

Outline Business Case

Project Title:

Establishing the Office of the Ombudsman

Project Sponsors:

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Establishing the Office of the Ombudsman

PART 1: OVERVIEW

1.1 Executive Summary

This business case sets out the rationale to create a new single entity for the independent handling of complaints relating to Government departments and Government administration to ensure the confidence of the public is maintained and that departments are held accountable for their decision.

Currently different types of complaints are handled by separate independent agencies, namely the Information Commissioner's office and the Office of the Complaints Commissioner. The Police Law (2010) creates a need to establish an additional agency to investigate complaints against the police.

This new Office of the Ombudsman will bring together the existing "Complaints Commissioner's Office" and "Information Commissioner's Office". In addition, this new office will undertake the responsibilities of the police complaints commission, an office yet to be established.

Bring the two existing offices together will deliver administrative efficiencies (including staff costs of \$205k) which will be utilized to create the functions of the police complaints commission. This will negate the need for new investment in the region of \$700k to create a standalone police complaints office.

A single focus for complaints and relevant investigations will deliver efficiencies, provide opportunities to improve public communications and enhance the overall accountability of Government to the public.

A decision from Cabinet by February 2016 will allow for detailed project planning and consultation with staff during the first half of 2016 and the new organisation in full operation by the end of 2016.

1.2 Background

The 2014 EY report included a recommendation to share administrative staff between the Complaints Commission, Information Commissioner's Office and Auditor General. In setting out their recommendation, EY added that "in conjunction with this, there is also scope to develop an office and post of Ombudsman to deal with areas including freedom of information appeals, maladministration complaints and police public complaints".

Initial analysis of the recommendations confirmed that the best option was to move to the complete merger of the Complaints Commission and Information Commissioner into the Office of the Ombudsman. This new office could then be tasked to take on the independent police complaints function which had not been established, despite being required by the Police Law, 2010.

On 6 January 2015, Cabinet approved the Deputy Governor's recommendation to develop an Outline Business Case to establish the Office of the Ombudsman (Item #1971).

PART 2: Strategic Context

2.1 Organisational Overview

The Office of the Complaints Commissioner (OCC) was established in 2006, with a mandate to undertake "investigatory functions in respect of complaints against all government entities". The Information Commissioner's Office (ICO) was established in 2007. Its remit includes "administering the FOI Law through processing, mediating and hearing appeals and monitoring public authorities to ensure they are in compliance with the law". The work of these two agencies is a key tenet of CIG's Good Governance initiatives.

A Police Complaints Authority is required in the Police Law (enacted 2010) but has not been established. At present, CIG is non-compliant with the Police Law. The establishment of an independent mechanism for dealing with complaints against the police by the public would provide another important tenet of CIG's good governance provisions and ensure complaints against police officers are independently investigated and dealt with fairly and thoroughly.

2.2 Key Drivers

The Key Drivers that have given rise to this project proposal are:

- The need for Government to comply with legislative requirements.
- The need for improved effectiveness and efficiencies in a context of fiscal constraint.

It is recognised that there are different approaches in other jurisdictions and an environmental analysis is included at **Appendix 1**. The concept of combining commissions being serviced by one secretariat has worked successfully in the Cayman Islands, the example being the Commissions Secretariat which services the Judicial and Legal Services Commission, the Constitutional Commission, the Human Rights Commission, the Anti-Corruption Commission, the Civil Service Appeals Commission and the Commission for Standards in Public Life.

2.3 Relationship to Other Government/Organisational Priorities

This project has the potential to contribute to the following high-level investment objectives established by Cabinet for Project Future:

1. Improve openness and transparency - through the creation of an independent police complaints function and establishment of clear Parliamentary oversight across the new service;
2. Increase public confidence in Government – by improving trust in the police through the establishment of an independent complaints function;
3. Improve the efficiency and effectiveness of Government operations – by reducing the

overhead costs of the existing agencies, allowing a greater proportion of resources to be invested in service delivery and enabling the establishment of a police complaints service with no additional investment required;

4. Reduce the size of Government – by merging agencies and removing the need to create a new one; and by eliminating the need to increase headcount to establish a new police complaints function; and
5. Increase customer satisfaction with public services – through the delivery of defined customer benefits as part of the project.

PART 3: The Case for Change

3.1 Investment Objectives

The project has considered the investment objectives identified by Cabinet relevant to this project. Drawing on Cabinet discussion of the preliminary analysis presented in January 2015, the investment objectives for this project are as follows:

- **Objective 1:** To maximise efficiencies within management and administration to create capacity.
- **Objective 2:** To avoid additional costs for a stand-alone Police Authority.
- **Objective 3:** To enhance service delivery and good governance mechanisms while improving quality and timeliness.
- **Objective 4:** To reduce the potential and risk of litigation.
- **Objective 5:** To create a suitable framework for parliamentary oversight.
- **Objective 6:** To ensure the structure is scalable should new or other related functions become part of the Ombudsman Office, e.g. whistle blowers, data protection.

These investment objectives will be refined and developed as SMART objectives to be included in the project benefits realisation plan.

3.2 Existing Arrangements – Information Commissioners Office and Complaints Commissioners Office

Currently, the Office of the Complaints Commissioner and the Information Commissioner's Office operate as two stand-alone agencies. They are governed by two separate laws: The Complaints Commissioner's Law (2006) and the Freedom of Information Law (2007), respectively.

Both the OCC and the ICO have staff complements of 6 people and an annual budget of \$783,000 and \$797,000 respectively. The estimated staff complement for the Police Public Complaints Authority was proposed to be 5 persons and the total cost of the Authority was estimated at \$700,000.

As well as their investigatory roles, both existing agencies have been charged with publicising their work and ensuring the public are aware of their rights under the respective Laws. Openness and transparency are facets of government life and public service agencies are now publishing more

information on websites and other social media. Furthermore, Information Officers have been employed in each government agency and have become more adept at handling information requests. The public are also very aware of their rights under the Freedom of Information Law so the need for public awareness has reduced. This has reduced the need for on-going awareness-raising and resulted in a change in emphasis for the work of ICO.

The previous Complaints Commissioner resigned and left on the 9th January 2015, a person is now acting in that role. The Information Commissioner post has been vacant for over a year and an Acting Commissioner has been appointed on a temporary basis. This is an ideal time and opportunity to re-organise the two offices and appoint one person, the Ombudsman, to lead the new organisation.

ICO and the Complaints Commissioner are already co-located in the Anderson Square Building. This was done to achieve a rental cost saving of \$50,000. Currently the two offices and the Auditor General's Office share the building lease and facilities such as boardroom, kitchen and reception areas. The Chief Financial Officer of the Portfolio of Legal Services provides accountancy and finance services for both offices. There will be capacity within this building to accommodate the new functions in relation to police complaints.

3.3 New Requirement - Police Public Complaints Authority

A Police Public Complaints Authority is mandated in the Police Law (enacted 2010) but has not been established. Currently complaints by the public against the police are handled internally by the Royal Cayman Islands Police Service.

Drafting instructions for an amendment to the Police Law have been completed but were put on hold in light of the EY Report and the development of this project. The proposed Police Public Complaints Commission could be easily absorbed into the Ombudsman's Office; the only change would be that a parliamentary committee would operate as the independent oversight body for the Police instead of a civilian oversight body.

More information about the Complaints Commission, the ICO and Police Complaints are at appendix 2, 3 and 4 respectfully.

3.4 Key Business Problem(s)

- **Problem 1:** There is no provision within CIG for independent investigations of complaints by the public against the police.

Part VII and Schedule 4 of the Police Law (enacted 2010) require the establishment of a Police Public Complaints Authority. Although this law has been enacted, the Authority has not been set up. This creates potential legal exposure and risk of challenge for CIG.

Serious complaints against the police are handled internally, which creates a significant potential conflict of interest, or have not been addressed. Public confidence in policing is eroded without an independent complaints function and potential complainants may be put

off if they do not believe the complaints process to be fair and impartial.

- **Problem 2:** The current arrangement of having separate agencies providing complaints functions requires two sets of management and administration arrangements and so does not take advantage of synergies and opportunities for efficiencies.

Currently the Information Commissioner's Office (ICO) and the Office of the Complaints Commissioner (OCC) operate as separate agencies, with a combined annual cost of \$1,580,000, and a total staff complement of 12 persons. The costs of management and administration are duplicated across the two agencies. The intermediate option of rationalising back office functions as recommended by EY could reduce administration costs but would not address the significant duplication of management costs.

There is the potential for a third agency, if the Police Public Complaints Authority is to be established. The cost of the Authority as a stand-alone agency is estimated at \$700,000, and would require approximately 5 new staffing positions. This level of funding is a challenge for CIG, in the context of its current fiscal constraints and its efforts to contain headcount across the civil service.

Cabinet had considered the establishment of a Police Complaints Commission to be serviced by the Commissions Secretariat. The proposal was considered during the 2015/16 budget round and provision was made for an additional investigator to be added to the Secretariat establishment during this year. The full year cost is \$79,000 but in recognition that the Commission had yet to be established, the 2015/16 budget only includes provision for a part year's cost (\$39,000).

There is a concern that for the small size of the jurisdiction there is no need for two or three discrete entities with their own management, administration and support services. The UK is in the process of rationalising their ombudsman services and many other jurisdictions either have merged functions or are considering doing so as detailed in Appendix One.

There are missed opportunities to rationalise the delivery of these good governance services, to better reflect the realities of a small jurisdiction, to pool specialist resources, and to establish a new structure that provides greater efficiencies, including resources to fund a mechanism for the independent handling of complaints against the police.

- **Problem 3:** The current arrangement for the handling of complaints does not deliver the best possible service to customers.

Public access to complaints services is limited by the current arrangements which require the public to navigate between separate agencies, laws and administrative procedures. As standalone agencies, there is limited opportunity to develop specialist roles for improved services. Reductions in management and support costs and a growth in investigative staff as police complaints are added would enable service quality and timeliness to improve.

- **Problem 4:** A new Protection of Data Bill will, if enacted, create additional functions for the ICO

which need to be accommodated.

A new Protection of Personal Data Bill proposes additional responsibilities for data protection to be charged to the Information Commissioner, which will require that office to register public and private sector data controllers; receive and investigate complaints; enforce the law; and impose fines and monetary penalties.

The Information Commissioner estimates that a further four persons will need to be recruited to cover these additional functions. Whatever arrangements are put in place need to be capable of incorporating these functions. The costs will need to be funded.

PART 4: Project Options

The 2014 EY report included the following recommendation:

“40 – Sharing of administrative staff between the Complaints Commission, Information Commissioner’s Office and Auditor General.”

In setting out their recommendation, EY added that *“in conjunction with this, there is also scope to develop an office and post of Ombudsman to deal with areas including freedom of information appeals, maladministration complaints and police public complaints”*.

On 6th January 2015, Cabinet received a report from the Deputy Governor recommending the complete merger of the Complaints Commission and Information Commissioner into the Office of the Ombudsman which would then also be able to take on the independent police complaints function which had not been established, despite being required by the Police Law, 2010. This recommendation was approved (Item #1971).

The approval by Cabinet of the Deputy Governor’s recommendation and the mandate to develop this business case therefore predates the introduction of the project future methodology. Hence no strategic assessment looking in more detail at a range of options for government oversight had been prepared as this was not a requirement at that time.

The absence of a formal option appraisal does not undermine the proposed solution since it is clear that any such appraisal would still have recommended the complete merger of the Office of the Complaints Commissioner and the Information Commissioner’s Office to create the Office of the Ombudsman. This is because this solution is the only one capable of fully meeting the investment objectives. It saves both management and administrative support costs and creates the potential to incorporate police complaints functions into the new Office while still achieving net savings in the Government’s budget requirements. The combination of functions and the creation of additional investigative capacity will enhance services overall. Parliamentary oversight of all the functions of the new Office will maintain independence while ensuring scrutiny and accountability for the proper discharge of these good governance arrangements.

It is clear that any option short of that proposed would fail to deliver these benefits. Crucially, the

option actually recommended by EY (sharing of back office functions) could only achieve savings in administration while leaving the management overheads unchanged. The incorporation of police complaints within the current total cost would not be possible, for example if it is simply added to the functions of the Complaints Commissioner, and the overall cost to government would increase. The potential for enhancing service delivery through the single service would remain unrealised.

If the business case for the establishment of the Ombudsman has not been made sufficiently strongly in this document, it would remain open for Cabinet to mandate that other options be explored.

PART 5: RECOMMENDED PROJECT OPTION

5.1 Summary of Key Benefits for the Recommended Project Option

Financial Costs and Benefits Table

The table below summarises the financial costs and benefits of the proposed change. For the purpose of illustration, the following assumptions are made:

1. The change takes place on 1 January 2017 (ie 6 months into the 2016-17, 18 month financial year)
2. The in-year savings in 2016-17 are utilized to meet the costs of change
3. Budget requirement in 2018 (and subsequently) is reduced by the full net saving
4. All figures in 2015-16 prices

	2015-16 (\$'000)	2016-17 (\$'000)		2018 (\$'000)
		July 16-Dec 17	Jan-Dec 17	
Office of the Complaints Commissioner	783	391.5		
Information Commissioner's Office	797	398.5		
Police Complaints (in Commissions Secretariat)	39	19.5		
Office of the Ombudsman			1536	1536
Provision for Costs of Change			83	
Total Budget Requirement	1619	809.5	1619	
Net Savings		0	0	83

There will be costs associated with the project in relation to staff and public engagement, recruitment, training and communications. It is envisaged that there will be sufficient existing budget provision and efficiencies through the merger to negate the need for specific transitional funding.

The proposed merger of the OCC and ICO would enable two posts to be deleted, one in the management structure and one administrative support post. The total costs of employment for these two posts is approximately \$205,000. This figure represents the gross cost saving from the merger and

represents an efficiency gain since the reduction in overheads allows the same workload to be carried at a lower total cost.

Further savings may be identified in the non-pay budget of the Ombudsman as the two existing agencies are merged. This will be done during the next, planning stage of this project and therefore this benefit line may be increased in the full business case.

Incorporating police complaints within the new Ombudsman service means that the functions could be covered by two new investigator posts (who would also contribute to the work of the existing agencies). No additional management or support posts are required though it is recognised that some adjustments in grading of posts in the new structure may be necessary to reflect changed responsibilities. The new structure has not been finalised nor the new posts evaluated but an estimate of the potential impact (increases and decreases) has been made, drawing on advice from the Portfolio of the Civil Service.

The business case assumes:

1. That the existing budgetary provision within the Commissions Secretariat will be applied to defray the additional costs of police complaints in the new structure
2. The remaining net cost of creating capacity for the investigation of police complaints will be met from the efficiencies created through the ICO/OCC merger

The total impact of incorporating police complaints is set out in the table below:

Requirement	Budget (\$'000)	Cost (\$'000)
Two additional investigator posts		156
Provision for net costs of grading of possible structure		5
Existing budget provision (Commissions Secretariat)	39	
TOTAL NET COST (Police Complaints)		122
Efficiency saving from ICO/OCC merger	205	
OVERALL GOVERNMENT BUDGET SAVING	83	

The table above demonstrates that the proposals in this project allow the existing complaints and freedom of information services to be maintained and police complaints to be added while reducing the overall Government budgetary requirement by \$83,000.

The overall saving could be removed from the budget of the new Office of the Ombudsman. However, the likelihood that data protection functions will be added to the remit of the Ombudsman has already been recognised. If the saving was retained by the Ombudsman, the net additional budget required to fund the new functions would reduce from \$282,000 to \$199,000.

In addition, the identified cost pressure of \$661,000 for police complaints will not now need to be funded. This represents a financial benefit in terms of cost avoidance.

There is a further non-cashable benefit from the creation of independent capacity to investigate police complaints. Since complex complaints will now be investigated elsewhere, the time of police officers currently taken up in that activity will now be available for core police work.

The following non-financial benefits are anticipated if the project is implemented:

Benefit Category	Anticipated Outcome	Project Benefit	Metric
Improved oversight	One parliamentary committee to oversee the Office	Will meet contemporary standards by delivering clear accountability to parliament for performance and for prudent use of public money	One oversight body instead of two and comprehensive oversight by the legislature.
Legal Compliance	Compliance with Police Law	Reduced legal exposure	Zero lawsuits for non-compliance
Service Improvement & Customer Benefits	Enhanced service delivery	New services available to the public - Independent handling of complaints by the public against the police.	Increase new services by 1 Number of serious Police Complaints investigated (est. 10 per annum currently) Number of appeals considered (current unmet demand) by independent investigators
		Greater convenience to customers.	One physical and web-based location to receive complaints. Customer satisfaction rating of service convenience (survey/target to be implemented post-merger)
		With more investigators and a streamlined operation, customer complaints will be handled in a timely manner.	The new Ombudsman would establish service standards for the resolution of complaints and develop monitoring and reporting procedures by go-live date. The achievement of standards would be published on the Office of the Ombudsman website.
		Increased public confidence in raising complaints and concerns.	The new Ombudsman would establish service standards for the resolution of police complaints. Increased-customer satisfaction with integrity/accountability of police (survey/target to be established post-merger)

Future Resilience	Future functions can be added at minimum cost	The new Office structure will be designed so it can be scaled up to incorporate other related roles in the future	Reduced future set up costs, overheads and implementation timescale.
Staffing	Better trained Staff with greater back up and resilience Greater job satisfaction	Improved staff morale	Co-ordinated training provided for staff Staff morale to be assessed during and after implementation

The project will establish appropriate baselines for benefits realization following approval of the OBC. The new Ombudsman will be charged with the realization of these benefits.

5.2 Summary of key risks with the recommended project option

The following key risks have been identified by key stakeholders. This will be developed following OBC approval and developed into a mitigation plan.

Category	Description	Mitigation strategies
Under-perform against expectations	A merger or restructuring project may be started without a proper specification of the intended project outcomes and an absence of a defined and clear performance plan.	Develop a robust business case and define the required outcomes of the merger and restructure including performance specifications for the overall project. Define plans for measurement, progress tracking and open communication regarding results of project progress and performance delivery
Project delay - legal frameworks	Legislation underpinning the arrangements may need to be completely revised bringing considerable delay in the project	Seek clear legal opinion and implement approaches which minimise the need for legislative change. It may be necessary to fund external legal resources to reduce delays.
Adverse public reaction	Adverse public opinion as a result of the changes may undermine the value of the project	Understanding the public's views will help to evaluate the risk and that would be considered as a communication plan is developed. Surveying the public in advance of a merger or restructure will help to know what the risk of adverse public opinion is
Poor project delivery & weak benefit realisation	Weak project management could lose track of budget, progress, and overall performance of the project. Staff morale may be impacted and this could undermine benefit realisation	Continued sponsorship of Deputy Governor. Make the best Ombudsman selection possible. Use of approved project planning and other methodologies and suitably trained project staff. Ongoing engagement of staff to secure their buy-in and to elicit their ideas.
Inadequate design	Inadequate design and documentation of new business processes may result in confusion and inconsistent delivery of services leading to poor customer service and performance degradation.	Ensure there is adequate documentation and review process for new or redesigned business processes. Train staff in use of new processes. Communicate new processes effectively to the customers.

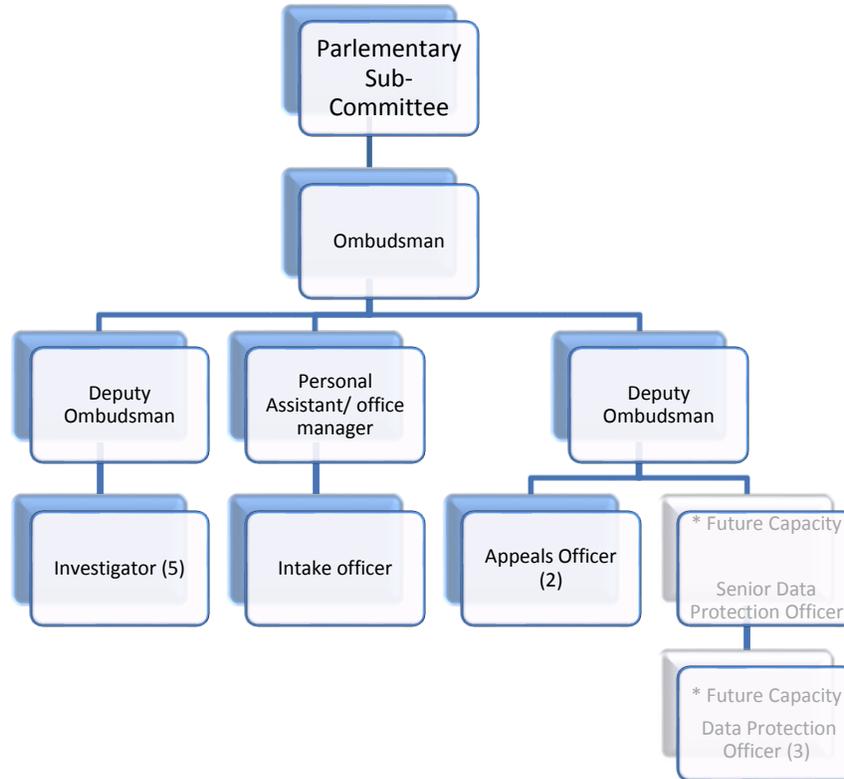
Improper political influence	Improper political influence resulting from Parliamentary Oversight of sensitive functions such as Information Appeals and Police Complaints.	Establish robust governance model whereby respective roles and responsibilities are established. Selection of an experienced Ombudsman, and ongoing training and education being provided to members of the Oversight Committee, officials within the Office of the Ombudsman and the public at large.
Resistance to Change Management	Existing staff may have closely identified with the existing organization to which he/she already belongs, and may resist proposals to establish joint operations under unified leadership.	Existing staff will be actively engaged throughout the implementation phase, with particular emphasis on internal communications.

Another risk identified early in the process was whether the establishment of the Office of the Ombudsman offended provisions within the Cayman Islands Constitutional Order. The Attorney General was consulted to establish if there would be any constitutional barriers to a merger and sharing of functions within a single ombudsman. His initial view (11 September 2015) is that the words in s.120 (5) is sufficiently wide enough to allow the Governor to task the Ombudsman with the other functions in circumstances where it is reflected as one post/job/office comprising various functions.

5.3 Personnel implications

It is proposed that the Office of the Ombudsman be created with an establishment of twelve posts. This is the same headcount number as the existing ICO and OCC combined. It removes the need for the additional post in the Commissions Secretariat and prevents the need to create up to four new posts (the originally estimated five less the one post already established in the Commissions Secretariat) in order to create a separate Police Complaints Authority.

The structure would be finalized in subsequent phases of this project and formal grading of posts would be evaluated by the Portfolio of the Civil Service. However, a draft structure as set out below has been developed to allow the costing of the proposal and, in particular, to ensure that the data protection officers can be accommodated should they be required.



*Greyed out text illustrates the potential in the structure to incorporate future functions, subject to legal enactment and funding

It is recognised that while the total number of posts is the same as at present, the roles themselves may change. Hence there will need to be a clear transition plan for staff including appropriate training if roles are changing. However, assuming the necessary transitions can be made, the new structure could be implemented without the need for redundancies and the associated costs.

Most of the project implementation will be carried out by existing civil servants. While this represents an opportunity cost to Government, there is no formal budget requirement. Initial project planning has shown that the required staff time can be dedicated to the project. The only exception is the potential risk of availability of in-house legal drafting resources.

The roles to be merged and amalgamated are administrative and management and while there will be some unique elements relating to existing procedures and processes they are sufficiently generic and can be addressed through change management and training. Specially trained investigators will be required to handle police complaints as it is unlikely that existing staff will have the required skills

5.4 Costs, Funding & Affordability of the Recommended Project Option

The on-going revenue position yields a net saving of \$83,000 to Government as identified in Section 5 above.

Most of the project implementation will be carried out by existing civil servants. While this represents

an opportunity cost to Government, there is no formal budget requirement. Initial project planning has shown that the required staff time can be dedicated to the project as set out in the “Key Personnel Resources” section below.

In addition, one-off project costs have been identified covering:

- the need to establish the Office of the Ombudsman (web-development, templates etc)
- advertising and awareness raising for the new service
- training for existing and new members of staff
- recruitment costs to new posts
- external legal support in the event in-house legal drafting resources cannot provide a timely response.

It is not clear at this point how much of this can be done from within existing budgets elsewhere across Government (eg for training) and how much additional spending will be required. This will be clarified during the project planning phase.

It is recommended that any additional cash costs be met from within the existing budgets of the services that are being combined. In other words, the combined underspend in 2015-16 and the first year saving of \$83,000 during the transition year would become a budget to support the additional costs of change. There is no significant risk that this would be insufficient (even if there are external legal costs). Additional funding is not being sought to implement this project.

5.5 Key stakeholders

The following key stakeholders are relevant for this project:

Stakeholder	Impact the project?	Be impacted by the project?	Issues raised by stakeholder	How will we engage this stakeholder?
Internal				
Staff & leadership of the three entities involved in the merger	Cooperation of the staff is key to the merger being successful. Leadership buy in is also critical to taking the project forward.	Change of duties for some members of staff. New job descriptions Possible new grading of posts. Staff training	Compromise the independence of the ICO Improved job prospects Acquiring new skills. (see appendix 3) Police welcome an independent body to deal with serious complaints against the police.	Initial meetings already undertaken, to explain the project, further meetings when Cabinet have given the green light to the project
Legal Department	Dealing with drafting in a timely manner.	The workload involved in Re-drafting the legislation will require a substantial resource.	Initial legal advice received and set out in this report.	After Cabinet decision is made to go ahead with the project and what priority is given to the legislative impact.
Members of the Legislative Assembly	Agreement to set up oversight committee.	The oversight committee will have a larger more diverse entity to oversee a larger budget to set more expenditure to control.	No formal contact made at present with oversight committee, but there have been some negative comments during the meetings of recent Finance Committee.	After Cabinet decision is made to go ahead with the project.
External				
General Public		Having one agency to deal with (one stop shop) will reduce the time spent identifying the right agency to deal with. A more efficient and effective service will be delivered.	None.	During implementation including, the consultation phase of any new law.

PART 6: Implementation Strategy

6.1 Governance arrangements

The project will be led by Peter Gough, as Project Manager who will report directly to the Deputy

Governor. On-going monitoring will be carried out by the Strategic Reforms Implementation Unit and progress will be reported regularly to Cabinet as part of the wider Project Future Governance arrangements.

6.2 Assurance and approvals

As there are no new investment requirements, approval of this OBC will authorise the project sponsor to proceed to detailed planning and project execution.

Where there are any material changes identified prior to or during execution, the case will be resubmitted to Cabinet for approval/direction.

6.3 Outline timescale

From approval, implementation is expected to take 9 months, subject to detailed project planning.

Key project milestones are:

Key Milestones	Target Start Date
Cabinet/Caucus Approval of OBC	February 2016
Project Team Assembled	March 2016
Approval of project plan and full business case	May 2016
Consultation with staff, customers and stakeholders	July 2016
Recruitment, staff training and transition	August-December 2016
New office fully established and operational	December 2016

6.4 Key personnel resources

Successful project delivery requires a range of key staff to be available to contribute to the project as set out below. No external resources are required at this stage though the risk around legal drafting resources has been recognised.

The Project Team is as follows:-

Role	Description	Name/Title
To manage the project on behalf of the Deputy Governor.	Project Manager	Peter Gough, Strategic Advisor
	Deputy Project Manager	TBD
Provide legal and constitutional advice and to draft the new law that combines the FOI Law, the Complaints Commissioner Law and the section of the Police Law dealing with Complaints.	Legal Advisor/ Constitutional Advisor	Legal Department
To manage the staffing transition, consultation with affected staff, new organisation, new job descriptions, slotting staff into new roles, training, recruitment of new staff and Consultation with CICSA.	HR Advisor	Portfolio of the Civil Service
To advise on technical issue, complaints handling, due process, appeals etc.	Technical Advisor	John Epp
To advise on internal and external communications strategy	Communications Advisor	Government Information Services

6.5 Project management methodology

The Project Future Project Management Methodology and standards will be used to support project implementation.

6.6 Benefits realisation

A detailed benefits realisation plan will be created at the detailed planning phase of the project. However, at a minimum the following objectives are expected to be achieved:

- **Objective 1** – To achieve in the 2018 budget, gross savings of \$205,000 in management and administration costs through the merger of the two existing entities and net savings of \$83,000 after incorporating police complaints.
- **Objective 2** – To avoid \$661,000 of additional costs for a standalone Police Complaints Authority
- **Objective 3** – To be refined through the project planning phase.
- **Objective 4** – To ensure zero successful legal challenges for non-compliance with the Police Law following establishment of the Ombudsman.
- **Objective 5** - To be refined through the project planning phase.
- **Objective 6** – To be determined as part of the implementation of new regulatory frameworks

6.7 Risk management

A risk management plan will be created at the detailed planning phase of the project.

6.8 Organisational change management

A detailed organisational change management plan will be created at the detailed planning phase of the project.

6.9 Project close-out (and post-project evaluation)

A project close-out report will be created at the closing phase of the project. A post-project evaluation may be conducted by an independent team facilitated by SRIU at a future date.

Appendix I: Environmental Analysis

United Kingdom

There are currently over twenty ombudsman services in the UK and over ten public service ombudsmen alone - a total of 30 oversight bodies.

The United Kingdom is introducing a Draft Public Service Ombudsman Bill in 2015. The purpose of the Bill is to:

- Reform and modernise the Public Service Ombudsman sector providing a more effective and accessible final tier of complaints redress within the public sector.
- Absorb the functions of the Parliamentary Ombudsman, the Health Ombudsman, the Local Government Ombudsman and potentially The Housing Ombudsman.

The Government published a consultation on the proposal to create a single Public Service Ombudsman (alongside the Gordon Report) on 25th March 2015. This closes on 16th June. Responses to this consultation will inform the policy development process and plans for this future legislation.

The main benefits of the Bill would be:

- Creating an overarching Public Service Ombudsman organisation which would include the functions of the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman and potentially the Housing Ombudsman.
- A simplified, improved and more accessible final tier of redress for customers of public services who have complained and who do not feel satisfied by how their complaint has been handled.
- The opportunity to improve public services by identifying where problems are occurring and informing the creation and development of effective responses.

The main elements of the Bill are

- Accountability, and
- Reporting

The Bill would ensure a robust process for accountability and reporting.

Australia

The Australian Government concludes that “the arguments in favor of an Ombudsman or an Information Commissioner are evenly weighted. There are some advantages that an

Ombudsman can bring to the function - such as its greater resources and experience in administrative oversight. There are likewise some advantages on offer with an Information Commissioner - for example, it is easier to give a Commissioner a determinative role and oversight of ministerial decisions.”

In its analysis the research paper has determined that there is a substantial overlap between general Ombudsman work and FOI work. “Many of the issues are the same - complaints about delay in dealing with an application, about an agency’s interpretation of a person’s application, the sufficiency of a reasons statement for an adverse decision, the adequacy of a search for missing documents, or a refusal to handle a burdensome request. Those complaints are resolved more by applying principles of good administration that are at the heart of Ombudsman work generally, than by applying specialist FOI jurisprudence. The Ombudsman also has coercive statutory powers that may be needed in exceptional cases to obtain documents, enter premises and take evidence on oath.”

There is an apparent determination during the research that performing FOI related duties complements the Ombudsman Office as noted “there is a need for the underlying objectives of FOI - greater transparency and accountability in executive government - to be promoted. Those objectives align closely with other Ombudsman work. Indeed, FOI is a natural supplement to that work, and will give the Ombudsman’s office an insight into an agency’s record keeping and attitude to transparency.”

In the final analysis in determining whether to keep them separate or merge the functions the paper stated as follows “If an Ombudsman is the chosen option, it seems preferable to bestow the function by conferring it upon the Ombudsman as a separate statutory role of Information Commissioner. And, whichever option is chosen, there is much to be said for allowing appeals to be heard by an administrative tribunal with a merit review function. The tribunal provides a better setting, in difficult or hard-fought cases, for allowing the expert presentation and adjudication of competing arguments. The division of responsibility between the tribunal and a commissioner (or ombudsman) also lessens the risk that the fate of FOI will rest on the health of the current relationship between a commissioner and the government.

Preliminary research undertaken indicates that Ombudsman with an FOI function or oversight role could be found in New South Wales, Victoria, South Australia, Tasmania, and Australian Capital Territory. Examining other jurisdictions, particularly in Australia, there is significant overlap in the work between the Complaints Commissioner or Ombudsman function and FOI. Incorporating both functions provides the added benefit of enhancing access to ‘administrative justice’.

Another factor that can be decisive is the size of the government jurisdiction and the expected FOI caseload. In a small jurisdiction where the number of FOI cases is low, it makes more sense

to give the oversight function to the Ombudsman rather than create a small and possibly awkward separate office. By contrast, in a jurisdiction that handles a large FOI caseload, a separate office is easier to justify. This can, however, be countered by geography. In a geographically large country such as Australia, there are practical advantages in merging the FOI function in an Ombudsman's office that already maintains a national operation. At the end of the day, there is a need for either an Ombudsman or an Information Commissioner to play an oversight role. Simply stated, FOI will not work well across government unless there is an FOI champion."

However, drawing on our international counterparts, Australia, in particular New South Wales has successfully implemented the operations of the Information Commissioner's Office, the Complaints Commissioner's Office and maladministration. Within this scope, the Ombudsman is an independent officer who possesses comprehensive powers to act in accordance in any of the areas highlighted above. It should be emphasised that the Ombudsman can only recommend disciplinary action to the Commissioner of Police.

Ireland

The Irish Government has combined the roles of Information Commissioner and Complaints Commissioner, now called Ombudsman and Information Commissioner. Distinct legislation continues to support the two functions, but a single leader now embodies dual roles. Responsibilities of these roles are defined as follows:

"The Ombudsman is a senior public official, charged with monitoring the public administration through the examination and investigation of complaints from members of the public who believe they have been adversely affected by the administrative actions of a public body.

The remit of the Ombudsman now covers all Government Departments, Local Authorities, the HSE, and circa 180 additional public bodies recently added to the remit through the Ombudsman (Amendment) Act 2012. The Ombudsman also serves as Information Commissioner under Freedom of Information legislation, and as Commissioner for Environmental Information."

The Information Commissioner is completely independent of the Government in the performance of his functions. This independence is underpinned by the Freedom of Information Act 2014.

The main functions of the Commissioner can be summarised as:

- reviewing (on application) decisions of public bodies in relation to FOI requests and where necessary, making binding new decisions
- reviewing the operation of the Freedom of Information Act to ensure that FOI bodies comply with the provisions of the legislation
- fostering of an attitude of openness among FOI bodies by encouraging the voluntary publication of information above and beyond the minimum requirements of the Act
- preparing and publishing commentaries on the practical operation of the Act
- the publication of an Annual Report

The Ombudsman examines complaints of maladministration against government departments. He makes

recommendation for redress, where appropriate and report annually to the Irish Parliament on the work of the Office. If a public body chooses to reject these commendations, a special report may be made to Parliament. As Information Commissioner the principal role is to review the decisions of public bodies under the Freedom of Information Acts, 1997 and 2003. Binding decisions are made and which may be appealed to the High Court but only on a point of law. Annual reports are submitted to the Parliament on the work of the Office.

On the face of it, there appears to be a number of similarities between the roles of the ICO and the OCC. These similarities would also seem to facilitate easy transition of roles between the two Offices. In addition the skills set for staff seem to also co-relate. If approved, further examination will occur during the next phase.

In Northern Ireland, there is the role of the Police Ombudsman with oversight for police complaints only.

Caribbean

Barbados and Trinidad have an established office that is distinct from dealing with FOI and complaints investigations. In Jamaica, the Ombudsman is known as the Public Defender. The Public Defender combines the role of the classic ombudsman with the role of a human rights commissioner/advocate, (and, by the way, can investigate complaints against the Public Service Commission).

Canada

The Ombudsman's office completes the duties of the Information Commissioner as is done in Manitoba. The Ombudsman annual reports for the calendar year 2014, including a report under The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA) and a separate report under The Ombudsman Act and The Public Interest Disclosure (Whistleblower Protection) Act (PIDA).

The Ombudsman can serve as the Commissioner for Public Interest Disclosure (Whistle blowers) as is done in Alberta and Newfoundland, Nova Scotia and Saskatchewan. In Alberta and British Columbia, the Ombudsman also regulates professional organisations such as Accountants, Health Services and Veterinarians.

Appendix 2 Complaints Commission

The Office of the Complaints Commissioner is responsible for undertaking the investigatory functions in respect of complaints against all government entities as set out in the Complaints Commissioner Law (2006) Revision.

Scope of Activities

- Receiving written complaints from the public and deciding whether they should be investigated;
- Investigating written complaints from the public and reporting to the complainant and government entity on the results of the investigation;
- Making recommendations for actions to be taken where injustice has occurred as a result of maladministration, monitoring compliance with those recommendations;
- Where no adequate action is taken, preparing a special report to the Legislative Assembly in accordance with S.18(3) of the Complaints Commissioners Law;
- Referring to the relevant person or body for their action any evidence of breach of duty, misconduct or criminal offence;
- Ascertaining the inequitable or unreasonable nature or operation of any enactment or rule of law;
- Reporting annually to the Legislative Assembly on the performance of the Office of the Complaints Commissioner's functions;
- Conducting Investigations of the Commissioner's Own Motion (OMI's) on matters of special importance in the public interest in accordance with S.11 of the Complaints Commissioners Law
- Continuous monitoring of the effectiveness of the Internal Complaints Process established by the OCC throughout the civil and public service by means of quarterly reporting and the Annual Meeting / Seminar; and
- Educating and raising awareness of the role and function of the Office of the Complaints Commissioner, both amongst government entities and with the general public.

Strategic Ownership Goals

The key strategic ownership goals for the Office of the Complaints Commissioner in 2015/16 and the subsequent two years are as follows:

- Provide first-class training to the Office of the Complaints Commissioner staff.
- Improve presence on the internet for informational purposes and to register complaints on line;
- Provide reports to the media on the work of the Office of the Complaints Commissioner;
- Increase public awareness education and outreach through OCC publications, media interviews, advertising social media and an active presence during Heritage Week;
- Monitoring and reviewing the implementation of the internal complaints procedure to increase civil and public servants knowledge of the role and mandate of the Office of the Complaints Commissioner, including providing annual training;
- Enhance the international visibility of the Office of the Complaints Commissioner; and
- Participate on the Anti-Corruption Commission.

Financial Performance

The 2015/16 budget was \$783,000.

The 2015/16 staffing costs are

Salary	Health	Pension	Other	Total Remuneration
\$429,000	\$84,000	\$24,000	\$10,000	\$547,000

Outputs

OCC 1	Investigation of Written Complaints or Public Interests	\$535,000
OCC 2	Monitor the Implementation of the Commissioner's Recommendations	\$141,000
OCC 3	Policy	\$13,000
OCC 4	Public Education Outreach	\$94,000

Workload

According to the 2015/16 Annual Budget Statement, the OCC referred over 300 complaints to the relevant agency to deal with in 2014/15. It received approximately 70 written complaints to be dealt by 3 investigators. The 2015/16 forecast expenditure for this output is \$535,000, which includes provision for 1-3 public interest investigations. The approximate cost for the investigation of each complaint ranges from \$5,000 to \$11,000.

Appendix 3 - Information Commissioner's Office

As a quasi-judicial office, continue to administer the Freedom of Information Law, 2007, (FOI Law) through processing, mediating and hearing appeals; monitoring public authorities to ensure they are in compliance with the law and the public's rights under the law have been upheld; and to promote FOI within the Cayman Islands.

In the event that the Data Protection Bill is adopted by the Legislative Assembly (on the Legislative Schedule for the Spring of 2014) , the ICO will play a similar enforcement role in relation to that statute but in relation both the Private and Public Sector.

Scope of Activities

Freedom of Information Law:

- Hear, investigate and rule on appeals filed under the Law;
- Monitor and report on the compliance by public authorities with their obligations under the FOI Law;
- Make recommendations for reform both of a general nature and directed at specific public authorities;
- Refer to the appropriate authorities cases where it appears that a criminal offence has been committed;
- Publicize the requirements of the FOI Law and the right of individuals under it. Similar scope of activities under the Data Protection Law, if passed

The key strategic ownership goals for the Information Commissioner's Office in 2015/16 and the subsequent two years are as follows:

- FOI Appeals/Mediation/Hearings
- To review eligible appeals under the FOI Law in accordance with the policies and procedures of the ICO, for instance where an applicant has exercised the right to access records and is unhappy with a public authority's decision, action or non-action with respect to a request filed under the Law;
- To process, mediate and/or hear appeals where an applicant is unhappy with the decision or response of a public authority who has:
 - Failed to indicate whether or not it holds a record; o Failed to communicate the information contained in a record within the time allowed by this Law or at all;
 - Failed to respond to a request for a record within the time limits established in this Law;
 - Failed to provide a notice in writing of its response to a request for a record;
 - Charged a fee that is in contravention of this Law; or
 - Otherwise failed to comply with an obligation imposed under this Law.

Where an appeal is not resolved at mediation, the Commissioner reviews the issues and personally makes a binding decision with which the public authority must comply. If the public authority is dissatisfied with the Commissioner's decision, an application for Judicial Review of the decision can be filed with the Grand Court in accordance with the Law.

Monitoring Compliance with FOI Law

- Monitor and Investigate Public Authorities: to monitor public authorities to ensure compliance with the Law and carry out investigations in accordance with ICO procedures.
- FOI Law review: assist the Hon. Speaker and the FOI Law Review Subcommittee of the Legislative Assembly in the statutorily mandated review of the FOI Law, and suggest further amendments if appropriate.
- Data Protection: assist the Hon. Attorney General and carry out preparations for the drafting and implementation planning relating to a Data Protection Law, in the event that the Data Protection Bill is passed in the Legislative Assembly.

Public Awareness of FOI

ICO is committed to raising awareness of our role among the general public and planning promotional activities and producing promotional products to increase public awareness of the rights provided under the FOI Law throughout the Cayman Islands.

The ICO assists public officers, in particular Information Managers, with questions relating to the general workings of the FOI Law, and conducts training seminars on introductory and specialist topics relating to FOI.

The general public can communicate with our office for inquiries and assistance at the physical office location, telephone and email. This information is available electronically on the ICO website which is maintained and updated on a regular basis.

We aim for outreach and networking opportunities including an annual or bi-annual Caribbean Conference in cooperation with our associate Information Commissioner Offices, in order to:

- promote Cayman Islands as an Information Rights leader in the Caribbean;
- assist and learn from International Commissioners' experiences and collaboration with these offices to develop best practices and standards in the Cayman Islands;
- assist other UK Overseas Offices in establishing, developing and maintaining Information Commissioner Offices, as required.

The ICO's Strategic Ownership Goals under the Data Protection Law are expected to be similar, if the Data Protection Bill is passed by the Legislative Assembly.

Financial Performance

The 2015/16 revenue budget requirement is \$797,000.

The 2015/16 staffing costs are

Salary	Health	Pensions	Other	Total Remuneration
\$443,000	\$75,000	\$25,000	\$6,000	\$549,000

Outputs

ICO 1	Compliance with Freedom of Information Legislation	\$797,000
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Workload

Since it came into being in January 2009 through to the end of June 2015, the Information Commissioner's Office had received 167 appeals under the Law, an average of approximately 26 per annum.

While these figures are the most obvious expression of workload, the Commissioner has commented that: *"Many of the ICO's other functions do not translate easily into statistical representation. They include outreach to the general public, compliance monitoring and investigation of public authorities, and increasingly, training of Information Managers and other officials general, and advice about the FOI Law to the Public Sector."*¹

Appendix 4 - Police Public Complaints Commission

Following Cabinet approval to issue drafting instructions (CP NO 1724/12) to establish the Police Public Complaints Commission (PPCC) by an amendment to the existing law, the draft law was presented to Cabinet for approval in July 2013. That draft has not been progressed while this project was on-going. No police complaints function has yet been established.

Functions of the Commission

The Commission will act as an independent civilian oversight body for the Police and will receive and order an investigation of any complaint made by a member of the public against a police officer and or civil servant acting under the auspices of the police.

Any complaints regarding death or serious injury as a result of police action will be investigated by a team of investigators from overseas.

The less serious complaints will be investigated by a senior police officer or the Professional Standards Unit as appropriate; however the PPCC will monitor the investigations of all complaints.

The Commission will act as an appellant body for those complainants that are not satisfied with the outcome of their complaint.

The Commission will encourage the Police to resolve complaints informally. The Commission will adopt an oversight role for the investigation of these complaints.

When it is not possible or appropriate to resolve the complaint informally there will be a formal process adopted.

If the complaint relates to a fatality or serious injury as a result of police custody or action, a copy of the complaint will be forwarded to the Director of Public Prosecutions and the Attorney General.

A complaint can be made within six months from the date on which the alleged acts took place or from the date such acts become known to the complainant.

Objectives

The following objectives for a Public Police Complaints Commission should be met:-

- Independent of the executive – In governance terms this does not necessarily mean a statutory authority. The three oversight bodies we currently have, namely the Audit Office, Information Commissioner and Complaints Commissioner are parliamentary bodies and are overseen by the Legislative Assembly. The Commissions set up under the constitution are not statutory authorities nor is the Anti - Corruption Commission;
- Independent investigative resources –Independent of the agency they are investigating;
- Defining scope and purpose – Determined by regulations and administrative policy;
- Adequate powers - This is determined by legislation;

- Sufficient resources and funding - Parliamentary oversight and reporting;
- Authority to follow up on recommendations - Determined by legislation; and
- Supported by legislation – separate legislation has been established.

It is important to have independent oversight as part of the process this will:-

- Improve the image of the police and its relationship with the public;
- Improve the public's understanding of the nature of police work;
- Promote community policing;
- Improve the quality of a police agency's internal investigations;
- Reassure the public that the police agency investigates complaints thoroughly and fairly;
- Discourage misconduct amongst police officers; and
- Improve a police agency's policies and procedures.

Workload

It is estimated that an average of 2 routine complaints are made against the police per week of which 10 are more serious complaints per annum. The workload is based on data from the Professional Standards Unit (PSU). The more routine complaints would still be dealt with through the normal police channels and investigated by the PSU. However, all complaints would be monitored by the independent body. This independent body would act as the primary investigators for the more serious complaints and would act as an appellant body where there is an allegation that a routine complaint was not addressed by the PSU in a satisfactory manner. It is likely that more complaints would be generated once the independent function is established, as there is likely to be greater public confidence.

Appendix 5 Consultation Feedback

ICO, Complaints Commissioner and the Commissioner of Police

The ICO, the OCC and the Commissioner of Police have been consulted. Initial feedback to the concept of a merger from the OCC and ICO is mixed.

The Complaints Commissioner's Office currently sees a potential merger as an opportunity for staff development and training and to develop a more robust organisational structure that would support the overall mission of the Office. It was felt that dealing with complaints against the police was a logical extension of their role. The previous Complaints Commissioner had a different view, she felt it would be a demotion of the office, and there would be a conflict of interest if the merger took place

The issue of the OCC handling complaints against the police was discussed in the early days when the Office of the Complaints Commissioner was set up. The opinions voiced at that time were that there would need to be changes to the law to merge these offices. The Police have no fundamental issues with the Ombudsman Office dealing with complaints against the police as long as there is an agreed process and the role of the Professional Standards Unit is recognised in dealing with low level complaints albeit that there will oversight by the Office of the Ombudsman. The main issue with any oversight body of the police is to ensure that their powers do not override the absolute authority of the Police Commissioner in disciplinary and operational decisions.

The ICO perspective is that the two offices are operationally fundamentally dissimilar and risk losing brand definition and their reputation and credibility. They have expressed doubts about potential cost savings. The Acting Information Commissioner has stated publicly that "a merger has the potential of weakening the authority and independence of the Office, and risks undermining the already difficult task of many civil and public servants including Information Managers and ICO staff, who make the right to access possible in the Cayman Islands on a daily basis".

The main thrust of the arguments from the ICO and the previous Complaints Commissioner is that their functions are different and a merger may compromise their independence and influence. A further argument was presented that each agency had to be independent of each other in order to deal with complaints against each other.

In reality, both agencies deal with public complaints whether it concerns complaints of maladministration or complaints against government for not releasing information. The business case demonstrates that the merger has the potential to actually strengthen their function, improve service, and would save money. Risks in the project, including those raised during the consultation with stakeholders, are considered within the outline business case and mitigations proposed.

Opposition Members of the Legislative Assembly

A stated concern was whether the Cayman Islands Constitutional Order 2009 allows for the establishment of an Office of the Ombudsman to subsume the functions of what is now the role of the Complaints Commissioner. Specifically, section 120 of the Constitution was cited which provides, "Subject to this

Constitution, a law enacted by the Legislature may make provision for the office, functions and jurisdiction of a Complaints Commissioner, otherwise called an Ombudsman.”

Legal advice obtained subsequent to this consultation confirms that the proposed merger would not be prohibited by existing constitutional provisions.

Another stated concern was that the consolidation of the ICO, OCC and Police Complaints would result in Parliamentary oversight of sensitive operations, potentially resulting in improper political influence.

This concern has been incorporated within the risk assessment for the project and will be addressed by numerous safeguards including legislative safeguards.