

**WORKING PARTY ON LEGAL CHARGES AND PRACTICES: REPORT TO THE LEGISLATION
COMMITTEE - JUNE 2001**

**Presented to the States on 8th October 2002
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

120

2002

R.C.38

Price code: C

**WORKING PARTY ON LEGAL CHARGES AND PRACTICES:
REPORT TO THE LEGISLATION COMMITTEE - JUNE 2001**

1. Background

1.1 On 5th February 1999 the Legislation Committee (Act No. 5) agreed the constitution of a Working Party to consider further the issues raised by the Jersey Consumer Council's report on Legal Charges and Practices (RC.43/98) which had been presented to the States on 22nd September 1998.

1.2 The Working Party consisted of -

Deputy I.S. Nicholls, replaced by Senator W. Kinnard in 2000 (Chairman)
Deputy E.M. Pullin, replaced by Senator T.A. Le Sueur in 2000 (Legislation Committee member)
M.C.St.J. Birt Q.C., replaced by W.J. Bailhache Q.C. in 2000 (H.M. Attorney General)
Advocate M.H. Clapham (Law Society)
Advocate A.J. Dessain (Law Society)
Advocate C.G.P. Lakeman (Law Society)
Advocate R.J. Renouf (Law Society)
Mr. P.J. Bryans (Law Review Officer).

1.3 The Working Party's terms of reference were -

"To consider further the issues raised in the Consumer Council Report on Legal Charges and Practices and to make recommendations for the Legislation Committee's approval concerning the following matters -

- (a) Client care;
- (b) Property related transactions;
- (c) Court costs and general matters, and
- (d) Petty Debts Court."

It was noted that a separate working party had been established to consider the Consumer Council's recommendations with regard to Legal Aid and the establishment or otherwise of a Central Legal Office.

2. Methodology

2.1 The Working Party has convened on eight occasions (16th June, 20th October and 3rd December 1999, 7th April and 21st June 2000 and 1st March, 11th May and 7th June 2001).

2.2 Working Party members have produced or arranged for the production of position papers and reports on particular topics for consideration by the Working Party at its meetings.

2.3 In the three sub-sections of each of sections 3-6 of this report are set out -

- (a) the summarised recommendations of the Consumer Council in its Report;
- (b) a summary of the measures which have been taken to date with regard to the implementation of the Consumer Council's recommendations; and
- (c) the Working Party's further comments and recommendations.

3. Client care

3.1 Consumer Council Recommendations

Revision of Law Society of Jersey Code of Conduct and Etiquette to include -

- (a) Lawyer - client agreement that clearly sets out the "terms of engagement", including an outline of cost and time scale explained to the client.

- (b) A transparent system for settling differences/disputes, publicised and clearly defined.
- (c) A logical disciplinary procedure for Advocates and Solicitors.

3.2 Implementation

The Law Society adopted a new Code of Conduct at an extraordinary general meeting of the Society held on the 15th September 2000. A copy of this is annexed as the **First Schedule** to this report. In so far as the Consumer Council's specific recommendations are concerned -

- (a) Rule 4 of the Code of Conduct requires all members of the Society to set out in writing to their clients their terms of engagement and the likely costs to be incurred and specifically sets out details of what should be included in such a communication.
- (b) The Code of Conduct requires the terms of engagement to include details of internal complaints procedures established by the member's firm, provisions for the resolution of disputes in accordance with the Code and the existence of professional disciplinary procedures.
- (c) The Code does not set out in detail the disciplinary procedures for advocates and solicitors. The Law Society had taken the view, which the Working Party accepted, that this was unnecessary. New disciplinary procedures, i.e. the establishment of a disciplinary committee and a disciplinary tribunal, will be established by the Law Society of Jersey Law 200- which is currently being considered by the Legislation Committee.

3.3 Comments/Recommendations

The Code of Conduct Sub-committee of the Law Society had kept the Working Party acquainted with its work on the new Code of Conduct and in its several drafts of that document had adopted most of the suggestions and recommendations of the Working Party. The Working Party has noted that the terms of engagement communication proposed by Rule 4 of the Code of Conduct does not include an outline of the timescale for a particular matter. Whilst the Working Party considered it was desirable to include such a matter if possible, it accepted that this could not always be done.

The Working Party has been advised by the Law Society that its Code of Conduct Sub-committee remains in being as a Standing Committee to consider how the Code may be further improved and adapted to changing circumstances. The intention is that the Sub-committee will be alive to representations and proposals from within and outside the Society, and will ask the Society in General Meeting to consider its recommendations for amendments to the Code on a regular basis.

The Working Party would like the Society to consider including in the Code a statement of the ways in which the Society will continue to assist in the resolution of disputes between lawyers and their clients by conciliation or mediation. It did not consider that such a recognition of the informal procedures which currently exist should be enshrined in legislation as was suggested by the Consumer Council in its Report, because informal procedures are by definition informal and flexible.

4. **Property-related transactions**

4.1 Consumer Council Recommendations

- (a) Improvements in technology and centralisation of information.
- (b) Review scale fees on contracts.
- (c) Phase out the use of French.

4.2 Implementation

- (a) The Working Party is able to report that the second stage of the PRIDE (Public Registry Index and Document Enrolment) System became operational towards the end of last year. The first phase included an online index to all property contracts and the second has linked the index to scanned images of all contracts registered since 1800. It is understood that there have been teething problems since the commissioning of the second stage and

that work to remedy these is continuing. The new system is available both at the Public Registry and to local law firms over a high speed link. It is intended that at a later stage a unique property reference number (UPRN) will be included in the system.

As indicated in the Working Party's Interim Report it is hoped that in the much longer term information about properties held by public bodies and utility companies will be linked into PRIDE by use of the UPRN.

- (b) At an extraordinary meeting of the Law Society held on the 28th September 2000, members resolved to authorise those members of the Society who were also members of the Rules Committee of the Royal Court to request the Rules Committee to give consideration to recommendations for changes to the tariff of fees fixed by the Superior Number of the Royal Court on the 19th February 1954. When the matter was raised at a meeting of the Rules Committee that Committee referred the recommendations to the Legislation Committee which, in turn, referred them back to the Working Party. As a result of suggestions made by the Working Party, there was a further extraordinary general meeting of the Law Society on 1st June 2001 at which it was resolved that the original recommendations should be varied. A copy of the revised recommendations is annexed as the **Second Schedule** to this report.
- (c) The Working Party noted that the Law Commission was in the course of reviewing the whole of the conveyancing system in Jersey, which is at present extremely complicated. It accepted the view of its Law Society members that simply permitting or requiring contracts to be written in English in future (with the now common exception of the terms and conditions set out in contracts of lease) was calculated to result in considerable confusion. It noted that lawyers have traditionally always read over contracts to their English clients in English and that it had always been possible for clients to obtain translations of their contracts. The Law Society has advised the Working Party that nowadays it is almost invariably the practice that the lawyer will provide his client with an English translation of the contract as part of his service to the client, the cost of which is included in the scale fee. The Working Party therefore considered that it was appropriate to await the Law Commission's report.

4.3 Comments/Recommendations

Although the Working Party noted that the Consumer Council had not recommended that scale fees be abolished, the Working Party did consider it part of its remit to look once more at the case for the wholesale abolition of the scale fee system. It was aware that there is a strong minority lobby for abolition within the Law Society itself. However, it concluded that there was a stronger case for retention of the scale, at least until such time as there has been a major reform of Jersey's system of conveyancing.

With regard to the recommendations of the Law Society set out in the **Second Schedule** the Working Party welcomes all of these. It was particularly pleased that the Society has adopted its suggestion that the reduction of the fee to ½ the usual scale for first time buyers should be expressly provided for in the tariff, and that the price ceiling for such reduced fee transactions should be increased to the same level, £225,000, as applies in respect of the reduced incidence of Stamp Duty on such transactions.

The Working Party noted that, in respect of the proposed standard fees on sales and purchases and sales to first time buyers, the recommendation was that the fees should be "not less than" the stipulated percentage of the price. Whilst it recognised that in practice individual lawyers, not wishing to lose business to others, were unlikely to propose charging more than the basic tariff, save in the case of very low-priced transactions, the Working Party considered that one of the perceived advantages of a true scale fee system was that it fixed fees with certainty. On the other hand the Working Party did consider it fair that there should be a minimum fee, as had been provided for in the 1954 tariff, where the scale had been set at two per cent for the first £500 of value with a minimum fee of £5. Its recommendation therefore is that the stipulated scale fee should not be exceeded, but that there be a minimum chargeable fee of, say, £250.

The Working Party also strongly supports the recommendation that lawyers should not be obliged to charge a scale fee in the case of contracts of gift or other transactions where the consideration does not relate to the value of the property or which are not at arm's length.

The Working Party noted that the Society had not reacted positively in any way to the recommendation of its Conveyancing Sub-committee that no scale fee should apply in the case of assignments of lease. It recognises that the lawyer acting for an assignee has the same responsibility for checking title and advising on the lease as the lawyer acting for the first assignee, but considers that some allowance should be made for the fact that succeeding lawyers do not also play a part in negotiating the terms of the lease.

5. Costs and general matters

5.1 Consumer Council Recommendations

- (a) Different levels of “Court costs” freely available, published and explained.
- (b) Guidance leaflets freely available for assistance with more common matters e.g. wills and separation.
- (c) Compulsory membership of the Jersey law Society for Advocates and Solicitors.
- (d) Priority given to draft legislation.

5.2 Implementation

- (a) On 8th April 1999 the Rules Committee of the Royal Court, after exhaustive consultation, made very significant alterations to the Rules of Court relating to the recovery and taxation of costs by the Royal Court (Amendment No. 13) Rules 1999.

Rule 4 of the Code of Conduct adopted by the Law Society on 15th September 2000 requires a lawyer’s written terms of engagement to include clear statements as to the principles of recovery of costs awarded against an opposite party and as to any likely difference between the level of costs recoverable on an award of costs against such party and the level of costs which the member will charge to the client.

- (b) Many guidance leaflets on particular subjects are produced by individual firms of lawyers. The Law Society Committee has circulated the membership suggesting that all such leaflets should be distributed to key centres such as the Citizens Advice Bureau and Parish Halls, where they would be available to the general public, and the Working Party understands that this has happened. Members of the general public may also obtain such leaflets from the individual firms themselves, whether or not they are existing clients of those firms.
- (c) The draft Legal Practitioners (Jersey) Law 200- which is currently before the Legislation Committee makes it necessary for any lawyer wishing to practise Jersey Law as an advocate or a solicitor to be a member of the Law Society of Jersey.
- (d) As already indicated the finalised draft legislation is before the Legislation Committee. It comprises -

The Law Society of Jersey (Jersey) Law 200-

The Law Society of Jersey Bye-Laws 200-

Legal Practitioners (Jersey) Law 200-

The drafts have been much worked on and the Law Draftsman has liaised closely with the Law Society and the Attorney General. Input has also been sought from the Association of Solicitors of England and Wales Practising in Jersey.

5.3 Comment/Recommendations

The Working Party understands that the new Rules of Court do go a long way towards meeting the Consumer Council’s recommendation that successful litigants should be able to recover a much larger proportion of their legal costs than was the case under the old taxation regime.

The Working Party hopes that the Legislation Committee will give high priority to the enactment of the proposed legislation.

6. Petty Debts Court

6.1 Consumer Council Recommendations

- (a) Review the role and function of the Petty Debts Court.

- (b) Establish a Small Claims Court.

6.2 Implementation

- (a) The Working Party had agreed that the jurisdiction of the Petty Debts Court should be increased to £10,000, and this was brought into effect by the passing of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000.
- (b) Pursuant to a recommendation of the Attorney General, the Working Party had proposed that the Attorney General, Mrs. Carol Canavan representing the Law Society, and Mr. Ian Le Marquand (Police Court/Petty Debts Court Judge) should travel to the United Kingdom to observe the workings of a Small Claims Court. They did so and concluded that such a Court system would be inappropriate for Jersey. The Attorney General has already reported on the matter to the Legislation Committee, and a working party has been set up to consider proposals for improvements to the Petty Debts Court system generally to ensure that it will, in future, be able to deal expeditiously and cost-effectively with all defended small claims.

6.3 Comments/Recommendations

In the light of the above, the Working Party does not consider it appropriate to comment further on these matters.

FIRST SCHEDULE

The Law Society of Jersey Code of Conduct

This Code of Conduct replaces all earlier codes of conduct and was adopted by the Law Society of Jersey by Resolution duly passed at an Extraordinary General Meeting held on the 15th day of September 2000 when it came into force.

The general purpose of the Code of Conduct is to specify the standards of conduct on the part of members of the Law Society of Jersey which are appropriate in the interests of the profession and of justice. This Code of Conduct applies to all members whenever admitted to membership.

In any particular case or cases the Committee of the Law Society of Jersey ('the Committee') shall have power to waive in writing any of the provisions of this Code of Conduct for a particular purpose or purposes expressed in such waiver, and to revoke such waiver.

1. Professional Reputation and Exclusivity

A member shall not carry on any other profession, occupation or business, association with which might reflect adversely on the reputation of the legal profession in Jersey. A member shall not practise Jersey Law in partnership with any person other than another member.

2. Standards

It is the duty of every member at all times to uphold the dignity and high ethical and technical standards of the legal profession, and to adhere to the terms of the oath sworn before the Royal Court. Where principles of practice conflict with the public interest in the proper and efficient administration of justice, the duty to the Court shall take precedence.

Accordingly:

- (1) A member must exercise independence of judgement and promote and protect the best interests of the client.
- (2) A member shall not permit integrity or professional standards to be compromised at the instance of the client or any third party.
- (3) A member must not act where the member's own interests conflict with those of the client or where a conflict of interests or duty, or a significant risk thereof, arises between two or more clients of a member's firm. A member must bear in mind the duty owed to each individual client and the obligation to advise in the best interests of the client.
- (4) Neither a member nor a member's firm shall act for two or more clients in relation to matters where there are disputes or other conflicts between those clients. In non-contentious transactions, a member or a member's firm may act for more than one party only with the specific consent of all parties to such a transaction.
- (5) A member's firm shall properly manage and administer its practice and shall ensure that appropriate arrangements are in place for supervision of qualified and unqualified staff employed.
- (6) A member shall attend to all client affairs with the same degree of diligence and shall answer all correspondence within a reasonable time.
- (7) A member shall do nothing to compromise or impair a person's freedom of choice in placing instructions for legal services, save that nothing herein shall prevent a member who is charged with administering the Legal Aid Scheme from allocating a lawyer to an applicant in the customary way.
- (8) A member shall not allow a client to require as a condition to a transaction that the other party also instruct such member or the firm of such a member.
- (9) A member shall aim to practise in such a way as to avoid discriminating against a client on grounds of race, colour, ethnic or national origin, nationality, citizenship, gender, sexual orientation, marital status, disability, religion or political persuasion.

- (10) A member shall act towards other members with frankness and good faith consistent with the overriding duty to the Court and the duty to the client. A member shall observe the requirement of good manners and courtesy towards other members and their employees even although there may be matters of bitter contention between clients. A member shall not write personally offensive letters to other members.
- (11) A member shall not deceive the Committee or any member or knowingly permit a client to do so.
- (12) A member shall report to the President if convicted of any offence other than a minor road traffic offence.

3. Publicity

Subject to the guidance which follows, a member's firm may seek publicity for services and products and may advertise services and products in any way provided that the image projected is consistent with that of a professional person or firm bound to high ethical and technical standards.

- (1) Advertisements shall comply with the Law and this Code of Conduct (as amended from time to time) and any directives issued by the Committee.
- (2) Advertising material circulated in public within the Island of Jersey shall not directly refer to fees or costs but may refer to details thereof as being available on request.
- (3) Advertising material may contain any factual statement the truth of which a member is able to justify but should not make disparaging references to or disparaging comparisons with the services of others.
- (4) A member's practice shall not be publicised in the Island of Jersey by means of unsolicited visits, telephone calls, or other communications.
- (5) A member's firm shall not advertise the provision of legal services in such a way as to amount to harassment of a prospective client.
- (6) The provisions of this Rule extend to professional stationery and to information issued or publicised electronically or telephonically.

4. Terms of Engagement

- (1) Upon acceptance of instructions from a new client or a client who has not previously received terms of engagement or who has not instructed the firm for over five years, a member shall advise the client in writing of the terms of engagement, including reference to the following matters:
 - (a) the relationship of the lawyer to the client including the required basis of confidentiality, and utmost good faith between lawyer and client, and the duty of the lawyer to exercise reasonable skill and care;
 - (b) names and contact details of the member with overall responsibility for that client and of any other member and assistants dealing with that matter;
 - (c) if appropriate, the terms of reference for the work instructed;
 - (d) the basis on which fees and expenses are to be charged by reference either to scale or set fees, or to hourly rates and circumstances which may affect the level of fees such as:-
 - (i) the complexity and novelty of the matter;
 - (ii) the specialised legal knowledge required;
 - (iii) the monetary amount or other the value of the matter;
 - (iv) the number and length of documents;
 - (v) the urgency of the matter and the place and time of day when the work is to be carried out;

- (vi) the importance of the matter to the client;
 - (vii) the time to be expended;
 - (e) the terms of payment and the time for payment, the rate of interest (if any) chargeable on late payment, the delivery of interim bills and the right of the client at any time to enquire and be informed of the fees incurred to date;
 - (f) liability for costs in contentious matters including a clear statement as to the principles of recovery of costs awarded against an opposite party and a clear statement as to any likely difference between the level of costs recoverable on an award of costs against such a party and the level of costs which the member will charge to the client;
 - (g) the terms upon which funds are held on behalf of the client, and their utilisation;
 - (h) the right of the client to receive progress reports on request;
 - (i) details of the internal complaints procedures established by the member's firm, including the name of the person to whom such complaints should be addressed, of the fee dispute provisions described in Rule 10 and of the existence of the professional disciplinary procedures;
 - (j) the circumstances in which the member's firm will have the right to vary the terms from time to time;
 - (k) termination of instructions and the ultimate disposal of documents.
- (2) A member should aim for complete understanding by the client from the outset as to the basis of the relationship.
- (3) A member shall advise an existing client for whom a new matter is undertaken of any resultant change in the above information and shall provide the appropriate details. A member may agree with an existing client that it is not necessary to provide terms of engagement in respect of every new instruction, provided that such agreement is evidenced in writing.

5. Scale Fees

A member shall not undertake professional work at a fee lower than any relevant scale fixed by the Rules of Court or by the Law Society from time to time after approval in general meeting except with the consent of the Committee. The terms of this Rule shall not prevent a member from undertaking such work without charging a fee.

6. Profits

Without the approval of the Committee a member shall not agree to share with any person not being an Advocate or Solicitor of the Royal Court the profits of the legal practice of such member other than (a) with a former partner or the dependants of such former partner or (b) agency arrangements with a legal firm practising the law of another jurisdiction involving not more than one third of the fee for the matter involved or (c) in respect of a staff bonus scheme.

7. Changing Lawyers and Ownership and Destruction of Documents

- (1) (a) A member shall not accept instructions from a new client in relation to a continuing matter when he is aware or becomes aware that another member has previously acted for the client in question on that matter until that member has received confirmation to a written enquiry from the other member that there is not a valid objection to accepting such instructions or a reasonable time has elapsed since such enquiry. The handing over of documents (which in this Rule means letters, faxes, e-mails and other documents whether hand-written, printed or stored electronically) on the termination of a retainer with a member shall be in accordance with the provisions of paragraphs (2) to (4) of this Rule.
- (b) In the event of there being such an objection the matter shall if not resolved forthwith amicably be referred for adjudication to the Bâtonnier or the President of the Chamber of Solicitors, or for the appointment of an adjudicator who shall act as an expert and not an arbitrator. The decision of such adjudicator shall be final. Nothing herein shall prevent a member from acting on an urgent matter for a

new client pending resolution of such dispute where the interests of justice so require.

- (2) Documents which belong to a client or a third party shall be dealt with in accordance with the instructions of the client or third party subject to Rule 7 (6) hereof and the firm's lien (if any).
- (3) Documents in existence before the retainer held by the member's firm as agent for and on behalf of a client or a third party belong to such client or third party.
- (4) Documents which come into existence after a member's firm is retained and for the purposes of the business to be transacted during the retainer fall into four broad categories:

- (a) Documents prepared by a member's firm for the benefit of the client and which have been paid for by the client, either directly or indirectly, belong to the client.

Examples:

Instructions and briefs;
Most attendance notes;
Drafts;
Copies made for the client's benefit of letters received by the member;
Copies of letters written by the member to third parties if contained in the client's case file and used for the purpose of the client's business.

- (b) Documents prepared by a member's firm for the member's firm's own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to the member's firm.

Examples:

Copies of letters written to the client;
Copies made for the member's own benefit of letters received by the member;
Copies of letters written by the member to third parties if contained only in a filing system for all letters written in the office;
Tape recordings of conversations;
Inter-office Memoranda;
Entries in diaries;
Timesheets;
Computerised records;
Office journals;
Books of Account.

- (c) Documents sent to a member by the client during the retainer, the property in which was intended at the date of despatch to pass from the client to the member belong to the member.

Examples:

Letters, authorities and instructions written or given by the client.

- (d) Documents prepared by a third party during the course of the retainer and sent to a member (other than at the member's expense) belong to the client.

Examples:

Receipts and vouchers for disbursements made on behalf of the client;
Medical and witness reports;
Counsel's advice and opinions;
Letters received by a member from third parties.

- (5) Where a client on termination of retainer requests it, a member's firm upon payment of a reasonable fee for such copying shall supply copies of correspondence sent by such firm to the client, of correspondence sent by the client to such firm, of correspondence sent to third parties on behalf of the client and of the written

authorities and instructions sent by the client to such firm.

- (6) Where the only record of a document is held by a member's firm electronically and if it had been held physically it would belong to the client a print-out shall be provided to the client on request.
- (7) Notwithstanding anything set out above, files and records of any material matter whether in physical form or held electronically where there is no physical document shall not be destroyed until after the lapse of twenty years from the last material entry therein except with the client's written consent. After the said period has elapsed such files and records may be destroyed only if it is reasonable to do so in the circumstances giving due consideration to the reasonable interests of the client, and after an attempt to obtain a written consent to do so has been made or instruction to forward them elsewhere has been received from the client or the client's executors, administrators or successors if reasonably ascertainable. There is no duty to maintain the hardware of a computer system on which such documents are stored for this twenty year period.

8. Undertakings

- (1) A member who gives an undertaking to another member or the firm of another member shall be personally bound by that undertaking unless when giving the undertaking the giver makes it clear that the undertaking is not a personal undertaking and states on whose behalf it is given and has authority to give such undertaking. A member's firm shall be responsible for honouring an undertaking given by any member of staff with express or implied authority.
- (2) A firm of a member (in this Rule "P") acting for a purchaser of immovable property undertakes impliedly to the lawyer acting for the vendor that P:
 - (a) either
 - (i) has the purchase consideration or the balance due by P's client as the case may be ("the outstanding consideration") as cash in P's hands;
 - (ii) is satisfied that P will have cash in P's hands on the tenth day after contract has been passed ("settlement day") to pay the outstanding consideration on behalf of P's client.

In this regard, P will only have discharged the obligation to be satisfied if P has an express or implied undertaking from the firm of another member that (subject to (c) below) the requisite funds will be transmitted to P on or before the day on which they are required to be paid to the vendor's lawyer;

AND

- (b) P is unaware of any circumstances which might give rise to any impediment to making such payment as referred to in (c) below;

AND

- (c) subject to any order of the Royal Court which has the effect of arresting the funds in P's hands or otherwise preventing P from making the requisite payment, and subject to the contract not being nullified for any reason, P will pay to the vendor's lawyers on settlement day such of the outstanding consideration as is in P's hands pursuant to paragraph (a) of this rule;

AND

- (d) will apply immediately to the Court to vary any order which has the effect of arresting the funds in P's hands or otherwise prevents P from making the requisite payment.

A similar undertaking applies as regards a contract of simple conventional hypothec substituting "lender" for "purchaser" and "borrower" for "vendor", and also in the case of exchange and counter-exchange where the party paying the "equivalent" shall be considered to be the purchaser. No such undertaking applies in relation to judicial hypothecs or leases.

9. Instructing other Firms

The firm of a member which instructs the firm of another member or a legal firm practising the law of another jurisdiction shall be responsible for the payment of that other's proper fees and disbursements unless otherwise

agreed.

10. Fee Disputes

Without prejudice to the jurisdiction of the Courts any dispute between a client or former client and a member's firm as to costs claimed by a member's firm from such client or former client may be referred by either party to the Committee which may delegate the matter to a Sub-Committee for investigation and recommendation, and the Committee's decision shall be binding on the parties provided that they shall have agreed to accept the Committee's decision as binding. The Committee or Sub-Committee shall if appropriate set out the terms of reference and the procedure that it wishes to adopt. Both parties shall be given adequate opportunity to know the nature of the complaint and have an opportunity to respond to it.

11. Communications with others' clients

The firm of a member shall not communicate directly or indirectly on a particular matter with a person represented by the firm of another member on the matter except through that other firm or with that other firm's consent, save that there is no restriction on communicating directly with a client's neighbour in regard to a request to be party to a contract to be passed before the Royal Court.

12. Bail

A member shall not stand bail for any person for whom he or any member of his firm is acting as legal adviser except with the consent of the Committee.

13. Recording

A conversation with another member or the staff of another member's firm shall not be recorded without prior written advice that the conversation will be recorded and the provision, if required, within a reasonable time, of a transcript thereof to the other member or the member's firm at a reasonable cost.

14. Conflicts between Firm and Client

A member shall not enter into a contract with a client or prepare a document by which a client confers a benefit on a partner or employee of such firm unless:-

- (1) the client is independently advised by another member not being of the same firm; or
- (2) the benefit so conferred is insignificant relative to the affairs or wealth of the client; or
- (3) the recipient of such benefit is related by blood or marriage to such client; or
- (4) the client has given informed consent.

15. Clients' Moneys

- (1) Every member who receives or holds a client's money shall without delay pay such money into a current or deposit account at a bank in the name of the firm of such member in the title of which the word client appears ("Client Account") and no money other than clients' moneys shall be paid into a Client Account.

Client's money means money held or received by the firm of a member on account of a client for whom the firm acts in relation to such money as lawyer, agent, bailee or stakeholder, but excluding money held or received as a trustee (other than as bare trustee) and money to which the firm of a member is the only party entitled.

- (2) There may be drawn from a Client Account only money properly payable and which is forthwith paid to or on behalf of a client, or in reimbursement of monies expended on behalf of a client or costs due to the firm of such member or money paid into such account by mistake or accident.
- (3) Every member's firm at all times shall keep properly recorded in such books, records and accounts as may be necessary all monies received and expended by such firm, on behalf of clients, shall distinguish such money received, held or paid on account of each separate client, and shall distinguish such money from other money

received, held or paid on any other account.

- (4) Every member's firm shall within six months of the close of the annual accounting period of such firm or on its cesser of trading deliver to the Secretary of the Society a certificate addressed to such firm issued by a member of the Jersey Association of Practising Chartered and Certified Accountants not being an employee of that firm stating that such member has complied with the foregoing sub-paragraphs of this rule other than minor non-loss causing errors. It shall be the duty of the Secretary of the Society to keep and maintain a file for all such Annual Certificates. If any firm fails to supply a Certificate in compliance herewith the Secretary shall report the failure to the President who shall refer the matter to the Committee for appropriate action. Each firm shall supply the Secretary of the Society with the name of its accountant and shall notify the Secretary of all changes in accountant or in the date of the end of its financial year.

In the event of a change in a member's accounting period giving rise to an accounting period of more than one year a member shall provide such certificate in respect of such longer period as the Committee shall require.

- (5) (a) Every member's firm shall account to its client for interest earned (less income tax where required by law to be deducted) on money it holds on a separately designated deposit account. If money is held for the client but not in such an account interest shall only be payable as set out below:

- | | | |
|---|-------------------------|-------------------------------|
| - | in excess of £2,500.00 | held in excess of eight weeks |
| - | in excess of £5,000.00 | held in excess of four weeks |
| - | in excess of £10,000.00 | held in excess of two weeks |
| - | in excess of £20,000.00 | held in excess of one week |

Sums in excess of £40,000.00 held for less than one week give rise to an obligation to pay interest if it is fair and reasonable in all the circumstances provided that if the member's firm accounts for such sums with due despatch no interest is required to be paid.

- (b) Interest shall be payable at the rate which would have applied had such money been placed on immediate call deposit at one of the major clearing banks operating in Jersey (less income tax where required by law to be deducted) and shall be paid as soon as reasonably practicable after the moneys are paid out.
- (c) The period applicable to the interest shall be from the date of receipt of cleared funds until the date such funds leave the member's firm's bank account.
- (d) Notwithstanding the foregoing, no interest shall be payable if it amounts to less than £20.00 (net of any tax payable).
- (e) Nothing herein shall derogate from any rules of common law or statute which may apply to trust money.
- (f) The sums mentioned in paragraphs (a) and (b) above shall be subject to revision triennially in accordance with the proportionate rise in the Jersey Retail Price Index since March, 2000 rounded to the nearest pound. The first such review shall be made on 1 May 2003.

16. Malicious Proceedings, etc.

A member shall guard against instituting proceedings on behalf of a client which on good and reasonable grounds such member considers to be instituted only for the purpose of gratifying the client's anger, ill-will or malice toward another person or persons. In particular, a member shall at all times guard against asking questions in litigation, which are only intended to insult or annoy either a witness or any other person and should exercise discretion and judgement both as to the substance and the form of questions put in cross-examination which go only to the credit of

the witness. A member shall not include in any pleading an allegation of fraud unless such member has possession of reasonably credible material from which a prima facie case of fraud can be established.

17. Duty as to assist Court

- (1) A member shall bear in mind that whilst an advocate's primary function is to present the case for a client to its best advantage, there is no requirement to win the case at all costs. The fundamental principle to guide the member is that an advocate's function is to assist the Court to reach a just decision on the facts properly adduced before it in accordance with a correct interpretation of the law.
- (2) A member shall not consciously deceive the Court or state facts to the Court which the member knows to be untrue. The member shall bring to the notice of the Court every relevant legal authority which such member's researches have revealed, even although they may be adverse to the case of a client.

18. Duty as to Evidence

A member shall not invent a defence for a client nor suggest to the client or to a witness the use of words in evidence which would distort the facts.

A member shall, if reasonably possible, avoid the naming in open Court of third parties whose characters would thereby be impugned.

A member shall not by assertion in a speech impugn a witness where there has been an opportunity to cross-examine unless in such cross-examination the witness has had opportunity to answer the allegation.

19. Duty as to Criminal Cases

If a client charged with a criminal offence admits to a member the commission of the offence but insists on a plea of not guilty, the member must tell the client that such an admission will place strict limitations on the member's conduct of the case. The member shall not put the client in the witness box to protest his or her innocence or put forward any arguments suggesting that some other person has committed the offence charged. Subject to these limitations the member may properly continue the defence, may require the Crown fully to prove its case, may take any technical objections and may argue that there is insufficient evidence to justify a conviction. If the client refuses to accept these limitations, the member shall withdraw from the case.

20. Use of Opponent's Document

- (1) A member shall not himself obtain or seek to obtain a document or knowledge of the contents of a document belonging to another party otherwise than by means of the normal and proper channels for obtaining such documents or such knowledge.
- (2) Where during the course of legal proceedings whether before, during or after a trial or hearing a member for one party receives as part of or in the course of his or her instructions, a document which appears to be a document belonging to another party (or a copy thereof) and to be privileged from discovery or otherwise to be one which ought not to be in the possession of such member's, client or instructing solicitors, then before such member makes any use of such document:
 - (a) the member shall make appropriate inquiries of his or her client or instructing solicitors in order to ascertain the circumstances in which the document was obtained; and
 - (b) unless satisfied that the document has been properly obtained in the ordinary course of events, the member should inform his or her opponent of such member's intention to use the document and of the circumstances (so far as known) in which the document had been obtained.
- (3) In the event of objection by the opponent to the use of such document the matter shall be referred to the Court for it to determine what use, if any, may be made thereof.
- (4) Subject to the foregoing sub rules and to the provisions of this Rule 24, a member is under a duty, unless the Court otherwise orders, to make all and such use of such document as would be in his or her client's interests.

21. Rule Changes

The Society in General Meeting may amend these rules and any amendments thereto from time to time.
PROVIDED THAT:

- (1) the notice convening such meeting shall contain sufficient identification of the subject matter, and
- (2) no such resolution shall be validly passed unless two thirds of the persons present at the meeting (either in person or by proxy) vote in favour thereof.

15 September 2000

SECOND SCHEDULE

THE LAW SOCIETY OF JERSEY

Recommendations in respect of the Tariff of Fees fixed by the Superior Number of the Royal Court on the 19th February 1954

At an Extraordinary General Meeting of the Law Society of Jersey held on Friday 1st June 2001 it was resolved to authorise those members of the Society who are also members of the Rules Committee of the Royal Court to request the Rules Committee to give consideration to the following recommendations:-

1. That the tariff under the headings "BAIL A FIN D'HERITAGE ET VENTE DE RENTE, HYPOTHEQUE CONVENTIONNELLE ET EMPRUNT", "BAIL A TERMAGE", "CONTRATS", "PARTAGE" and "PRISE ET ACQUET D'HERITAGE" should be abolished.
2. That the following tariff should apply in respect of transactions involving immoveable property in Jersey ("property"):-
 - A. On a sale or purchase of property, a fee of not less than 1% of the stipulated consideration subject to the following exceptions:-
 - (i) Where there is no price stipulated for the property or where the price or other consideration is not related to the market value of the property, or where the lawyer acting is not providing a full conveyancing service appropriate to the nature of the property being conveyed due to the particular relationship between the contracting parties, the lawyer acting shall not be obliged to charge at the stipulated scale.
 - (ii) Where:
 - (a) the transaction is a purchase of land on which a single unit of dwelling accommodation is or is to be constructed for occupation by the purchaser;
 - (b) the gross value of the property or, where the dwelling has not been constructed, the notional gross value of the property once the dwelling has been constructed, calculated on the basis of market values prevailing at the time of sale does not exceed £225,000; and
 - (c) the transaction fulfils the conditions contained in the proviso to sub-paragraph (b) of paragraph 13 of the substituted First Schedule to the Stamp Duties and Fees (Jersey) Law 1998, which substituted Schedule is set out as the Schedule to the Stamp Duties and Fees (Jersey) Regulations 1999.
 - the fee shall be not less than ½% of the stipulated consideration.
- B. In respect of the lease or sub-lease or transfer of lease or sub-lease of property passed before the Royal Court, the fee charged shall be ½% of the aggregate rental for the term or unexpired portion of the term (up to a maximum of 21 years) plus any capital premium payable subject to the following exceptions:-
 - (i) Where:-
 - (a) the transaction is a contract of lease or sub-lease or transfer of lease or sub-lease passed before the Royal Court of a single unit of dwelling accommodation where the transaction falls within the financial limits of the Building Loans (Miscellaneous Provisions) (Jersey) Law Regulations 1961 (whether or not a loan is actually made under those Regulations);
 - (b) the aggregate of the said rental and premium does not exceed £225,000; and
 - (c) the transaction fulfils the conditions contained in the proviso to sub-paragraph (n) of paragraph 13 of the substituted First Schedule to the Stamp Duties and Fees (Jersey) Law 1998, which substituted schedule is set out as the Schedule to the Stamp Duties and Fees (Jersey) Regulations 1999
 - the fee charged shall be one quarter per centum (¼%) of the said aggregate of the said rental and premium.

- (ii) Where the aggregate of the said rental and premium exceeds £3,000,000 a fee of ¼% shall apply to the amount in excess thereof.
- C. That no fixed or scale fee shall apply in respect of extensions of leases or sub-leases passed before the Royal Court.
- D. That no fixed or scale fee shall apply in relation to the creation or cancellation of conventional hypothecs, the sale and purchase of *rentes* or the registration of the deeds of reimbursement thereof.
- E. That no fixed or scale fee shall apply in relation to deeds of *partage d'héritage*.