

# STATES OF JERSEY



## DRAFT THE LAW SOCIETY OF JERSEY (AMENDMENT No. 4) LAW 201-

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Lodged au Greffe on 20th December 2016  
by the Chief Minister

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STATES GREFFE





Jersey

## **DRAFT THE LAW SOCIETY OF JERSEY (AMENDMENT No. 4) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft The Law Society of Jersey (Amendment No. 4) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 16th December 2016

## REPORT

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The draft Law amends The Law Society of Jersey Law 2005 (“**the 2005 Law**”) and has 2 core purposes –

- to make provision in the 2005 Law for the recognition and disciplinary control of legal service bodies; and
- to revise and improve the procedure in the 2005 Law for dealing with complaints of professional misconduct against advocates, solicitors and legal services bodies.

### **Legal services bodies**

The draft Law widens the scope of the 2005 Law to provide for the recognition by the Law Society of legal services bodies.

One of the main reasons for the development of legal services bodies is to follow the lead of many other jurisdictions in having the ability for legal practices to be set up as limited liability partnerships (“LLPs”).

LLPs are partnerships governed by the terms of their partnership agreements. They have some of the benefits that are offered by companies, including separate legal personality and a form of limited liability. LLPs are flexible structures which can be used for a variety of purposes: for instance, by professionals, by small businesses and in financial services.

It is worth noting that a re-statement of the Limited Liability Partnerships (Jersey) Law 1997 was adopted by the States Assembly on 1st November 2016. This is the Limited Liability Partnerships (Jersey) Law 201- ([P.95/2016](#)).

The draft Law widens the scope of the 2005 Law to provide for the recognition by the Law Society of legal services bodies. The preamble of the 2005 Law, the interpretation Article, and the objects of the Law Society Article are amended to take into account the introduction of legal services bodies.

New Part 2A of the 2005 Law (as amended) will provide an enabling power for the Law Society to make bye-laws prescribing the circumstances in which a limited liability partnership may be recognised as a legal services body. The Minister shall be able to prescribe by Order any other body capable of this recognition. New Article 17A of the 2005 Law lists the matters which may be provided for by such bye-laws. As with other bye-laws made by the Law Society, no bye-law shall have effect unless it is approved by the Royal Court.

The States are empowered under new Article 17B to make Regulations which provide for any enactment to have effect in relation to legal services bodies with such additions, omissions or other modifications as appear necessary or expedient.

The provisions of Articles 2 and 3 of the *Loi (1961) sur l'exercice de la profession de droit à Jersey* (the “1961 Loi”) shall not be applicable to a body recognised as a legal services body. The 1961 Loi provides offences for an unqualified person (i.e. any person other than either of the Law Officers, or a Jersey advocate or solicitor) to sign summonses, institute actions before the courts or willfully pass himself or herself off as a qualified person. A legal services body will not itself be qualified for the purposes of the 1961 Loi, but all of the partners of the limited liability partnership must be Jersey advocates or solicitors.

“Professional misconduct” shall now be defined in Article 1 of the 2005 Law to mean –

- a breach by a practitioner or legal services body of any principle or rule set out in the Law Society’s Code of Conduct (as amended or replaced from time to time);
- the employment by a practitioner or legal services body of an advocate or solicitor who has been suspended or removed from the roll; or
- such other conduct which in the opinion of the Royal Court falls below the standard or conduct expected of practitioners or legal services bodies.

These provisions are not intended to replace the need for disciplinary proceedings against individual advocates or solicitors, but rather to create the ability to bring disciplinary proceedings against either or both a legal services body and the advocate/solicitor responsible.

There will also be circumstances where there is a need to discipline legal services bodies and not the individual advocates/solicitors, i.e. where there is no obvious individual advocate/solicitor to discipline. The potential consequences for the legal services body could include suspension from operating for a period of up to 12 months, or removal from the register of bodies. It is important that legal services bodies are accountable and can be sanctioned for misconduct. It will depend on the facts of the case and be a matter for the Law Society or the Attorney General, as the case may be, to take a view on the most appropriate person to pursue action against. The Law Society and the Attorney General have confirmed that the pursuit of a legal services body will not preclude individual lawyers from also being pursued, where it is appropriate to do so.

One example where the legal services body could be disciplined is where a person who is not Jersey qualified has, through the legal services body, done something improper and brought the conduct of their employer the legal services body into question. This is fairly similar to the present circumstances where, in theory at least, the partner advocates/solicitors of a firm could (depending on the circumstances) be responsible for actions by non-Jersey lawyers or administrative staff of their firm because actions are taken “for and on behalf of” the firm.

The draft Law also provides for the offence of a body describing or holding itself out as a legal services body when it is not so recognised, and there is also provision for any directors, partners, managers, or similar officers to be guilty of the offence where a legal person has committed the offence with the consent or connivance of the director, etc., or the offence is attributable to any neglect on the part of the director, etc.

## **Disciplinary Procedure**

### **Current Procedure**

Part 3 of the 2005 Law, together with the Law Society of Jersey (Disciplinary Proceedings) Rules 2010 (“the 2010 Rules”), provides the procedure for dealing with complaints of professional misconduct against Jersey advocates and solicitors.

The Law Society of Jersey acts as the receiving authority for complaints, and the President determines whether the case merits reference to a disciplinary committee comprised of one lawyer and 2 lay persons. If the President considers the case does not relate to professional misconduct or that it is vexatious, frivolous or trivial, he may refuse to appoint a disciplinary committee to adjudicate on the complaint.

If a complaint is referred to a disciplinary committee, the committee holds a hearing in private. The complainant and practitioner are provided with the opportunity to be heard, to call evidence and to cross-examine witnesses.

At the conclusion of the hearing, the disciplinary committee has 3 options –

- (i) to dismiss the complaint;
- (ii) if it determines that the complaint is proved and that it constitutes professional misconduct by the practitioner, the committee may privately rebuke or publicly reprimand the practitioner if it considers it can be properly dealt with by such a sanction; or
- (iii) to refer the complaint to the Attorney General without making a finding.

The complainant, practitioner, and Attorney General have rights of appeal to the Royal Court from the disciplinary committee's decision. If the committee refers the matter to the Attorney General, he may bring a representation to the Royal Court to deal with the matter.

The Royal Court procedure is similar to that of the disciplinary committee, although there is no role for the complainant, i.e. the Attorney General presents evidence and may cross-examine the witnesses presented by the practitioner.

The Royal Court may dismiss the complaint or, if it considers there to have been professional misconduct, it may deal with the matter by way of any of the following sanctions –

- by privately rebuking the practitioner;
- by publicly reprimanding the practitioner;
- by imposing a fine (no statutory limit) on the practitioner;
- by suspending the practitioner from practice for a period not exceeding 6 months; or
- by ordering that the name of the practitioner be removed from the roll of advocates or solicitors (as the case may be), i.e. striking off.

The practitioner or Attorney General may appeal to the Court of Appeal against a decision of the Royal Court.

### **New procedure**

The draft Law introduces several amendments to the disciplinary process to make it more efficient and fairer. The Law Society appointed Advocate John Kelleher on 17th May 2011 to review the disciplinary process established by the 2005 Law and the Rules. Following consultation with the wider profession, Advocate Kelleher reported to the Law Society on 26th October 2012 several issues, and made recommendations arising out of such issues.

The Legislation Advisory Panel has worked with the Law Officers' Department and the Law Society to develop legislation which not only addresses several of the recommendations of the report, but also introduces other revisions aimed at improving the procedure.

The draft Law has been subject to a consultation with the members of the legal profession and has been provided to the Bailiff and Deputy Bailiff for comment.

In addition to Part 3 of the 2005 Law now being extended to cover any complaints against legal services bodies, the other fundamental changes to the procedure are hereafter summarised.

### *Definition of professional misconduct*

Under Part 3 of the Law, the President is required to determine if there is a *prima facie* case of professional misconduct and the disciplinary committee or Royal Court, as the case may be, will ask itself whether it is satisfied that a complaint is proved, on the balance of probabilities, to constitute professional misconduct.

As mentioned above, the opportunity has therefore been taken to define “professional misconduct” in Article 1 of the 2005 Law to mean –

- a breach by a practitioner or legal services body of any principle or rule set out in the Law Society’s Code of Conduct (as amended or replaced from time to time);
- the employment by a practitioner or legal services body of an advocate or solicitor who has been suspended or removed from the roll; or
- such other conduct which in the opinion of the Royal Court falls below the standard or conduct expected of practitioners or legal services bodies.

### *Threshold consideration by President*

The threshold test for a complaint has been slightly amended in the revised Article 21 of the 2005 Law so that the President (or his or her delegate) must consider whether there is a *prima facie* case of professional misconduct (whereas currently the test is whether it “relates to professional misconduct.”) Furthermore, if the threshold is not met, or the President considers the matter to be vexatious, frivolous or trivial, he or she must dismiss the complaint (whereas currently the President “may” dismiss in such circumstances).

The draft Law also introduces a prescription period in the new Article 21 so that if a complaint is received by the Law Society more than 12 months after the events giving rise to the complaint, it shall be dismissed unless the President is satisfied that exceptional circumstances exist.

### *Role of the complainant at disciplinary committee hearing*

The draft Law will amend the procedure at the disciplinary committee level so that under the new Article 22 of the 2005 Law, the complaint shall now be presented by the Law Society (through a local practitioner and Law Society member who is appointed as the Case Delegate) and not the complainant.

The complainant will therefore no longer have the responsibility of presenting the case and cross-examining witnesses (at present the complainant is assisted in practice by an appointed Case Delegate). The complainant will also not have the right to appeal to the Royal Court against the decision of the disciplinary committee to dismiss a complaint or deal with it by private rebuke or public reprimand. Instead, the President of the Law Society or the Attorney General may appeal against such a decision (new Article 24(1) of the 2005 Law).

The revision of the complainant’s role from a party to the litigation to a witness will enhance the efficiency of the disciplinary committee process and bring it into line with the Royal Court procedure, where the complainant may be called as a witness, but the conduct of the case is carried out by the Attorney General. The complainant shall however retain a right to be present at the hearing.

### *Chairmanship of the disciplinary committee*

The disciplinary committee will now be chaired by the lawyer member (new Article 21(3)(f)(i)), following a recommendation made by the Royal Court in *Re MM*.<sup>1</sup> The Chairman will, however, continue to be assisted by 2 lay members of the disciplinary panel. This composition and chairmanship reflects the standard in the Royal Court Inferior Number and the majority of the Island's tribunals.

### *Determination by a disciplinary committee*

One of the major criticisms of the current process is that if the disciplinary committee is of the opinion that it cannot adequately sanction a practitioner, the committee can only refer the matter to the Attorney General with no finding. This means that even though the disciplinary committee will have heard all of the evidence and has satisfied itself that there has been professional misconduct, it cannot simply refer the matter to the Attorney General for sentencing. If the Attorney refers it to the Royal Court, then there will be a fresh hearing with all the evidence re-heard. In addition to this hampering the efficiency of the process, it can also end up being significantly more costly for the practitioner if he or she has legal representation at those hearings.

The disciplinary committee shall now have 4 options at the conclusion of a disciplinary hearing (new Article 23(1)) –

- (a) it may dismiss the complaint;
- (b) if it is satisfied that the complaint of professional misconduct is proved –
  - (i) it may deal with the matter by way of one of the penalties available to it if satisfied that this is an adequate way of dealing with the matter;
  - (ii) it may refer the matter to the Attorney General if it is not satisfied that it can be dealt with by any of the penalties available to the disciplinary committee; or
- (c) refer the matter to the Attorney General without making a finding.

Where the committee makes a finding that it is satisfied that a complaint is proved, but refers the matter to the Attorney General, he may then refer the matter to the Royal Court for sanction. The Royal Court may then proceed direct to sentencing without the need to re-hear the evidence and make its own finding. The practitioner or legal services body, however, retains a right to appeal against the finding of the disciplinary committee (if sanctioned by the disciplinary committee it may also appeal against the sanction).

The ability to refer the matter to the Attorney without making a finding has been retained for cases where the disciplinary committee considers the issues to be complex and thus require adjudication by the Royal Court. However, the committee shall also have the ability to adjourn proceedings at any time and refer the matter to the Attorney General. This will allow the committee to adjourn proceedings prior to or during a hearing if it considers that the matter is too serious or too complex to be dealt with by the committee.

### *Revised penalties at disciplinary committee level*

The sanctioning powers of the disciplinary committee are being augmented so that if the committee is satisfied that a complaint is proved and can be dealt with by one of the following penalties, the committee may in respect of the practitioner or legal services body –

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<sup>1</sup> [2009] JRC 174.

- (i) issue a private rebuke or public reprimand;
- (ii) impose a fine of up to £10,000; or
- (iii) impose a fine of up to £10,000 and issue a public reprimand.<sup>2</sup>

Therefore, the disciplinary committee shall now have the ability to impose a fine on the practitioner or legal services body and the maximum amount mirrors the revised maximum jurisdiction of the Magistrate's Court.<sup>3</sup> The disciplinary committee may also issue a public reprimand in conjunction with a fine (if a matter is considered sufficiently serious to merit a fine (which requires publication), then an additional private rebuke would be of no added value).

Any fine imposed on a practitioner or legal services body by the disciplinary committee shall constitute a debt due and payable to the Law Society (new Article 29(a)).

#### *Power of the Royal Court to remit the matter to the disciplinary committee*

The inability of the Royal Court to be able to remit matters to the disciplinary committee was commented upon by the Court in Re MM<sup>4</sup> and it was noted that it would be helpful to have this power so the disciplinary committee could deal with any procedural difficulties. Therefore, the 2005 Law shall be amended to enable the Royal Court to remit a matter to the disciplinary committee, whether the matter has come before the court on an appeal or a reference by the Attorney General (new Articles 24(3)(b) and 26(5)(c) of the 2005 Law).

#### *Revised penalties in Royal Court*

The maximum suspension which the Royal Court may impose on a practitioner is being increased from 6 months to 12 months, and the same maximum period shall apply for legal services bodies (new Articles 24(4) and 26(6) of the 2005 Law). This is because there may be circumstances which merit a longer period of suspension owing to the seriousness of the misconduct. However, in such circumstances, the Royal Court would be faced with imposing a suspension period of 6 months, which would not fully address the misconduct; and the court's only other option would be a striking-off, which might be disproportionate when a suspension of, for example, 9 months would have been adequate. The maximum period of suspension is therefore being increased to allow the Royal Court more flexibility. It is considered that if a period of suspension of 12 months was not felt to be adequate, then a striking-off would be appropriate.

#### *Publication*

The draft Law shall amend the 2005 Law to require the disciplinary committee to publish its decisions when it finds that a complaint is proved and it fines and/or reprimands a practitioner or legal services body, and also where it refers the matter to the Attorney General and the Royal Court has sanctioned the practitioner or legal services body. Such publication is subject to any appeals brought against the committee's decision by the practitioner or legal services body (new Article 23(7)).

The Royal Court will continue to publish its judgments in the normal way. As disciplinary proceedings are held *in camera*, there shall be no publication of findings by the disciplinary committee or Royal Court if a complaint is dismissed, or if a finding that a complaint is proved is rejected on appeal (new Article 23(7)).

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<sup>2</sup> New Article 23(2) of the 2005 Law.

<sup>3</sup> Article 3(1) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 as amended by the Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016.

<sup>4</sup> *Ibid.*

### *Removal of mediation option*

Under the 2005 Law, the disciplinary committee or the Royal Court, as the case may be, may, with the consent of the complainant and practitioner, refer the matter to mediation. It has been decided that this is inappropriate, as professional misconduct is not an issue which can be mediated. If the practitioner has committed misconduct, it is a matter between him or her and the Law Society and/or Royal Court, and the complainant should have no ability to “settle” the matter. If something is extremely minor, than it is likely it will not have passed the President’s threshold test.

### *Development Officer*

The Law Society, at its Annual General Meeting of 2016, resolved to rename the officer known as “the Librarian” as “the Development Officer” to reflect the wider ambit of that officer’s role. Therefore, a consequential amendment has been made to Article 1 of the 2005 Law to define the Librarian.

### **Rules of Court**

The Superior Number of the Royal Court is empowered to make Rules of Court regulating and prescribing the procedures to be followed by disciplinary committees and on references and appeals to the Royal Court. The 2010 Rules are mostly concerned with the procedure to be followed by the disciplinary committee as opposed to procedure in the Royal Court.

Subject to the draft Law being adopted by the States and receiving Royal Assent, the Superior Number will be asked to consider a new set of Rules to complement the revised procedure. The opportunity has been taken to adjust and clarify the enabling powers for Rules of Court in Article 34 of the 2005 Law.

### **Regulations**

In addition to the aforementioned power regarding Regulations to provide for any enactment to have effect in relation to legal services bodies, the States are also empowered under new Article 32A to amend the Law by way of Regulations.

### **Transitional application**

The procedure which the draft Law introduces (“the new procedure”) will apply to any complaints received by the Law Society on or after the day which the draft Law comes into force.

The draft Law also contains transitional provisions to the effect that where a complaint is received within the 3 months prior to the draft Law coming into force, then the new procedure shall apply unless, having taken into account any representations from the parties, the President or the disciplinary committee, as the case may be, determines that the old procedure should apply. If, however, the matter is already being heard by the disciplinary committee, the procedure cannot change mid-hearing or after the determination by the disciplinary committee, and in such circumstances the old procedure would continue to apply.

Three months has been identified as a reasonable cut-off point because there will be a gap of at least three months between the draft Law being lodged and it receiving Royal Assent, and therefore it will be reasonably foreseeable to those affected as to when the new procedure may apply.

Transitional provisions will also be inserted in the new Rules of Court so that the 2010 Rules apply if the old procedure is used, and the new Rules will apply if the new procedure is engaged.

**Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Note on the Draft The Law Society of Jersey (Amendment No. 4) Law 201-

#### Article 6 ECHR

1. Article 6(1) of the ECHR provides that –  
*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*
2. Jurisprudence has confirmed that where the substantive content and effect of a domestic law right are of a predominantly personal, private or economic nature, the right at issue will usually be a civil right, and therefore Article 6 will be engaged. Given that the 2005 Law and underlying legislation provides for the disciplinary control of practitioners and legal services bodies, the draft Law engages Article 6.
3. The determination of a complaint will in most cases be made at first instance by the disciplinary committee, but the availability of appeal to the Royal Court (which is a self-evident Article 6 compliant body) will ensure compatibility with Article 6.
4. **Based on the reasoning above, the draft Law can be said to be compatible with Article 6 ECHR.**

#### Article 1, Protocol 1 ECHR (“A1,P1”)

5. Article 1, Protocol 1 of the ECHR provides that –  
*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*  
*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*
6. The draft Law potentially engages A1, P1 to the extent that the peaceful enjoyment of property might be interfered with if a penalty for professional misconduct prevents a practitioner from practicing or a legal services body from operating. However, A1, P1 is a qualified right. It is perfectly reasonable to exercise disciplinary control over legal practitioners as there is substantial public interest in doing so. The procedure and the sanctions in Part 3 of the 2005 Law as amended by the draft Law are proportionate and strike the right balance between the rights of the individual and the interests of the community at large.
7. **Based on the reasoning above, the draft Law is compatible with A1, P1 ECHR.**

## Explanatory Note

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This Law amends The Law Society of Jersey Law 2005 (the “2005 Law”) with a view to –

- (a) recognizing legal services bodies, and providing disciplinary control in relation to legal services bodies, as well as to solicitors and advocates; and
- (b) amending the disciplinary controls and procedures contained in Part 3 of the 2005 Law which are applicable to advocates and solicitors of the Royal Court and legal services bodies.

*Article 1* provides that the 2005 Law is amended in accordance with this Law.

*Article 2* amends the preamble of the 2005 Law so as to widen its scope so that it now provides for the recognition of legal services bodies, and for the disciplinary control of legal services bodies as well as the existing recognition of advocates and solicitors of the Royal Court (i.e. “practitioners”).

*Article 3* adds to Article 1 of the 2005 Law definitions of terms introduced by this Law. In particular, it defines “legal services” as such professional services as may be provided by practitioners by virtue of being qualified as a solicitor or advocate, “legal services body” as a body recognized as such under Part 2A of the 2005 Law, as inserted by this Law; and “limited liability partnership” as a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997. It enables the Minister to amend the definition of “limited liability partnership” by Order. Other new definitions are added as a consequence of the amendments to Part 3 of the Law concerning disciplinary controls over practitioners and legal services bodies and in particular “professional misconduct” is now expressly defined as a breach of The Law Society of Jersey’s (“Law Society”) Code of Conduct; employing a person in breach of Article 30 (prohibition of employment of practitioners removed from roll for misconduct, or suspended), or conduct which in the opinion of the Royal Court falls below expected standards.

*Article 4* amends Article 8 of the 2005 Law so as to add to the objects of the Law Society the object of promoting high standards of professional conduct among legal services bodies.

*Article 5* amends Article 16 of the 2005 Law to enable bye-laws to be made relating to the control of legal services bodies, which will be binding in respect of those bodies.

*Article 6* amends Article 17 of the 2005 Law so that bye-laws made under the new powers to be provided under Article 17A in respect of legal services bodies, are only exercisable following a special resolution of the Law Society and cannot have effect until approved by the Royal Court.

*Article 7* inserts new Part 2A into the 2005 Law, which is comprised of Articles 17A, 17B and 17C.

Article 17A(1) provides powers to the Law Society to make bye-laws prescribing the circumstances in which a limited liability partnership, or any other body that the Minister may prescribe by Order, may be recognized by the Law Society as a legal services body. Under Article 17A(2), a recognized legal services body is exempt from Articles 2 and 3 of the Loi (1961) sur l’exercice de la profession de droit à Jersey, which prohibits persons who are not legally qualified from instituting legal proceedings. Article 17A(3) permits bye-laws to prescribe the legal services that may be provided by a legal services body; make provision as to the management and

control of a legal services body; prescribe the requirements which must at all times be satisfied by a recognized legal services body if it is to remain so recognized; and regulate the conduct of the affairs of legal services bodies.

Article 17A bye-laws must prevent a limited liability partnership from being recognized as a legal services body unless all of its partners are practitioners, and must not permit a legal services body from undertaking any business other than the provision of legal services or any activity other than one which is ancillary or incidental to the provision of legal services.

Article 17A(5), (6) and (7) lists the matters that the Law Society's bye-laws may make provision for, including provisions in relation to applications and renewals of applications for recognition as a legal services body; fees payable; the name that may be used by a legal services body; circumstances when a body will cease to be recognized as such; registration and compliance monitoring requirements; appeals; and conditions that may attach to a recognition as a legal services body.

By Article 17B, the States may by Regulations provide for any enactment (including this Law) to have effect in relation to legal services bodies with such additions, omissions or other modifications as appear to the States to be necessary or expedient.

Article 17C(1) makes it an offence for a body to describe itself or hold itself out as a legal services body for the time being recognized as such under Article 17A unless it is so recognized. The offence carries the penalty of a fine of an unlimited amount. Article 17C(2), (3) and (4) provide that if an offence under Part 2A is committed by a body corporate, a limited liability partnership or any other partnership with separate legal personality, if it is proved to have been committed with the consent or connivance of a person described in those paragraphs, then that person will also be guilty of the offence and liable to the penalty provided for that offence in the same manner as the incorporated limited partnership, other body corporate, limited liability partnership, separate limited partnership or other partnership with separate legal personality.

*Article 8* amends Article 18 of the 2005 Law so as to provide for the appointment of a chairman to the Law Society's disciplinary panel from amongst the panel's lay members.

*Article 9* makes a minor consequential amendment to Article 19 of the 2005 Law so as to clarify that professional misconduct constitutes the ground for the removal from office, by the Royal Court, of a disciplinary panel member.

*Article 10* inserts new Article 19A which requires the President to arrange the submission of quarterly reports to the chairman of the disciplinary panel setting out the number of complaints received in the previous quarter, ongoing complaints and complaints dismissed or referred to a disciplinary committee.

*Article 11* makes a minor consequential re-numbering amendment.

*Article 12* substitutes Article 21 of the 2005 Law with a new Article 21 which sets out the process by which a complaint of professional misconduct must be made and the process which must be followed by the President of the Law Society ("President") upon receipt of a complaint. In particular, a complaint must be made in writing and, unless the President makes an exception, not more than 12 months after the occurrence of the last of the events complained about. The President is required to dismiss the complaint if there is "*prima facie*" (i.e. "at first sight") no evidence to support the complaint, or if it is vexatious, frivolous or trivial, and the President must give written reasons for the dismissal. If the President is satisfied that there is a *prima facie* case of professional misconduct, he or she must arrange for the preparation of a written

statement of complaint and must select 3 members of the disciplinary panel (2 lay members of the panel and 1 ordinary member of the Law Society) to comprise the disciplinary committee who will hear the complaint. The complaint would be presented on behalf of the Law Society by a case delegate appointed by the President, and the case delegate's reasonable costs would be met from Law Society funds. The President may appoint a person to assist him or her in carrying out the requirements of Article 21, and that person's reasonable costs would also be met from Law Society funds.

*Article 13* inserts new Article 21A into the 2005 Law which is based on repealed Article 27 of the 2005 Law. Under this new Article it is the President who will conduct an investigation into the complaint (or a person appointed to conduct the investigation on the President's behalf) rather than the Committee of The Law Society. The President or person appointed may, as part of his or her investigation, also conduct interviews with the complainant and other persons.

*Article 14* substitutes Articles 22 and 23 of the 2005 Law. Substituted Article 22 is based on repealed Article 28 of the 2005 Law and sets out the procedure which a disciplinary committee must follow when conducting a complaint hearing. The committee may require the attendance of persons to give evidence and to produce documents. Persons who fail to comply with a committee's requirements or who refuse to take an oath or make an affirmation are guilty of an offence and liable to a fine of an unlimited amount. The disciplinary committee is empowered to issue directions to facilitate the fair conduct of the proceedings and may at any time, if it thinks fit, adjourn the proceedings and refer the complaint to the Attorney General. Substituted Article 23 of the 2005 Law sets out the process by which the committee must determine the complaint. It may dismiss the complaint, refer it to the Attorney General without making any findings, or determine that the complaint is proved. In the latter case, the committee may issue the practitioner or legal services body, as the case may be, with a private rebuke or a public reprimand, impose a fine of up to £10,000 or impose a fine up to that amount coupled with a public reprimand. If the committee is not satisfied that any of the foregoing penalties are adequate, it must refer the case to the Attorney General. There is a right of appeal to the Royal Court against a decision dismissing a complaint, finding the complaint proved or any penalty applied. Article 23 also sets out which decisions a disciplinary committee must or must not publish on the Law Society's website.

*Article 15* amends Article 24 of the 2005 Law so as to clarify who may appeal to the Royal Court and in what circumstances an appeal may be made. As well as rejecting or upholding a decision of the disciplinary committee on appeal, the Royal Court may remit the matter back to the committee for re-determination. If the Royal Court finds that that complaint should not have been dismissed it may apply any one of the penalties the disciplinary committee has at its disposal under Article 23, except that the fine may be of an unlimited amount. Alternatively the Royal Court may suspend the practitioner from practice (or legal services body from operation) for a period not exceeding 12 months or order the removal of the practitioner's or legal services body's name from the roll or register (if any), as the case may be. If the Royal Court upholds a disciplinary committee's finding that the complaint is proved but considers the penalty imposed was not appropriate in the circumstances, it may impose a higher or lesser penalty, as the case may be.

*Article 16* substitutes Article 25 of the 2005 Law to set out the 4 circumstances in which the Attorney General may refer a complaint to the Royal Court, as follows: where the President has dismissed a complaint (Article 21(3)(c)); where in the course

of the proceedings the disciplinary committee adjourns and refers the complaint to the Attorney General (Article 22(10)); where the committee finds that the complaint is proved but refers it to the Attorney General because the committee is not satisfied that any of the penalties it can impose are appropriate (Article 23(1)(b)(ii)); or where, at the conclusion of the proceedings, the committee refers the complaint to the Attorney General without making a finding (Article 23(1)(c)).

*Article 17* amends Article 26 of the 2005 Law which deals with the consideration of complaints referred by the Attorney General to the Royal Court under Article 25. A hearing before the Royal Court is not required where the Court only has to determine the question of which penalty should be imposed, otherwise the referral of other complaints require a hearing. The Royal Court may dismiss the complaint or impose one of the penalties listed in Article 23, except that the fine may be of an unlimited amount or may suspend the practitioner from practice (or legal services body from operation) for a period not exceeding 12 months or order the removal of the practitioner's or legal services body's name from the roll or register (if any), as the case may be. The Royal Court may remit the matter back to the disciplinary committee for re-determination or determination (as the case may be). The provision enabling referral to a mediator before a complaint is determined by the Royal Court, is deleted. Where the Royal Court has determined which penalty to impose in relation to a complaint to which Article 23(1)(b)(ii) applies, the penalty cannot take effect until any outstanding appeal against the disciplinary committee's finding that the complaint is proved, has been determined, has been abandoned or the time limit in which to appeal has expired.

*Article 18* repeals Articles 27 and 28 of the 2005 Law, which have been replaced by new Article 21A as inserted by *Article 13* and Article 22 as substituted by *Article 14*.

*Article 19* substitutes Article 29 of the 2005 Law the effect of which is to retain the existing provision concerning the recovery of fines and costs imposed by the Royal Court as debts due to the States but with the additional provision that fines imposed by a disciplinary committee are debts due and payable to the Law Society.

*Article 20* amends Article 30 of the 2005 Law so as to prohibit a legal services body from employing, retaining or remunerating a person whose name has been removed from the roll of advocates or solicitors, on grounds of misconduct, where he or she has not been restored to that roll, or employing, retaining or remunerating a practitioner who is suspended from practice as an advocate or solicitor, without the prior approval of the Committee of The Law Society. A practitioner or a legal services body who contravenes Article 30 is guilty of professional misconduct.

*Article 21* inserts new Article 32A into the 2005 Law. Article 32A enables the States to make Regulations amending this Law and extends that power so as to include the power to make any supplementary, incidental, consequential, transitional, transitory or saving provisions which appear to the States to be necessary or expedient for the purposes of any such amendment as well as for the purposes of any Regulations made under Article 17B relating to legal services bodies.

*Article 22* substitutes Article 34 of the 2005 Law to provide a stand-alone power for the Royal Court to make procedural rules governing the conduct of hearings before disciplinary committees. The power to make rules governing the conduct of disciplinary cases on appeal to the Royal Court, or on reference from the Attorney General to the Royal Court would be given effect under Article 13 of the Royal Court (Jersey) Law 1948.

*Article 23* substitutes Article 35 of the 2005 Law so that the Law Society must now publish the bye-laws it makes under the 2005 Law (as amended by this Law) in a manner that is likely to bring them to the attention of those affected.

*Article 24* amends Article 36 of the 2005 Law by replacing lapsed transitional provisions with transitional provisions which would apply to complaints received in the 3 months immediately before the commencement of Articles 12 to 16 of this Law, but not concluded before the commencement of those Articles. Where, as at the commencement date of Articles 12 to 16 of this Law, a complaint has not been referred to a disciplinary committee or has been so referred but not heard, the President or the committee (as the case may be) may, subject to representations, determine that the complaint should proceed in accordance with the amendments made by those Articles. If, as at the commencement date of Articles 12 to 16 of this Law, the complaint is in the process of being heard, it shall be determined as if those Articles had not been enacted. In the case of any complaints which, in the 3 month period referred to above, have either been referred to the Attorney General or the Royal Court, or lodged for appeal to the Royal Court, those complaints shall also be determined as if Articles 12 to 16 of this Law had not been enacted.

*Article 25* gives the title of this Law and provides for it to come into force on such day or days as the States may by Act appoint.





Jersey

## DRAFT THE LAW SOCIETY OF JERSEY (AMENDMENT No. 4) LAW 201-

### Arrangement

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Jersey

## DRAFT THE LAW SOCIETY OF JERSEY (AMENDMENT No. 4) LAW 201-

A **LAW** to amend further The Law Society of Jersey Law 2005

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### 1 The Law Society of Jersey Law 2005 amended

The Law Society of Jersey Law 2005<sup>1</sup> is amended in accordance with this Law, and a reference to an Article is to the Article of that number in The Law Society of Jersey Law 2005<sup>2</sup>.

### 2 Preamble of The Law Society of Jersey Law 2005 amended

In the preamble of The Law Society of Jersey Law 2005<sup>3</sup> for the words “and for the disciplinary control of advocates and solicitors of the Royal Court;” there are substituted the words “; to provide for the recognition of legal services bodies; and for the disciplinary control of advocates and solicitors of the Royal Court and of legal services bodies;”.

### 3 Article 1 amended

In Article 1(1) –

- (a) in the definition “bye-laws”, after the words “Article 16” there are inserted the words “or 17A”;
- (b) after the definition “bye-laws” there are inserted the following definitions –

“ ‘case delegate’ means the person appointed under Article 21(3)(f)(iii);

- ‘chairman of the disciplinary panel’ means a person appointed under Article 18(7);
- ‘Code of Conduct’ means the code of professional conduct which applies to practitioners and legal services bodies, adopted under the bye-laws, as amended or replaced from time to time;”;
- (c) after the definition “Committee member” there are inserted the following definitions –
- “ ‘complaint’ shall be construed in accordance with Article 21(1);
- ‘complainant’ means a person who makes a complaint;”;
- (d) in the definition “disciplinary committee” for the words “Article 21(1)” there are substituted the words “Article 21(3)(f)(i)”;
- (e) after the definition “disciplinary panel” there is inserted the following definition –
- “ ‘incorporated limited partnership’ means an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011<sup>4</sup>;”;
- (f) after the definitions “Law Society” and “Society” there are inserted the following definitions –
- “ ‘legal services’ means such professional services as may be provided by practitioners by virtue of being qualified as a solicitor or advocate;
- ‘legal services body’ means a body recognized as such under Part 2A;
- ‘Librarian’ means the officer referred to in Article 10(2)(d) who may also be known as the ‘Development Officer’;
- ‘limited liability partnership’ means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997<sup>5</sup>;
- ‘No. 4 Amendment Law’ means The Law Society of Jersey (Amendment No. 4) Law 201<sup>-6</sup>;”;
- (g) after the definition “President” there are inserted the following definitions –
- “ ‘professional misconduct’ means –
- (a) a breach, by a practitioner or legal services body, of any principle or rule set out in the Code of Conduct;
- (b) conduct of which a practitioner or legal services body is guilty under Article 30(3) by reason of contravening Article 30(1) or (1A); or
- (c) such conduct (other than misconduct referred to in paragraph (a) or (b)) which, in the opinion of the Royal Court, falls below the standard of conduct expected of practitioners or legal services bodies, as the case may be;

‘separate limited partnership’ means a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011<sup>7</sup>;’;

(h) after Article 1(2) there are added the following paragraphs –

“(3) For the purposes of Part 3, the expression ‘the complaint is proved’, means the complaint is proved, on the balance of probabilities, to constitute professional misconduct by the practitioner or legal services body who is the subject of the complaint.

(4) The Chief Minister may by Order amend the definition ‘limited liability partnership’.

#### **4 Article 8 amended**

In Article 8(b), after the word “practitioners” there are inserted the words “and legal services bodies”.

#### **5 Article 16 amended**

In Article 16 –

(a) in paragraph (5), after the word “practitioners” in both places where it appears, there are inserted the words “or legal services bodies”;

(b) in paragraph (7) after the word “Society” there are inserted the words “and each legal services body”.

#### **6 Article 17 amended**

In Article 17, after the words “Article 16” there are inserted the words “and 17A”.

#### **7 Insertion of Part 2A of The Law Society of Jersey Law 2005**

After Article 17 there is inserted the following Part –

### **“PART 2A**

#### **LEGAL SERVICES BODIES**

##### **17A Recognition of legal services bodies**

(1) The Law Society may make bye-laws prescribing the circumstances in which a limited liability partnership, or any other body that the Minister may prescribe by Order, may be recognized by the Law Society as a legal services body.

- (2) Articles 2 and 3 of the Loi (1961) sur l'exercice de la profession de droit à Jersey<sup>8</sup> shall not apply to a body that is recognized as a legal services body by the Law Society.
- (3) Bye-laws made under paragraph (1) may –
  - (a) prescribe the legal services that may be provided by a legal services body;
  - (b) make provision as to the management and control of a legal services body;
  - (c) prescribe the requirements which (subject to any exceptions provided in the bye-laws) must at all times be satisfied by a legal services body so recognized if it is to remain so recognized; and
  - (d) regulate the conduct of the business of legal services bodies.
- (4) Except as otherwise permitted in Regulations made by the States under Regulation 17B, bye-laws made under paragraph (1) –
  - (a) must not recognize a limited liability partnership as a legal services body unless all of its partners are practitioners;
  - (b) must not permit a limited liability partnership that is a legal services body to undertake any business other than the provision of legal services or any activity other than one which is ancillary or incidental to the provision of legal services.
- (5) Bye-laws made under paragraph (1) may make provision –
  - (a) for the manner and form in which applications for recognition as a legal services body, or for the renewal of such recognition, must be made, and requiring such applications to be accompanied by a fee of such amount as the Law Society may prescribe;
  - (b) for the manner and form in which other applications under the bye-laws are to be made, and requiring such applications to be accompanied by a fee of such amount as the Law Society may prescribe;
  - (c) requiring legal services bodies to pay periodical fees of such amount as the Law Society may prescribe;
  - (d) for regulating the name that may be used by a legal services body (provided that the name must not be inconsistent with the requirements of any other law in Jersey);
  - (e) about the time when any recognition, or renewal of recognition, takes effect and the period for which it is (subject to the provisions made by or under this Part) to remain in force;
  - (f) for requiring a legal services body, or a partner, secretary, director or other officer of a legal services body, to notify the Law Society where the legal services body no longer satisfies any requirement for it to remain a legal services body;

- (g) for the suspension or revocation of any such recognition, on such grounds and in such circumstances as may be prescribed in the bye-laws;
  - (h) about the effect on the recognition of a legal services body of any change in the membership of the body, including provision for the body's recognition to be transferred to another body;
  - (i) for the keeping by the Law Society of a register containing the names and places of business of all bodies which are for the time being recognized as legal services bodies and such other information relating to those bodies as may be specified in the bye-laws;
  - (j) for information (or information of a specified description) on such a register to be made available to the public, including provision about the manner in which, and times at which, information is to be made so available;
  - (k) for bye-laws to have effect in relation to legal services bodies with such additions, omissions or other modifications as appear to the Law Society to be necessary or expedient;
  - (l) requiring legal services bodies to appoint a person or persons to monitor compliance, by the legal services body, with requirements imposed on it under this Law or any bye-laws applicable to it by virtue of this Article;
  - (m) for the manner of service on legal services bodies of documents authorized or required to be served on such bodies under this Law.
- (6) Bye-laws made under paragraph (1) may make provision for appeals to the Royal Court against decisions made by the Law Society under the bye-laws to suspend or revoke the recognition as a legal services body or any bye-laws relating to a legal services body.
- (7) Where the Law Society decides to recognize a body as a legal services body under this Article it may, if the Society considers that it is in the public interest to do so, grant that recognition subject to such conditions as may be prescribed under bye-laws made under paragraph (1).
- (8) Conditions imposed under paragraph (7) may include provisions that –
- (a) require the legal services body to take specified steps that will, in the opinion of the Law Society, be conducive to that legal services body carrying out its business and providing legal services efficiently; and
  - (b) prohibit the legal services body from taking any specified steps without the approval of the Law Society.
- (9) Bye-laws made under paragraph (1) may make provision about when conditions imposed under this Article take effect (including provision conferring power on the Law Society to direct that a

condition is not to have effect until the conclusion of any appeal in relation to it).

- (10) A certificate signed by an officer of the Law Society which states that any body is or is not, or was or was not at any time, a legal services body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (11) This Article is subject to Article 17.

### **17B Regulations: legal services bodies**

The States may by Regulations provide for any enactment (including this Law) to have effect in relation to legal services bodies with such additions, omissions or other modifications as appear to the States to be necessary or expedient.

### **17C Offences: pretending to be a legal services body**

- (1) A body that describes itself or holds itself out as a legal services body for the time being recognized as such under Article 17A, unless it is so recognized, shall be guilty of an offence and liable to a fine.
- (2) This paragraph applies where an offence under this Part by a body corporate, a limited liability partnership or any other partnership with separate legal personality is proved –
  - (a) to have been committed with the consent or connivance of a person mentioned in paragraph (3); or
  - (b) to be attributable to any neglect on the part of a person mentioned in paragraph (3).
- (3) The persons to whom paragraph (2) refers are –
  - (a) in the case of an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
  - (b) in the case of any other body corporate, a director, manager or other similar officer of the body corporate;
  - (c) in the case of a limited liability partnership, a partner;
  - (d) in the case of a separate limited partnership or any partnership, with a separate legal personality except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; or
  - (e) in any case, any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c) and (d).
- (4) Where paragraph (2) applies, the person shall also be guilty of the offence and liable to the penalty provided for that offence in the same manner as the incorporated limited partnership, other body

corporate, limited liability partnership, separate limited partnership or other partnership with separate legal personality.

- (5) Where the affairs of a body corporate are managed by its members, paragraphs (2) and (4) shall apply in relation to acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate."

## 8 Article 18 amended

After Article 18(6) there are added the following paragraphs –

- (7) The Committee shall, from amongst the disciplinary panel's lay members, appoint one of those members to be the disciplinary panel's chairman for such period not exceeding 24 months as the Committee shall determine.
- (8) The disciplinary panel's chairman is eligible for re-appointment on the expiry of the period determined by the Committee under paragraph (7) provided that the period of re-appointment does not exceed 24 months.
- (9) Any period of appointment or re-appointment under paragraph (7) or (8) must, in any event, not exceed the remaining period of the member's term of office as a member of the disciplinary panel."

## 9 Article 19 amended

In Article 19(4)(g), after the words "on grounds of" there is inserted the word "professional".

## 10 Article 19A inserted

After Article 19 there is inserted the following Article –

### **"19A Reports to the disciplinary panel about complaints of professional misconduct**

- (1) Every 3 months the President shall arrange for the submission to the chairman of the disciplinary panel, a report setting out the number of –
  - (a) new complaints received in the 3 month period immediately before the submission of the report;
  - (b) complaints that were either dismissed or referred to a disciplinary committee in the 3 month period immediately before the submission of the report; and
  - (c) ongoing complaints previously reported.
- (2) In the case of complaints that are dismissed, the report shall state the reasons for the dismissal."

**11 Article 20 amended**

In Article 20(1), for the words “Article 21(1)” there are substituted the words “Article 21(3)(f)(i)”.

**12 Article 21 substituted**

For Article 21 there is substituted the following Article –

**“21 Action on receipt of complaint of professional misconduct**

- (1) Any person may make a complaint to the Law Society alleging that a practitioner or legal services body, as the case may be, is guilty of professional misconduct.
- (2) A complaint must be made not more than 12 months after the last of the events giving rise to the complaint, unless the President is satisfied that exceptional circumstances exist which justify the complaint being made after the expiry of that period.
- (3) If the Law Society receives a complaint alleging that a practitioner or legal services body is guilty of professional misconduct, the President shall promptly take the following action –
  - (a) if the complaint is not made in writing, the President shall –
    - (i) require the complainant to submit it in writing, or
    - (ii) having regard to the complainant’s circumstances, arrange for the complaint to be submitted in writing on the complainant’s behalf;
  - (b) for the purposes of determining whether or not the complaint establishes a *prima facie* case of professional misconduct, the President may cause an investigation to be undertaken in accordance with Article 21A;
  - (c) the President shall dismiss a complaint if he or she is satisfied that no *prima facie* case of professional misconduct is established, or the complaint is vexatious, frivolous or trivial;
  - (d) where the President dismisses a complaint he or she shall inform the complainant, the practitioner or legal services body, as the case may be, and the Attorney General in writing of the decision, stating the reasons for the dismissal;
  - (e) if the President is satisfied that a *prima facie* case of professional misconduct is established, he or she shall, on behalf of the Law Society, cause a written statement of complaint to be prepared which –
    - (i) shall fully set out details of the alleged professional misconduct,
    - (ii) may include additional information arising from any investigation under Article 21A or information which did not form part of the complaint as originally made, and

- (iii) shall be copied and sent to the practitioner or legal services body in question;
- (f) the President shall –
  - (i) select from the disciplinary panel a disciplinary committee consisting of 2 persons who are lay members of the disciplinary panel and one person who is an ordinary member of the Society who shall act as the chairman of the disciplinary committee,
  - (ii) refer the complaint to that disciplinary committee,
  - (iii) subject to paragraphs (4) and (5), appoint a case delegate to present the complaint to the disciplinary committee, and
  - (iv) send a copy of the statement of complaint to the Attorney General.
- (4) The case delegate must be an ordinary member or any other class of member specified under the bye-laws.
- (5) A person appointed under paragraph (7) may, if the President thinks fit, be appointed as the case delegate if that person is a member of the Law Society as required under paragraph (4).
- (6) The reasonable costs of the case delegate shall be met out of funds provided by the Law Society.
- (7) The President may, as he or she thinks fit, appoint any person, regardless of whether or not that person is a practitioner, to assist the President in carrying out any of the actions required under paragraph (3)(a), (c), (d) or (e).
- (8) The reasonable costs of the person appointed under paragraph (7) shall be met out of funds provided by the Law Society.
- (9) If the President is, for any reason, unable to discharge his or her functions under this Part, he or she shall delegate those functions to another Committee member.”.

### 13 Article 21A inserted

After Article 21 there is inserted the following Article –

#### “21A Investigation of complaint

- (1) For the purposes of investigating a complaint against a practitioner or legal services body, as the case may be, the President may –
  - (a) require the practitioner in question or a member of his or her firm, or the legal services body to produce or deliver to the President any relevant documents in the practitioner’s or legal services body’s custody or control, and the President may retain possession of those documents until his or her investigation and any disciplinary proceedings that arise from the investigation are completed;

- (b) conduct interviews with the complainant, practitioner or legal services body, as the case may be, or any other person whom the President considers may assist the course of the investigation.
- (2) A person who, without lawful excuse, fails to comply with the President's requirement under paragraph (1)(a) shall be guilty of an offence and liable to a fine.
- (3) This Article does not limit –
  - (a) a right to decline to produce or deliver a document to the President or be interviewed on the ground of legal professional privilege; or
  - (b) the rule against self-incrimination.
- (4) The President shall not use –
  - (a) a document obtained under paragraph (1)(a); or
  - (b) any information obtained in consequence of the production or delivery of that document or in consequence of an interview under paragraph (1)(b),for any purpose other than for the purposes of the investigation of the complaint, or any disciplinary or criminal proceedings that arise from the complaint.
- (5) For the purposes of this Article, the expression 'President' shall be taken to include a person appointed to conduct the investigation on the President's behalf."

#### 14 Articles 22 and 23 substituted

For Articles 22 and 23 there are substituted the following Articles –

##### **"22 Procedure and conduct of proceedings before a disciplinary committee**

- (1) When, under Article 21(3)(f)(ii), the President refers a complaint to a disciplinary committee, that complaint shall be conducted in the name of the Law Society and that committee shall action the matter promptly.
- (2) The disciplinary committee shall –
  - (a) sit in private;
  - (b) allow the case delegate, the practitioner or legal services body, as the case may be, to make representations, call evidence and cross-examine witnesses;
  - (c) allow the complainant to be present; and
  - (d) allow the Attorney General to make representations.
- (3) The disciplinary committee may, by notice in writing signed by the chairman, require a person –

- (a) to attend and give evidence before it in a matter on which it is proceeding; and
  - (b) to produce to it any documents in the person's custody or control that relate to the subject matter of the proceedings.
- (4) The disciplinary committee may require a person to give evidence on oath or under affirmation, and for that purpose any member of the disciplinary committee may administer an oath or take an affirmation.
- (5) A person who without lawful excuse –
- (a) fails to comply with a requirement made by a disciplinary committee under paragraph (3); or
  - (b) on being required to do so under paragraph (4), refuses to take an oath or make an affirmation, or to give evidence,
- shall be guilty of an offence and liable to a fine.
- (6) The disciplinary committee may issue such directions as it considers necessary to facilitate the fair conduct of the proceedings including directions concerning the adducing of evidence alleging professional misconduct which is not set out in the statement of complaint.
- (7) A person giving evidence (on oath or otherwise), or appearing before a disciplinary committee, shall have the same privileges and immunities as if he or she were giving evidence in or appearing before a court of law.
- (8) Subject to paragraph (9), a person who is required to attend and give evidence before a disciplinary committee, or to produce or deliver a document to it, shall be reimbursed by the Law Society for his or her reasonable expenses (including loss of earnings) in doing so.
- (9) Paragraph (8) does not apply to the practitioner or legal services body who is the subject of the complaint.
- (10) The disciplinary committee may, at any time, and if it thinks fit to do so, adjourn the proceedings and refer the complaint to the Attorney General.

### **23 Determination of complaint by a disciplinary committee**

- (1) The disciplinary committee shall, at the conclusion of the complaint proceedings, determine the matter –
- (a) by dismissing the complaint;
  - (b) if the committee is satisfied that the complaint is proved –
    - (i) and is satisfied that it can be dealt with by applying one of the penalties specified in paragraph (2), by so dealing with it,

- (ii) but is not satisfied that any of the penalties specified in paragraph (2) are adequate, by referring it to the Attorney General; or
  - (c) by referring the complaint to the Attorney General without making a finding.
- (2) For the purposes of paragraph (1)(b)(i), the disciplinary committee may in respect of the practitioner or legal services body, as the case may be –
  - (a) issue a private rebuke or a public reprimand;
  - (b) impose a fine of up to £10,000; or
  - (c) impose a fine of up to £10,000 and issue a public reprimand.
- (3) The disciplinary committee shall inform the practitioner or legal services body, as the case may be, and the President in writing of its decision and reasons, but subject to paragraph (6), it shall not publish them in any other way.
- (4) The President may inform the complainant, in writing, of the disciplinary committee's decision.
- (5) There shall be a right of appeal, in accordance with Article 24, against a decision of the disciplinary committee determined under paragraph (1)(a) or (b).
- (6) Subject to paragraphs (7) and (8), the disciplinary committee is required to publish without delay, on the Society's website, its decision and reasons for finding the complaint proved and disposable under paragraphs (1)(b)(i) and (2).
- (7) The disciplinary committee shall not publish its decision and reasons –
  - (a) where it –
    - (i) privately rebukes the practitioner or legal services body, as the case may be, or
    - (ii) dismisses the complaint or refers it to the Attorney General,regardless of whether or not that decision is later upheld or rejected by the Royal Court further to an appeal brought under Article 24(1); or
  - (b) pending –
    - (i) the expiry of the period in which an appeal must be lodged under Article 24(2),
    - (ii) the abandonment of any appeal brought under Article 24(1), or
    - (iii) a determination of the Royal Court to reject any such appeal (subject to sub-paragraph (a)).
- (8) Where in relation to an appeal the Royal Court makes a determination under Article 24(5), the disciplinary committee shall publish its decision and reasons in accordance with paragraph (6)

but shall publish the substituted penalty applied by the Royal Court.”.

## 15 Article 24 amended

In Article 24 –

(a) for paragraph (1) there is substituted the following paragraph –

“(1) The following persons shall have a right of appeal to the Royal Court under this Law –

- (a) the President or the Attorney General, against a decision of a disciplinary committee either to dismiss the complaint or in respect of a penalty applied under Article 23(2); and
- (b) the practitioner or legal services body, against a decision of a disciplinary committee that the complaint is proved or in respect of a penalty applied under Article 23(2).”;

(b) in paragraph (2), for the words “Article 23(2)”, there are substituted the words “Article 23(3)”;

(c) for paragraphs (3), (4) and (5) there are substituted the following paragraphs –

“(3) On hearing the appeal, the Royal Court may –

- (a) reject or uphold the decision of the disciplinary committee; or
- (b) remit the matter to the disciplinary committee for re-determination, and

make such order as to the costs of the proceedings before the Royal Court as it thinks fit.

(4) If the Royal Court rejects the disciplinary committee’s decision to dismiss a complaint because the Court is satisfied that the complaint is proved, it may deal with the practitioner or legal services body, as the case may be, by applying one of the following penalties –

- (a) by issuing a private rebuke or a public reprimand;
- (b) by imposing a fine of any amount;
- (c) by imposing a fine of any amount and issuing a public reprimand;
- (d) by suspending the practitioner from practice as an advocate or solicitor for a specified period not exceeding 12 months;
- (e) by suspending the legal services body from operating as such for a specified period not exceeding 12 months;
- (f) by ordering that the practitioner’s name be removed from the roll of advocates or solicitors, as the case may be; or
- (g) by ordering that the legal services body be removed from the register of legal services bodies (if any).

- (5) If the Royal Court upholds the disciplinary committee's finding that the complaint is proved but the Court is of the opinion that the penalty applied by the committee under Article 23(2) is not appropriate in the circumstances, the Court may, under paragraph (4), apply such penalty as it considers appropriate.”;
- (d) in paragraph (6) for the words “The practitioner and the Attorney General, but not the complainant” there are substituted the words “The practitioner or legal services body, as the case may be, and the Attorney General”.

## 16 Article 25 substituted

For Article 25 there is substituted the following Article –

### “25 Reference of complaint by Attorney General to the Royal Court

The Attorney General may refer to the Royal Court –

- (a) a complaint which the President has dismissed under Article 21(3)(c);
- (b) a complaint referred to the Attorney General under Article 22(10) or Article 23(1)(b)(ii) or (c).”.

## 17 Article 26 amended

In Article 26 –

- (a) for paragraph (1) there is substituted the following paragraph –
  - “(1) If the Attorney General refers a complaint to the Royal Court, the Court shall only hold a hearing in respect of a complaint where Article 21(3)(c), 22(10) or 23(1)(c) applies.”;
- (b) in paragraph (3), after the word “practitioner” there are inserted the words “or legal services body, as the case may be,”;
- (c) for paragraphs (5) to (10) there are substituted the following paragraphs –
  - “(5) On hearing the complaint, the Royal Court may –
    - (a) dismiss the complaint;
    - (b) if it is satisfied that the complaint is proved, apply one of the penalties specified in paragraph (6); or
    - (c) remit the matter to the disciplinary committee for re-determination or determination, as the case may be, and make such order as to the costs of the proceedings before the Royal Court as it thinks fit.
  - (6) For the purposes of paragraph (5)(b) or where the complaint is a referral in respect of which Article 23(1)(b)(ii) applies, the Royal Court may in respect of the practitioner or legal services body, as the case may be –
    - (a) issue a private rebuke or a public reprimand;

- (b) impose a fine of any amount;
- (c) impose a fine of any amount and issue a public reprimand;
- (d) suspend the practitioner from practice as an advocate or solicitor for a specified period not exceeding 12 months;
- (e) suspend the legal services body from operating as such for a specified period not exceeding 12 months;
- (f) order that the practitioner's name be removed from the roll of advocates or solicitors, as the case may be; or
- (g) order that the legal services body be removed from the register of legal services bodies (if any).

(7) However, where the Royal Court determines a referral in respect of which Article 23(1)(b)(ii) applies, the Court shall not apply a penalty under paragraph (6) until –

- (a) the expiry of the period in which an appeal (under Article 24(1)(b) against a decision that the complaint is proved) must be lodged under Article 24(2);
- (b) the abandonment of any such appeal; or
- (c) a determination of the Royal Court to reject that appeal,

whichever occurs first.

(8) The practitioner or legal services body, as the case may be, and the Attorney General shall have a right of appeal to the Court of Appeal against a decision or order of the Royal Court under this Article.”.

## **18 Articles 27 and 28 repealed**

Articles 27 and 28 are repealed.

## **19 Article 29 substituted**

For Article 29, there is substituted the following Article –

### **“29 Recovery of fines and costs**

Any fine imposed on a practitioner or legal services body under –

- (a) Article 23(2) shall constitute a debt due and payable to the Law Society; or
- (b) Article 24(4) or 26(6), or costs that are awarded to the Attorney General under this Part, shall constitute a debt due and payable to the States, and shall be enforceable by the Treasurer of the States in the same manner as an order for the payment of costs made by the Royal Court in a civil case.”.

**20 Article 30 amended**

In Article 30 –

- (a) in paragraph (1)(a), after the words “on grounds of”, there is inserted the word “professional”;
- (b) after paragraph (1) there is inserted the following paragraph –
  - “(1A) No legal services body shall employ, retain or remunerate –
    - (a) a person whose name has been removed from the roll of advocates or solicitors, on grounds of professional misconduct, and has not been restored to that roll; or
    - (b) a practitioner who is suspended from practice as an advocate or solicitor,without the prior approval of the Committee and in accordance with such conditions (if any) as it may specify in giving its approval.”;
- (c) in paragraph (3), for the words “A practitioner who contravenes paragraph (1)” there are substituted the words “A practitioner or a legal services body who contravenes paragraph (1) or (1A)”.

**21 Article 32A inserted**

Immediately before Article 33 there is inserted the following Article –

**“32A Regulations**

- (1) The States may make Regulations to amend this Law.
- (2) The power to make Regulations under paragraph (1) or Article 17B includes the power to make any supplementary, incidental, consequential, transitional, transitory or saving provision which appear to the States to be necessary or expedient for the purposes of –
  - (a) amending this Law; or
  - (b) Regulations under Article 17B,as the case may be.”.

**22 Article 34 substituted**

For Article 34 there is substituted the following Article –

**“34 Rules**

- (1) Rules may be made, for the purposes of this Law, by the Superior Number of the Royal Court after consultation with the Rules Committee for -
  - (a) regulating and prescribing the procedure to be followed in, or in connection with, proceedings conducted and

- determined by disciplinary committees under Articles 22 and 23, and any matters incidental to or relating to any such procedure;
- (b) regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings before disciplinary committees or on any application in connection with, or at any stage of, any such proceedings;
  - (c) regulating any matters relating to costs of proceedings before disciplinary committees and in relation to the collection of fines imposed by disciplinary committees;
  - (d) regulating or prescribing any procedure or matter described in sub-paragraphs (a) to (c) where, under Article 36(3)(a),(b) or (c), the complaint is to proceed, or be determined as if the No. 4 Amendment Law had not been enacted.
- (2) In paragraph (1), ‘Rules Committee’ means the Committee established under Article 13(4) of the Royal Court (Jersey) Law 1948<sup>9</sup> (the ‘Royal Court Law’).
  - (3) The Attorney General shall be summoned to attend every sitting of the Superior Number of the Royal Court at which it is proposed to make or consider the making of rules under paragraph (1).
  - (4) The power to make Rules of Court under Article 13 of the Royal Court Law shall include a power to make rules regulating and prescribing the procedure to be followed on, or in connection with –
    - (a) appeals to the Royal Court against decisions of disciplinary committees under Article 24; and
    - (b) references to the Royal Court by the Attorney General under Article 25, including the hearing of any such references under Article 26.”.

### 23 Article 35 substituted

For Article 35 there is substituted the following Article –

#### “35 Publication of bye-laws

The Law Society shall publish the bye-laws it makes under this Law in a manner that is likely to bring them to the attention of those affected.”.

### 24 Article 36 amended

In Article 36, for paragraphs (1) to (4) there are substituted the following paragraphs –

- “(1) This Article applies where, in the 3 months immediately before the commencement of Articles 12 to 16 of the No. 4 Amendment Law –

- (a) the Law Society received a complaint alleging that a practitioner is guilty of professional misconduct;
  - (b) a disciplinary committee referred a complaint to the Attorney General;
  - (c) the Attorney General referred a complaint to the Royal Court; or
  - (d) an appeal to the Royal Court was lodged.
- (2) On the commencement of Articles 12 to 16 of the No. 4 Amendment Law, paragraph (3) or (4) shall apply, as the case may be.
- (3) If, in the case of paragraph (1)(a) –
  - (a) the complaint has not been referred to a disciplinary committee, the complaint shall proceed in accordance with the provisions of Part 3, as amended by the No. 4 Amendment Law, unless the President, on hearing representations made by, or on behalf of the complainant or practitioner, determines that the complaint should proceed as if the No. 4 Amendment Law had not been enacted;
  - (b) the complaint has been referred to a disciplinary committee but the committee has not convened to hear the complaint, the complaint shall proceed in accordance with the provisions of Part 3, as amended by the No. 4 Amendment Law, unless the committee, on hearing representations made by, or on behalf of the complainant, practitioner or President, determines that the complaint should proceed as if the No. 4 Amendment Law had not been enacted; or
  - (c) the complaint is in the process of being heard by a disciplinary committee, the committee shall continue to determine the complaint as if the No. 4 Amendment Law had not been enacted.
- (4) In the case of paragraph (1)(b), (c) or (d), the complaint or appeal shall proceed in accordance with the provisions of Part 3 as if the No. 4 Amendment Law had not been enacted.”.

## 25 Citation and commencement

This Law may be cited as The Law Society of Jersey (Amendment No. 4) Law 201- and shall come into force on such day or days as the States may by Act appoint.

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- 1 *chapter 07.570*
  - 2 *chapter 07.570*
  - 3 *chapter 07.570*
  - 4 *chapter 13.370*
  - 5 *chapter 13.475*
  - 6 *P.136/2016*
  - 7 *chapter 13.780*
  - 8 *chapter 07.315*
  - 9 *chapter 07.770*