
STATES OF JERSEY



ACCESS TO JUSTICE REVIEW: INTERIM REPORT

Presented to the States on 23rd July 2014
by the Chief Minister

STATES GREFFE

REPORT

A proposal to undertake a review of access to justice in Jersey was lodged au Greffe by the Chief Minister on 2nd December 2013 (P.158/2013). The proposal included the terms of reference, methodology and membership for a review of access to justice in Jersey. This was decided upon unanimously by the States Assembly on 23rd January 2014. Immediately following the adoption of the proposition, the States Assembly appointed by open ballot the members of the Advisory Panel.

The Advisory Panel is chaired by Senator P.F. Routier, M.B.E., and has the following members –

- Senator L.J. Farnham
- Connétable J. Gallichan of St. Mary
- Deputy M. Tadier of St. Brelade
- Deputy J.H. Young of St. Brelade.

The Panel is supported by an Expert Group, chaired by the Chief Minister's Department, which consists of one or more representatives from the following –

- Law Officers' Department
- Judicial Greffe
- The Law Society of Jersey
- The offices of the Bâtonnier and Acting Bâtonnier
- Jersey Chamber of Commerce
- Citizen's Advice Bureau
- Jersey Consumer Council.

1. Interim Report

The terms of reference decided upon by the States Assembly require that an interim report is submitted to the Chief Minister within 6 months of the work commencing. The Chief Minister has decided that this interim report should be presented to the States Assembly.

2. Transparency

The Advisory Panel and the Expert Group decided at the outset that they wished to be as open and transparent as possible in conducting this review. As a result, the review has established dedicated webpages as part of the gov.je website; and has published the terms of reference, the minutes of all meetings of the Advisory Panel and Expert Group, an invitation to submit written comments to the review, submissions received by the review, and the transcript of a public hearing held to explore a number of ideas which might provide the basis for positive changes in the future.

3. Description of the current legal aid system

The terms of reference for the review include a requirement to provide a comprehensive and factual description of the current legal aid scheme. This description has been prepared with the assistance of the Law Society of Jersey and the Judicial Greffe and has been published on the gov.je web site.

4. Invitation to submit written comments

The proposed methodology for the review included an undertaking to consult widely and gather evidence from the public and interested parties. As a result, the review issued an invitation on 12th May 2014 for members of the public and the legal profession to provide written comments. The invitation to comment particularly encouraged those with relevant expertise, experience or an interest in access to justice to respond. Comments were invited on any aspect of this topic. The review stopped receiving written comments on 20th June 2014. Copies of written comments can be found on the gov.je website, and include submissions from the Law Society of Jersey, the Bâtonnier, the Chambre des Ecrivains, the Jersey Legal Information Board, Jersey Citizen's Advice Bureau, the Jersey Consumer Council, a number of legal professionals and some members of the public.

5. Summary of written comments received

Whilst those commenting covered a broad range of topics, a number of themes emerged from the written comments received. These are summarised below.

5.1 Affordability

It was felt that there were opportunities to make the justice system more affordable. Cost, as an obstacle to accessing the justice system, was also mentioned in a number of specific contexts, including the costs of pursuing medical claims and the cost of recovering petty debts. It was suggested that the situation might be improved by considering the introduction of conditional fee arrangements, and by exploring the increased use of insurance.

5.2 Legal aid

Whilst it was argued that legal aid is only one component of access to justice, the existing system of legal aid featured in many of the comments received.

Sustainability of the present system

There is a diversity of views amongst the legal profession as to the appropriateness and sustainability of the present system. This diversity of views is reflective of the diverse nature of the legal profession in the Island. There is not, at present, a consensus in favour of disposing of the current scheme. However, the obligatory participation of junior lawyers in the scheme and cost burden of legal aid to the profession was highlighted. Whilst aspects of the current legal aid system were difficult to justify, it was felt that the legal profession was willing to continue to assist the more disadvantaged members of society. However, there was a groundswell of opinion that the system needs to be streamlined and modernised, working in partnership with the Law Society of Jersey. It was also pointed out that the present system is based upon a careful balance between contributing stakeholders, and that care should be taken to ensure that this delicately-balanced system, which involves a lot of goodwill, is not disrupted in unintentional ways.

Disadvantages of the rota system

The disadvantage of using a rota system to assign lawyers to legal aid cases was highlighted. It was felt that the rota system prevented the allocation of cases to lawyers who are experts in the relevant field of law. As a result, the lawyer assigned sometimes lacks the required knowledge. It was felt that a lack of relevant experience results in a risk of prejudice to the client through the time taken to deal with a case and/or may impact on the quality of advice provided. It was also felt that a lack of choice was not consumer-focused. This was a problem not just with the main legal aid rota, but also with the voluntary rotas for police and customs and, albeit to a lesser extent, the mental health tribunal. The lack of choice may also be a problem in relation to the requirements of the European Convention on Human Rights.

Legal aid thresholds and charging

It was argued that the current legal aid thresholds can result in some people being ruled as ineligible for legal aid who lack sufficient cash resources to pursue a case. This group of people can be seen as forming part of the 'squeezed middle'. It was also argued that it is not fair that the basis for making an assessment includes the resources of an applicant's partner. In relation to the charges levied by lawyers, the charging guidelines were felt to be too loose and that greater clarity would assist consumers.

Barriers to competition

A number of respondents felt that the current scheme could be a barrier to competition through preventing the entry of new firms into the market. It was felt that the present scheme may represent a hindrance to advocates or solicitors with less than 15 years' experience setting up on their own. It was argued that the present legal aid system places a disproportionate burden on small firms, which inhibits the establishment of new firms and results in an unfair competitive advantage for larger firms.

Legal aid vote

Given that there are no published guidelines for this aspect of the system, the intention of which is to provide state funding in onerous or very complex matters, it was felt that there was a lack of transparency, and concerns were expressed regarding the consistency of decision-making over the use of the funds.

5.3 Responsibilities of the government

A number of respondents suggested that it was a responsibility of the government to ensure access to justice and that the obligation to provide legal aid rests properly with the state. There was also a suggestion that the administration of the legal aid system should be undertaken by the government in order to ensure that decisions are made only in the public interest (although this would need to be considered alongside questions of public funding and the sustainability of compulsory participation by lawyers, which were not addressed at this stage).

5.4 Courts

A number of respondents noted that appearing in court can be an intimidating and stressful process. It was suggested that existing court processes might be outmoded, that the use of the French language can create a barrier, and that the facilities at the Royal Court are possibly inadequate from a consumer perspective. It was felt that better information might go some way towards reducing the intimidating nature of court processes, and that recent reform in the United Kingdom regarding civil and family court procedures might also be followed in Jersey. In addition, some respondents argued in favour of raising the cap on the claim values for cases which can be heard by the Petty Debts Court.

5.5 Alternative dispute resolution/non-judicial redresses mechanisms

It was noted that the Community Mediation scheme has shown that mediation can work, but that whilst good results have been achieved, the scheme is not widely known and is under-used. It was argued that mediation and similar techniques may be particularly useful when addressing commercial disputes. It was also argued that alternative dispute resolution may not be a mechanism for improving access to justice, but rather, may be a consequence of a failure to provide adequate access to justice.

5.6 Tribunals, panels and other adjudicatory bodies

The employment tribunal was felt to work well, but it was thought that the working of the tribunal could be speedier and would benefit from further investment in IT and the website. There was felt to be an issue regarding making the details of all employment tribunal cases publicly available, which might be inhibiting some people from using the tribunal. In addition, it was noted that such adjudicatory bodies could be particularly helpful in the settlement of commercial and/or petty debts. It was also argued that consideration should be given to the establishment of new tribunals, including for public law children issues, and to changing the jurisdictional limits of existing tribunals.

5.7 Honorary police

The honorary system was believed to work well, by and large, particularly for young people and first offenders. Concerns were raised regarding political considerations interfering with the prosecutorial role; that there was a need for greater consistency in decisions; and also a need for greater clarity regarding who is responsible for what within the overall system of policing.

5.8 Training and regulation of the legal profession

A view was expressed that the training of Jersey lawyers should be varied to encourage expertise in different areas of law. It was noted that the current legal aid scheme provides no incentive to specialise; although it is felt that an increasing number of qualifying lawyers specialise in specific areas of law, rather than practicing as generalists, as was the position historically. A suggestion was made that consideration be given to splitting the current representational and regulatory (including disciplinary) functions held by the Law Society of Jersey, in line with practice in other, albeit much larger, jurisdictions (although the costs and practicality

of having 2 separate bodies, given the size of the local profession, was not addressed at this stage).

5.9 Languages and plain English

Some respondents noted that certain information resources, texts and decisions, are only available in French and that this created a barrier to non-French speakers. It was also argued that Laws should be available in languages other than English. In addition, it was argued that efforts should be channelled into making plain English legal information available on the Citizen's Advice Bureau (CAB) website and that it would be helpful to consider linking published Laws to the reports provided by government departments in order to explain the purpose and intended effect of each Law.

5.10 Simplification and reform of Laws

It was argued that the simplification of Laws could lead to improvements in access. It was also argued that some areas of law, such as divorce law and property law, are somewhat antiquated and need reforming.

5.11 Understanding legal needs

Some respondents felt that there was a need for more objective and statistical evidence to set alongside the subjective views of respondents, and that a legal needs survey may be required. It was felt that there may also be a need to engage the support of appropriate external consultants in order to bring more specialist expertise into the conduct of the review.

5.12 Complementary work

A number of the submissions mentioned other work being undertaken which was relevant to improving access to justice. This included work by the Jersey Law Commission to review the provision of administrative justice in Jersey; work sponsored by the Jersey Legal Information Board (JLIB) to translate old French Laws into English and to channel legal advice notes into plain English information for inclusion on the CAB website; a survey being undertaken by KPMG regarding the economic contribution to the Island made by the legal profession; and the Community Mediation project supported by JLIB and the CAB. There was also reference made to the Royal Court Rules Review Group, established under the chairmanship of the Deputy Bailiff in order to conduct a separate technical review of the Rules of the Royal Court.

5.13 Ideas for change

An interesting range of proposed improvements were suggested by respondents. These included a number of viable options for improving the present legal aid system; ideas to improve affordability; suggestions for new or improved tribunals for commercial disputes, petty debts and for public law children issues; using the CAB as a gateway into legal aid; improving some areas of law, such as divorce law; and establishing new bodies to handle the administration of legal aid and issues relating to legal services complaints.

5.14 Principal areas of interest within the written comments received

Whilst the comments covered a broad range of topics, there were some areas which were commented upon more frequently, and sometimes in more detail. The principal areas of interest comprise –

- the legal aid system;
- the Courts;
- tribunals, panels and other adjudicatory bodies;
- alternative dispute resolution/non-judicial redress mechanisms;
- languages, as both a barrier and enabler of access.

These principal areas of interest may form the focus of further work to contribute to the Final Report.

6. Public Hearing

The review held a public hearing on 11th July 2014 in order to hear from a number of those who had submitted written comments and, in doing so, had made positive suggestions for future changes which might improve access to justice.

Attendees included the Jersey Legal Information Board and the Jersey Citizen's Advice Bureau, the Law Society of Jersey and the Bâtonnier, Advocates from Hanson Renouf, and Mr. Rothband from Riff Projects. A number of ideas for future change were explored in further detail, including options for reforming the legal aid system, including the possibility of using the Citizen's Advice Bureau as a pathway into the legal aid system, and the possible establishment of a legal aid chambers. Other ideas which were explored included the possible establishment of a tribunal to settle petty commercial debts, reforming divorce law and the need to conduct a legal needs survey.

A transcript of the public hearing has been published on the review webpages on the gov.je website.

Further work is likely to be conducted in order to understand better the needs of consumers and to continue to explore ideas for making positive changes.

7. Final Report

The terms of reference require that a final report is presented to the Chief Minister within 12 months of the date of this interim report.

Work will continue through 2014 and into 2015 in order to examine the scope for alternative approaches and to seek to make proposals within the final report for developing further an efficient and effective legal system, which would improve access to justice and the resolution of complaints, whilst delivering value for money in the use of public funds.