

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 22nd FEBRUARY 2021
ANSWER TO BE TABLED ON MONDAY 1st MARCH 2021**

Question

Will H.M. Attorney General explain the concept of perceived, apparent and actual bias in relation to the activities of politicians, civil servants, the Law Officers' Department and the Judiciary, highlighting any legal difference between these terms, and advise what legal, procedural or other remedies are available to individuals who believe they have been affected by any such bias?

Answer

This question is broad, and it is not possible to cover all aspects of it in detail. The remedies available to individuals who have been affected by bias will depend on the particular circumstances.

Regarding the legal definition of bias, apparent bias is where the individual is suspected to be biased because of his or her allegiances, interests or conduct. The test for apparent bias was set out in the case of [Porter v Magill \[2002\] 2 AC 357](#) and has since been applied in Jersey in a number of cases¹. The test for apparent bias set out in that case is as follows:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

This test is an objective test. In *Syvret v Chief Minister [2011] JLR 343* Commissioner Sumption stated (quoting Lord Hope in *Helow v Home Secretary [2008] 1 WLR 2416*) that the ‘fair-minded and informed observer’ is:

“someone who views the matter with some detachment, and reserves judgment until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, but nor will she shrink from the conclusion that there is a real possibility of bias, if this can be justified objectively by things that [the impugned judge or judges] have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.

....

She will form her judgment on this matter only when she has taken the trouble to inform herself on all relevant matters, and put them in a fair and complete overall context, recognising that this is part of the material which she must consider before passing judgment.”

Regarding the remedies available to individuals who believe they have been affected by bias; the procedures will be dependent on the parties involved.

Law Officers' Department

¹ See for example: [Barette v AG \[2006\] JCA128](#); [Syvert v Attorney General \[2009\] JLR 330](#); [Syvret v Chief Minister \[2011\] JLR 343](#); [Bisson v The Minister for Infrastructure \[2019\] JCA181](#); [AG v Sinnel and Chiddicks \[2014\] JRC126B](#)

Lawyers in the Law Officers' Department are required to comply with the [Code of Conduct for lawyers in the Law Officers' Department](#) as well as the States of Jersey [Code of Conduct](#) and a complaint can be made to the Attorney General by a person who considers that the Code may have been breached. The procedure for making a complaint can be found [here](#). The Code requires all lawyers to uphold the highest standards of conduct.

A complaint can also be made against the Attorney General or the Solicitor General; the procedure can be found [here](#).

Civil Servants

Pursuant to the [Code of Conduct](#) for Civil Servants, civil servants are required to adhere to high standards of conduct and act in the public interest.

Both members of the Law Officers' Department and civil servants may be subject to disciplinary action if, after investigation, they are found to have breached the relevant code of conduct.

Politicians

Elected members of the Assembly are required to comply with the Members' Code of Conduct, which is set out in [Schedule 3 of the Standing Orders of the States of Jersey](#), and can be the subject of a complaint to the Commissioner for Standards if there is an allegation that they have breached the Code.

Ministers and Assistant Ministers are also required to comply with the [Code of Conduct for Ministers and Assistant Ministers](#).

Judiciary

All courts and tribunals in Jersey, whether criminal or civil, are public authorities and obliged to conform to Article 6 of the E.C.H.R. (European Convention on Human Rights) which guarantees the right to a fair trial. If a person considers that the Judge who is going to be presiding over their case is biased then they can make an application to the Court for the Judge or Jurat to recuse themselves from the case (see for example *AB v AG (Capacity) [2020] JRC038A*) and they can also appeal to an appellate court.

A person can also make a complaint against the Bailiff in accordance with the [Bailiff Complaints Procedure](#) or against a member of the judiciary in accordance with the [Judicial Complaints Procedure](#).

Previous Attorneys General have provided answers to questions of the States Assembly concerning the independence and impartiality of judges and jurats on [1 March 2011](#), [15 May 2012](#), and [23 October 2012](#). These answers remain correct and supplement this answer.