

Memorandum of Understanding
between
The Comptroller and Auditor General



And



Date: 12 August 2024

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1. Parties to the Memorandum of Understanding

1.1. The parties to the agreement are:

The Comptroller and Auditor General (**C&AG**)

Address: de Carteret House

7 Castle Street

St Helier

JE2 3BT

AND

The Jersey Data Protection Authority/Information Commissioner (**JDPA**)

Address: 2nd floor, 5 Castle Street

St Helier

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This document is jointly owned by the C&AG and the JDPA.

2. Purpose of the Memorandum of Understanding (MOU)

- 2.1 The purpose of this MOU is to provide a framework for the effective working relationship, cooperation and exchange of information between the C&AG and the JDPA, relating to each body's respective responsibilities.
- 2.2 This MOU sets out principles of co-operation and does not override the statutory duties, responsibilities, functions and reporting rights of the C&AG and the JDPA. It is not enforceable in law and does not place extra legal responsibilities on either party. There is no implied transfer of responsibility from one party to the other nor implied sharing of statutory functions or accountabilities. The C&AG and the JDPA are committed to working in ways that are consistent with the principles of this MOU.
- 2.3 The MOU is intended to assist in promoting consultation on matters of mutual interest to improve the effectiveness of the C&AG and the JDPA in meeting their respective statutory duties and corporate objectives, including vision and values.
- 2.4 The Parties acknowledge that they may only provide information under this MOU if permitted or not prevented under applicable laws, regulations and/or other requirements.
- 2.5 The Parties have determined that they do not exchange enough personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

3. Functions of the C&AG

- 3.1 The Office of C&AG is a non-ministerial States body established under the Comptroller and Auditor General (Jersey) Law 2014 (the **2014 Law**).
- 3.2 The 2014 Law requires the C&AG to provide the States with independent assurance that the public finances of Jersey are being regulated, controlled, supervised and accounted for in accordance with the Law.
- 3.3 The responsibilities of the C&AG, fulfilled through the Jersey Audit Office (**JAO**), relate to:
- the accounts of the States of Jersey and certain other States entities to which the C&AG is responsible for the appointment of external auditors; and
 - wider aspects of the use of public funds.
- 3.4 The C&AG has a duty to consider and report on:
- general corporate governance arrangements
 - economy, efficiency and effectiveness in the way resources are used (that is, value for money); and
 - the effectiveness of internal controls.
- 3.5 Under Article 18 of the 2014 Law the C&AG has published a Code of Audit Practice that sets out the manner in which the C&AG proposes to discharge their functions.

4. Functions of the JDPA

- 4.1 The JDPA is a statutory body established under the Data Protection Authority (Jersey) Law 2018 (**DPAJL 2018**) to act as Jersey's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals. The JDPA consists of the Authority, the Information Commissioner, and the staff of the office. The operational name for the Information Commissioner and staff of the office is the Jersey Office of the Information Commissioner.
- 4.2 The JDPA is empowered to take a range of regulatory action for breaches of the Data Protection (Jersey) Law 2018 (**DPJL 2018**), the DPAJL 2018 and the Freedom of Information (Jersey) Law 2016 (**FOI Law**).
- 4.3 Part 4 of the DPAJL 2018 places a broad range of statutory duties on the JDPA, including monitoring and enforcement of the DPJL 2018, promotion of good practice and adherence to the data protection obligations by those who process personal data.
- 4.4 These duties sit alongside those relating to the enforcement regime under the FOI Law.
- 4.5 The JDPA's regulatory and enforcement powers include:

- 4.5.1 conducting assessments of compliance with the DPJL 2018, the DPAJL 2018 and the FOI Law;
- 4.5.2 issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
- 4.5.3 issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
- 4.5.4 administering fines by way of penalty notices in the circumstances set out in Article 26 of the DPAJL 2018;
- 4.5.5 issuing decision notices detailing the outcome of an investigation under the FOI Law;
- 4.5.6 certifying contempt of court should a public authority fail to comply with an information notice, decision notice or enforcement notices under the FOI Law;
- 4.5.7 investigating potential regulatory matters including liaising with the Jersey Financial Services Commission where appropriate; and
- 4.5.8 investigating potential criminal offences and liaising with the States of Jersey Police where appropriate.

5. Characteristics and principles of the working relationship between the JDPa and the C&AG

- 5.1 The C&AG and the JDPa intend that their working relationship will reflect the following principles:
 - adoption of a proactive approach and offering mutual support while respecting the statutory roles and the independence of each organisation
 - open and transparent, sharing information where legally able to do so, to inform decision-making and to minimise risk
 - efficient and effective communication, including through robust lines of communication and a collaborative approach where appropriate; and
 - maintaining and enhancing confidence of Islanders and the States Assembly in the C&AG and the JDPa.
- 5.2 Where the C&AG or the JDPa encounters a concern which they believe falls within the remit of the other, they will (where able) promptly convey the concern and relevant information. This might include anonymous or unsubstantiated reports. The receiving party may provide feedback on any action taken, but there is no expectation on the part of either party that feedback will be provided.
- 5.3 Each party will recognise the potential to offer input into the other's work programme through understanding each other's priorities and by discussing areas of shared concern.

- 5.4 The working relationship between the C&AG and the JDPA will involve at least biannual meetings where an exchange of information in respect of areas of mutual interest will be listed for discussion.
- 5.5 The C&AG and relevant staff of and/or contractors to the C&AG and the JDPA will liaise as necessary regarding any issues requiring cooperation and joint action.

6. Data sharing

- 6.1 When the C&AG and the JDPA co-operate with one another pursuant to this MOU they will do so in accordance with applicable legislation, including:
- the Data Protection (Jersey) Law 2018
 - the Human Rights (Jersey) Law 2000
 - the Comptroller and Auditor General (Jersey) Law 2014; and
 - laws and obligations relating to confidentiality of information.
- 6.2 Where data sharing occurs, due consideration will be given to ensuring that the purpose of sharing is specified, explicit and legitimate. It will be clear how the data shared is relevant to the remit of the receiving organisation and be proportionate to the stated purpose for sharing.
- 6.3 To the extent that any such shared information is to comprise personal data as defined under the DPJL 2018, the C&AG as a Data Controller must ensure that it has a legal basis to share such information and that doing so would otherwise be compliant with the data protection principles. Schedule 2 Part 2 para.13 of the DPJL 2018 may provide a legal basis for the C&AG to share information with the JDPA provided it is "necessary for... the exercise" of the JDPA's functions.
- 6.4 Art.8 of the DPAJL 2018 states that the JDPA can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if has been obtained, or provided to, the JDPA in the course of, or the purposes of, discharging its functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Art.8(2) of the DPAJL 2018 sets out the circumstances in which the JDPA will have the lawful authority to share that confidential information with JCC. In particular, it will be lawful in circumstances where:
- 6.4.1 The sharing was necessary for the purpose of the JDPA discharging its functions (Art.8(2)(c));
 - 6.4.2 The sharing was made for the purposes of criminal or civil proceedings, however arising (Art.8(2)(d)); or
 - 6.4.3 The sharing was necessary in the public interest, taking into account the rights and freedoms or legitimate interests of any person (Art.8(2)(e)).

- 6.5 The JDPA will therefore be permitted to share information with the C&AG in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 6.4. In doing so, the JDPA will identify the function of the C&AG with which that information may assist and assess whether that function could reasonably be achieved without access to the information in question. Where the information proposed for sharing with the C&AG amounts to personal data the JDPA will consider whether it is necessary to provide it in an identifiable form for the C&AG to perform its functions, or whether disclosing it in an anonymised form would suffice.
- 6.6 Where a request for information is received by either party under the DPJL 2018, the recipient of the request will seek the views of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Data Controller in respect of that data.

**7. Statutory functions:
of the C&AG in respect of the JDPA**

- 7.1 The JDPA is an independently audited States body with auditors appointed by the C&AG. Article 13 of the 2014 Law empowers the C&AG to make a report to the States Assembly on:
- the JDPA's accounts
 - the JDPA's general corporate governance arrangements
 - the economy, efficiency and effectiveness of the way the JDPA's resources are used; and/or
 - the effectiveness of the JDPA's internal controls.
- 7.2 Articles 21 and 22 of the 2014 Law give the C&AG wide powers of access to information, records and premises in connection with the discharge of their functions.
- 7.3 Nothing in this MOU shall affect the exercise of the C&AG's statutory functions in respect of the JDPA.
- of the JPDA in respect of the C&AG**
- 7.4 The JDPA's regulatory and enforcement powers include those functions referred to at paragraph 4.5 above. Schedule 1 of the DPJL 2018 gives the JDPA wide powers of access to information and premises in connection with their statutory functions.
- 7.5 Nothing in this MOU shall affect the exercise of the JPDA's statutory functions in respect of the C&AG.

8. Confidentiality and breach reporting

- 8.1 Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sending party.
- 8.2 Where one party has received information from the other, it will consult (where permissible) with the other party before passing the information to a third party and notify the sending party if it anticipates a legally enforceable demand for disclosure of the information (unless not practicable because of urgency or prohibited by law).
- 8.3 In accordance with relevant legislation, the C&AG and JDPA will protect the confidentiality and sensitivity of all unpublished and other confidential information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures.
- 8.4 Where confidential material obtained from, or shared by, the Sending party is wrongfully disclosed by the Receiving party holding the information, this party will bring this to the attention of the Sending party immediately. This is in addition to obligations to report a personal data breach under the DPJL 2018 where personal data is contained in the information disclosed.

9. Retention and disposal of information

- 9.1 The C&AG and JDPA acknowledge that any information provided under this MOU (including personal information) must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than permitted under the DPJL 2018 or any other regulations or requirements. As soon as practicable after any information supplied under this MoU is no longer required, the relevant party will dispose of it in a secure manner.

10. Review and termination of MOU

- 10.1 This MOU will be reviewed on an annual basis.
- 10.2 This MOU will continue to have effect until terminated by either Party giving 30 days' advance written notice to the other Party. It may be amended by agreement, in writing.
- 10.3 In the event of termination of this MOU, information shared under this MOU will remain subject to clauses 8 and 9.

11. Contacts

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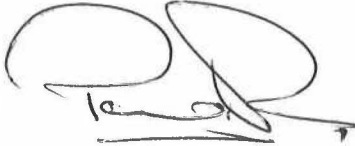
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Paul Vane, Information Commissioner

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12. Signatures:

	The Comptroller and Auditor General		Information Commissioner
Print Name	Lynn Pamment	Print Name	PAUL VANE
Signature		Signature	
Date	12 August 2024	Date	12 August 2024