
STATES OF JERSEY



LAW OFFICERS' DEPARTMENT AND MEMBERS OF THE LAW SOCIETY OF JERSEY: REVISED DISCIPLINARY PROCESS (P.152/2013) – RESPONSE OF THE CHIEF MINISTER

Presented to the States on 7th August 2014
by the Chief Minister

STATES GREFFE

REPORT

Deputy R.G. Le Hérisssier of St. Saviour lodged a proposition on 13th November 2013 regarding the *Law Officers' Department and Members of The Law Society of Jersey: Revised Disciplinary Process* (P.152/2013). The Proposition asked States members whether they were of opinion –

- (a) to request the Chief Minister to bring forward within 6 months proposals for revised procedures to deal with any complaints made against lawyers working in the Law Officers' Department (other than H.M. Attorney General and H.M. Solicitor General) to ensure that they conform with "best practice";
- (b) to request the Chief Minister to consult with the Law Society of Jersey and other interested parties to develop a revised Complaints and Disciplinary procedure for members of the Law Society that conforms with "best practice" and to present a report with recommendations to the States within 6 months;
- (c) to request the Chief Minister to consult with the Crown on the desirability and feasibility of establishing a revised Complaints and Disciplinary process for H.M. Attorney General and H.M. Solicitor General and to report to the States with recommendations within 6 months on the outcome of this consultation.

The Proposition was debated by the States Assembly on 4th February 2014. Deputy Le Hérisssier withdrew part (b) of the Proposition as this matter was already under consideration by the Legislation Advisory Panel following an earlier review undertaken by the Law Society of Jersey. It was indicated that the office of Chief Minister was content to work in consultation with the Attorney General, the Legislation Advisory Panel, the Law Society of Jersey and the Crown, to examine this matter in more detail. Parts (a) and (c) were adopted unanimously by States members (Pour 36, Contre 0, Abstain 0).

This report provides a response to each part of the proposition. Although part (b) was withdrawn, an update is provided for States members given the overall responsibilities of the office of Chief Minister for the Legislation Advisory Panel.

(a) Lawyers working in the Law Officers' Department

The members of the Law Officer's Department are professional, dedicated public servants with a strong sense of duty. It would be hoped that issues relating to the conduct of their professional duties would not arise on a regular basis. There is, however, a need to ensure that standards of professional conduct are clear and that there is a complaints handling system in place which has the rigour and transparency that the public would expect.

The Attorney General has now published both a *Law Officers' Department Code of Conduct for Lawyers* and an associated *Law Officers' Department Disciplinary Procedure*. The code and procedure are tailored to reflect the position of public sector lawyers. The Attorney General included these documents as part of his comments on the Proposition presented to the Assembly on 3rd February 2014 (P.152/2013 Com.) and both have now been published on the Law Officers' Department (LOD) pages of the gov.je website. The Attorney General has provided written assurance that he has taken account of equivalent practice in other jurisdictions and confirmed that the

requirements of the code and procedure are at least as stringent as those which apply to members of the Law Society of Jersey in private practice.

In addition, lawyers within the LOD are employees of the States Employment Board and are therefore subject to the Civil Service Code of Conduct and the associated Civil Service Disciplinary Policy and Procedure.

These codes and procedures apply equally to all qualified lawyers who work within the LOD and are not restricted to only those lawyers who hold Jersey qualifications.

Furthermore, as with all Advocates and Solicitors of the Royal Court, lawyers within the LOD are subject to the inherent disciplinary jurisdiction of the Royal Court.

Lastly, it is understood that the Law Society of Jersey (the Law Society) is content that Advocates or Solicitors within the LOD should be subject to these dedicated public sector codes and procedures, rather than adhering to those put in place by the Law Society for private practitioners.

(b) The Law Society of Jersey

Whilst part (b) of the Proposition was withdrawn, it was felt that States members may appreciate an update on progress regarding the changes to the disciplinary provisions for private practitioners.

The Law Society undertook a review of its disciplinary process and approached the Legislation Advisory Panel (LAP) during 2013 with suggested improvements. When States members considered the Proposition on 4th February 2014, these proposed improvements were under active consideration. Following the debate, the Law Society determined that a further review should be undertaken to take account of best practice in other comparable jurisdictions. This further review resulted in a number of changes to the original proposals.

The Law Society has written recently to the Chair of the LAP with final proposals for a number of changes to Law Society of Jersey Law 2005 and the Law Society of Jersey (Disciplinary Proceedings) Rules 2010. The Law Society has provided written assurance that these changes will ensure that the procedures conform to current best practice.

The LAP will be working with the Law Society and the Attorney General on the necessary law drafting instructions and it is hoped that the amended Law will be lodged by the end of the year.

(c) Attorney General and Solicitor General

The Island has been fortunate to be served by many capable and dedicated Crown Officers. It is, however, sensible to ensure that a suitable complaints and disciplinary process is in place for any such matters relating to the posts of Attorney General and Solicitor General. The public can then have confidence that there is a clear and transparent system in place, through which these Crown appointees can be held to account for their professional conduct, as befits a modern democracy.

The Attorney General has examined analogous procedures elsewhere, including the procedure for dealing with complaints against the judiciary in England and Wales. As a result, a complaints and disciplinary process has been drafted for the posts of Attorney General and Solicitor General.

The Attorney General has written to the UK Ministry of Justice and the Lieutenant Governor at the request of the Chief Minister in order to consult with the Crown on the proposed process, and it is hoped that this will be published before the end of the year.

There may also be further proposals in due course, following the publication by the end of the summer of a green paper on the possible establishment of a Judicial and Legal Services Commission for Jersey.