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# STATES OF JERSEY



## ACCESS TO JUSTICE REVIEW: THIRD INTERIM REPORT

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Presented to the States on 1st August 2016  
by the Chief Minister

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STATES GREFFE

## **REPORT**

### **Chief Minister's Statement**

I am pleased to present the Third Interim Report of the Access to Justice Review to the States Assembly.

The Access to Justice Review commenced in 2014 and has served as an initial examination of this important topic.

The Advisory Panel has included a number of interested States Members and has engaged both with Islanders and with organisations who have an interest in its work.

As this Report sets out, the Review has covered a broad range of topics, all of which are relevant to improving access to justice in Jersey. The Review has identified a number of positive examples of work by organisations across the justice system to improve access to justice whilst also highlighting further areas for improvement. For example, where there is a need for greater public awareness of certain services, notably mediation, the efforts of Citizens Advice Jersey and the Jersey Legal Information Board are already seeing encouraging results.

In addition, the Review has assisted in stimulating thought and consideration among organisations who engage with the justice system, legal profession and the public, as to how they can contribute towards enhancing access to justice for the people of Jersey. The Review will continue with a special focus on Legal Aid, affordability and the legal profession. In addition, the recommendations request a number of organisations and bodies to undertake further work, or build on their current provision, and I am confident that they will do so to the greatest extent possible.

I am grateful to all the individuals, institutions and organisations who have participated in, and co-operated with, the Review. In particular, I wish to thank all the States Members who have served on the Advisory Panel, which has been ably chaired by Senator P.F. Routier, M.B.E., and the members of the Expert Group.

I am confident that the recommendations of this Report will ensure that momentum is maintained towards ensuring the continual improvement of access to justice for the people of Jersey.

## **Introduction**

### **Background**

#### **Justice policy and resources: responsibility (P.92/2013)**

1. On 31st July 2013 the Chief Minister lodged a Proposition entitled “*Justice policy and resources: responsibility*” (P.92/2013<sup>1</sup>).
2. The Proposition clarified that the Chief Minister is responsible within the executive branch of government for: policy and resources in relation to the overall justice system; the Legislation Advisory Panel; safeguarding human rights; data protection; legal services; constitutional reform; and strengthening democracy.
3. The Proposition was debated by the States Assembly on 25th September 2013 and was adopted (39 votes *pour*; 4 votes *contre*; and 0 abstentions).
4. During the debate in the States Assembly on P.92/2013, the Chief Minister stated his intention to commission a review into access to justice in Jersey, and his belief that this was likely to be a lengthy but important piece of work.<sup>2</sup>

#### **Developing a draft terms of reference**

5. On 11th October 2013, following some initial exchanges between the Chief Minister’s Department and the Law Officers’ Department, a meeting was convened involving a number of the people now constituted as members of the Expert Group, in order to seek their views on the development of a draft terms of reference and methodology.
6. In addition, the Chief Minister held an informal discussion on this topic on 25th October 2013 with Deputies M. Tadier and J.H. Young of St. Brelade, who had requested a meeting in order to convey their thoughts regarding the terms of reference. This resulted in an initial draft terms of reference, which were considered by the Council of Ministers on 27th November 2013.
7. The Council agreed that the draft terms of reference should be presented by the Chief Minister to the States Assembly for consideration and that the members of the Advisory Panel who will work with the Chair should be proposed for election by open ballot.

### **P.158/2013 – Access to Justice in Jersey: Review**

8. On 2nd December 2013 the Chief Minister lodged a Proposition entitled “*Access to Justice in Jersey: Review*” (P.158/2013<sup>3</sup>).

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<sup>1</sup> <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.092-2013.pdf>

<sup>2</sup> <http://www.statesassembly.gov.je/AssemblyHansard/2013/2013.09.25%20States%20-%20Edited%20Transcript.pdf>

<sup>3</sup> [http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.158-2013.pdf?\\_ga=1.162844668.1902697789.1436360890](http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.158-2013.pdf?_ga=1.162844668.1902697789.1436360890)

9. P.158/2013 asked the States Assembly to approve the Terms of Reference, methodology and membership of the Access to Justice Review (“the Review”). These were unanimously approved by the States Assembly on 23rd January 2014.

#### Terms of Reference

10. The States Assembly approved the following Terms of Reference:

*“To undertake a review of access to justice in Jersey, including a review of legal aid, which will –*

- (a) provide a comprehensive and factual description of the current legal aid scheme;*
- (b) examine the scope for alternative approaches;*
- (c) make proposals 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;*
- (d) result in an interim report being submitted to the Chief Minister within 6 months of the work commencing, and a final report being presented to the Chief Minister within 12 months of the date of the interim report.”*

#### Methodology

11. The States Assembly approved the following Methodology –

*“In undertaking the review, those participating, with assistance as required, will –*

- (a) take a broad interpretation of access to justice so as to include general advice through to court representation in criminal and civil matters, including child care proceedings;*
- (b) consult widely, gather evidence from the public and interested parties, and compare Jersey’s legal system, including the use of alternative dispute resolution and tribunals, and the jurisdiction of the courts, with comparable systems;*
- (c) consider issues in relation to the affordability of access to justice and different models of funding litigation and providing legal representation;*
- (d) be mindful that the availability of a high-quality, efficient and independent legal profession, accompanied by an effective system to handle complaints, is of critical importance in sustaining access to justice and the rule of law;*

- (e) *have regard to the potential impact of any recommendations on the users of legal services, public funds, the legal profession and the tradition of honorary service in Jersey;*
- (f) *consider competition, price, and other market-based factors as they affect affordability, access to justice and the provision of legal aid in Jersey; and*
- (g) *ensure that proposals would provide public confidence in legal aid in terms of eligibility, human rights compatibility, and public expenditure.”*

#### Membership of the Advisory Panel

12. The States Assembly approved Senator P.F. Routier, M.B.E. as Chair of the Advisory Panel. The following States Members are currently members of the Advisory Panel –
  - 12.1. Connétable J. Gallichan of St. Mary;
  - 12.2. Deputy M. Tadier of St. Brelade;
  - 12.3. Connétable D.W. Mezbourian of St. Lawrence (who replaced Senator L.J. Farnham following the 2014 Elections);
  - 12.4. Deputy J.A. Hilton of St. Helier (who replaced Deputy J.H. Young following the 2014 Elections)<sup>4</sup>.

#### Membership of the Expert Group

13. The Expert Group has been chaired by the Chief Officer, Department for Community and Constitutional Affairs (previously Chief Officer, External Relations and Constitutional Affairs) and has comprised representatives of the: Law Officers’ Department; Judicial Greffe; Law Society of Jersey; offices of the Bâtonnier and Acting Bâtonnier; Jersey Chamber of Commerce; Citizens Advice Jersey; Jersey Consumer Council; and the Jersey Legal Information Board.

#### Work Undertaken

##### **Website**

14. In order to ensure transparency and to encourage public engagement with the Review, a dedicated area on the gov.je website was established<sup>5</sup>.

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<sup>4</sup>[http://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?docid=cb6a2df8f9ef1cd51befa5b250c44d25\\_MDs2013](http://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?docid=cb6a2df8f9ef1cd51befa5b250c44d25_MDs2013)

<sup>5</sup> <https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/index.aspx>

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### **Meetings of the Advisory Panel**

15. The Advisory Panel has held meetings on 8 occasions. The minutes of the meetings of the Advisory Panel have been published on the gov.je website<sup>6</sup>.

### **Meetings of the Expert Group**

16. The Expert Group has held meetings on 8 occasions. The minutes of the meetings of the Expert Group have been published on the gov.je website<sup>7</sup>.

### **Written Submissions**

17. 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.
18. 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.
19. Although it had initially been intended that the consultation would take place for a limited period only, the Advisory Panel decided, in view of the broad, important and ongoing nature of the Review, that the consultation should remain open throughout to allow further comment by the public.
20. The Chief Minister also encouraged members of the public to continue to provide comments for consideration as part of the Review so that all citizens had the opportunity to give their views.
21. In total 25 written submissions were received and published on the gov.je website<sup>8</sup>.

### **Public Hearings**

22. The Advisory Panel held 6 public hearings, the transcripts of which have been published on the gov.je website<sup>9</sup>. The purpose of the hearings was for the Advisory Panel to examine in further detail those submissions on which they required further information.

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<sup>6</sup><https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/MinutesAdvisoryPanelMeetings.aspx>

<sup>7</sup><https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/MinutesExpertGroupMeetings.aspx>

<sup>8</sup><https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/WrittenCommentsReceived.aspx>

<sup>9</sup><https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/PublicHearing.aspx>

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## Visits

23. In order to further understand the work of, facilities available to and challenges faced by the courts in respect of access to justice the Advisory Panel carried out visits to –
- 23.1. the Family Court;
  - 23.2. the Royal Court;
  - 23.3. the Magistrate’s, Petty Debts and Youth Court; and
  - 23.4. the Tribunals.
24. The Advisory Panel is grateful for the input and assistance of the Judiciary and officers of the Judicial Greffe who provided these interesting and valuable opportunities.

### **R.107/2014 – Access to Justice Review: Interim Report**

25. A first interim report was presented to the States Assembly on 23rd July 2014 (R.107/2014<sup>10</sup>) (“the First Interim Report”). The First Interim Report reflected on the first 6 months of the review and the initial submissions and public hearings.
26. The First Interim Report set out a summary of written comments received to that date and identified and summarised the submissions received using a number of themes which could be grouped together and which have been the focus of the Review, namely –
- The legal aid system, affordability and the legal profession.
  - The courts, tribunals, panels and other adjudicatory bodies and alternative dispute resolution/non-judicial redress mechanisms.
  - Information, languages and plain English and the simplification and reform of Laws.

### **R.89/2015 – Access to Justice Review: Second Interim Report**

27. A second interim report was presented to the States Assembly on 29th July 2015 (R.89/2015<sup>11</sup>) (“the Second Interim Report”). The Second Interim Report reflected on the period of the review from July 2014 to July 2015.
28. The Second Interim Report gave an update on the work of the review and work carried out by other stakeholders relating to each of the themes under consideration.
29. The Chief Minister undertook to continue to keep the States Assembly updated as to progress with the Review, and to provide a further report to the States Assembly by the end of July 2016.

<sup>10</sup> <http://www.statesassembly.gov.je/AssemblyReports/2014/R.107-2014.pdf>

<sup>11</sup> [http://www.statesassembly.gov.je/AssemblyReports/2015/R.89-2015.pdf?\\_ga=1.132999118.1902697789.1436360890](http://www.statesassembly.gov.je/AssemblyReports/2015/R.89-2015.pdf?_ga=1.132999118.1902697789.1436360890)

### **Third Interim Report**

30. This third interim report considers the period of review from July 2015 to July 2016.
31. The report sets out below some interim recommendations where the Review will continue, and some final recommendations which suggest that other bodies should have ongoing responsibility for delivering improvements to access to justice in the areas in which they work.

### **Legal Aid, Affordability and the Legal Profession**

32. The Terms of Reference specifically required the Panel to undertake a review of legal aid, including providing a comprehensive and factual description of the current legal aid scheme and examining the scope for alternative approaches.
33. A factual description of the legal aid system was prepared with the assistance of the Law Society of Jersey and the Judicial Greffe and is available on the website alongside an earlier review of legal aid and a link to the legal aid website<sup>12</sup>.
34. The Law Society of Jersey has engaged with the Access to Justice Review since its inception both by submitting written comment and active participation as members of the Expert Group. In addition, the Advisory Panel have held 2 public hearings with the Bâtonnier, President and Chief Executive Officer of the Law Society of Jersey.
35. The Advisory Panel has made clear in previous reports the important and valued commitment by the legal profession to serving the local community through maintaining the legal aid service in the Island, so that those who cannot afford the full cost are supported through the provision of free legal representation, or representation at a reduced cost, in key areas of personal law.
36. As part of its active participation with the Review, the Law Society of Jersey commenced a comprehensive review of the legal aid scheme in July 2015. The Law Society consulted with its members and the Judicial Greffe with the purpose of developing a sustainable legal aid model that maintains access to justice through the provision of legal representation for individuals with a legitimate need, but who do not have the means to meet the full costs of representation, and which enhances simplicity and transparency for all concerned.
37. The Advisory Panel is grateful for this review and has been informed that the Law Society of Jersey is likely to reach its conclusions by the end of October 2016.
38. The Advisory Panel will therefore request that representatives of the Law Society attend a Public Hearing in early autumn 2016 in order to receive the conclusions of the Law Society of Jersey following its review.

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<sup>12</sup><https://www.gov.je/CrimeJustice/AccessToJusticeReview/Pages/AccessJusticeReviewJersey.aspx>

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**Interim Recommendation – That the Access to Justice Review should continue with a special focus on legal aid, affordability and the working of the legal profession in Jersey once the Law Society’s Review of Legal Aid has been completed.**

**The Courts, Tribunals, Panels and other Adjudicatory Bodies and Alternative Dispute Resolution/Non-Judicial Redress Mechanisms**

**Royal Court Rules Review Group**

39. Among the submissions relating to the Courts it was suggested that –
- 39.1. appearing in court can be an intimidating and stressful process;
  - 39.2. that existing court processes might be outmoded;
  - 39.3. recent reform in the United Kingdom regarding civil and family court procedures might be followed in Jersey; and
  - 39.4. that the cap on the claim values for cases which can be heard by the Petty Debts Court might be raised.
40. The Advisory Panel was therefore grateful that the Bailiff formed a Royal Court Rules Review Group (RCRRG) which sought to improve access to justice and reduce the risks of and costs associated with litigation by reviewing the Royal Court Rules. The Bailiff has also helpfully indicated that a similar review will take place in due course of the Family Court Rules to improve access to justice in family cases.
41. The RCRRG issued an initial Consultation Paper on 2nd November 2014. That consultation closed on 30th November 2014<sup>13</sup>. Following the initial consultation the RCRRG issued a Final Consultation Paper on 5th October 2015. The Consultation closed on 14th November 2015<sup>14</sup>. In that paper the RCRRG recommended reform of the Royal Court Rules 2004 and court practices in order to improve access to justice, in particular for ordinary litigants who find themselves involved in civil disputes before the Royal Court. The RCRRG therefore made the following specific recommendations –
- “1. *Introduction of an overriding objective based on the overriding objective currently in force in England and Wales;*
  - 2. *A requirement for a pre-action communication prior to issue of proceedings, with potential costs or other sanctions for non-compliance without justification. Guidance on the content will be set out in a practice direction;*

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<sup>13</sup> <https://www.gov.je/Government/Consultations/pages/royalcourtrules.aspx>

<sup>14</sup> <https://www.gov.je/Government/Consultations/Pages/RoyalCourtRulesReview.aspx>

3. *Increasing the Petty Debts Court jurisdiction to £30,000, with a review after 2 years, and simplifying and updating its procedures to create a small claims court for Jersey;*
  4. *Amendments to the Rules concerning a party's written case to give the Royal Court power to require:-*
    - a. *a party to summarise its claim or defence, including the legal basis relied on;*
    - b. *a plaintiff to set out as far as possible the damages claimed by the time of the first hearing for directions; and*
    - c. *a party to clarify or provide information about its case to replace existing more limited powers.*
  5. *Any adjournment of more than four weeks beyond service of a claim should be subject to Court approval;*
  6. *Amendment of the summary judgment procedure to:-*
    - a. *introduce a no real prospect of success test; and*
    - b. *permit a defendant to seek summary judgment against a plaintiff.*
  7. *Provision for a summons for directions to take place automatically after the normal periods of time allowed for pleadings;*
  8. *Permitting the Court, including the Master, to require the parties to attend for directions at any time;*
  9. *Amending the Rules to provide that the contents of a summons for directions, will be defined by a practice direction;*
  10. *Permitting the Court, of its own motion, to strike out cases for a material failure to adhere to directions given.*
  11. *Issue of a practice direction to require mediation to be explored at the first directions hearing before the Court;*
  12. *Amendment to the Rules to grant the Royal Court power to limit discovery and the issue of a practice direction setting out how electronic discovery is to be produced; and*
  13. *Introduction of a Practice Direction limiting the number of experts in any case to a maximum of two disciplines, unless additional experts can be justified.*
  14. *In relation to litigation costs:-*
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- a. *an unsuccessful plaintiff shall only be liable for a successful defendant's costs beyond any damages recovered in certain types of claims, where a plaintiff has acted unreasonably or dishonestly;*
- b. *the types of claims where the rule in paragraph (a) above will apply are claims for personal injury, breaches of health and safety laws, medical negligence, negligent advice in relation to the sale or purchase of the family home and negligent advice in relation to wills, with actions in respect of a will being limited to claims below £250,000;*
- c. *hearings before the Master, other than a summons for directions, will continue to be subject to a summary assessment of costs, unless the Master decides otherwise. Summary assessment will now take place after the Master makes a costs order rather than at the hearing itself;*
- d. *the form of bill required for taxation will be reviewed to reflect that most firms now operate on the basis of electronic billing systems;*
- e. *the Rules will expressly recognise the power of the Royal Court to take into account offers of settlement when the Court is dealing with the costs of proceedings;*
- f. *litigation funding agreements will be subject to the approval of the Royal Court;*
- g. *A no win no fee agreements will not require approval of the Royal Court unless it forms part of a litigation funding agreement;*
- h. *hourly or other charge out rates of legal advisers in respect of no win no fee agreements shall be no greater than rates ordinarily charged to paying clients;*
- i. *after the event insurance premiums shall remain irrecoverable from the other party to the dispute;*
- j. *costs for undisputed debt claims before the Royal Court should continue to be limited to fixed costs only; and*
- k. *compulsory production and exchange of cost budgets will be introduced for all claims up to £250,000;*
- l. *when awarding or assessing costs claimed the Court will have regard to the proportionality of the costs claimed compared to the value of the dispute.*

15. *These changes shall be introduced by a combination of amendments to the current procedural rules of the Royal Court and the issue of relevant practice directions.”*
42. The Advisory Panel welcomes the work of the RCRRG. The Panel notes that work has commenced on implementing these recommendations, specifically, in respect of RCRRG Recommendation 3 that the Legislation Advisory Panel (see below) has been working with the Master of the Royal Court in order to bring forward the necessary legislative amendments to increasing the Petty Debts Court jurisdiction to £30,000, with a review after 2 years. It is understood that the Family Court Rules Review has not yet commenced.
43. The Advisory Panel is of the view that the Legislation Advisory Panel is best placed to work with the RCRRG in order to make any legislative amendments necessary to implement the final recommendations and any recommendations that may be made following the Family Court Rules Review.

**Final Recommendation: Legislation Advisory Panel to work with the Royal Court Rules Review Group in order to implement its final recommendations and contribute where necessary to the review and implementation of the Family Court Rules.**

### **Court Estate**

44. Submissions also suggested that facilities in the Royal Court building and Tribunal building are inadequate from a consumer perspective.
45. As set out above, the Advisory Panel visited the Royal Court and Family Court (which are housed within the Royal Court building); the Magistrate’s Court, Youth Court and Petty Debts Court (which are housed within the Magistrate’s Court building); and the Tribunals (which are housed on the 1st floor of Trinity House). During those visits the Advisory Panel received presentations from judges, and staff from the Judicial Greffe who administer the courts and tribunals, on their work and the challenges that they face.
46. The Advisory Panel was concerned by the difficulties presented by the constraints of the facilities currently available in the Royal Court building, and to some extent at Trinity House, which included: instances of poor acoustics; restricted space; close proximity of dock and jury; the need for continual assembling and disassembling for temporary use as a court depending on room availability; a shortage of witness facilities and break-out rooms; constraints arising from heritage listed status; and resulting challenges of finding court dates for civil cases (noting that children law cases were given some priority and that sentencing hearings were also dealt with expeditiously).
47. Following the visits the Panel noted that the Judicial Greffe were working with Jersey Property Holdings to identify future premises for Tribunals to take place. In addition, the Panel were informed that Jersey Property Holdings were working to find a long term, flexible solution for the needs of the Judicial Greffe. The Panel noted that discussions are ongoing between Jersey Property

Holdings and the Judicial Greffe in order to identify possible options and solutions.

48. In the Panel's view it is vital that options are developed to provide premises for the use of the Royal Court that do not make access to justice more challenging for ordinary, and often vulnerable, citizens. The Panel are supportive of the Judicial Greffe's objective to secure improved facilities in this regard.

**Final Recommendation: Judicial Greffe to work with Jersey Property Holdings to find a long term, flexible solution for the needs of the Royal Court, Family Court and Tribunals which ensures that the facilities available do not hinder access to justice.**

49. The Advisory Panel considered that the facilities available in the Magistrate's Court building, as a modern purpose built court, were excellent and did not suffer from the same short-comings as the Royal Court building, particularly in view of the facilities available for criminal trials.
50. The Panel noted however, that although the Magistrate's Court building was used periodically by the Royal Court, this use was limited as the Magistrate's Court building had not been designed to accommodate jury trials.
51. Following its visit the Panel understands that some modification could be made to the Magistrate's Court which would enable it to be used more frequently by the Royal Court when sitting to hear criminal matters, for example, jury trials. This might make best use of the secure facilities available and might provide some court availability in the Royal Court for non-criminal matters. In the Panel's view this is something that should usefully be considered by the Judicial Greffe working with Jersey Property Holdings.

**Final Recommendation: Judicial Greffe to work with Jersey Property Holdings to consider modifications to the Magistrate's Court building that would enable the Royal Court make use of the secure facilities available including for jury trials to be held there.**

### **Scrutiny Review of Domestic Property Transactions**

52. Some submissions drew attention to issues concerning the conveyancing process and property transactions.
53. The Advisory Panel notes that a Scrutiny Review of Domestic Property Transactions<sup>15</sup> has commenced. The Terms of Reference for the Review are –
- 53.1. The average length of time that transactions take to progress from offer and acceptance to completion.
- 53.2. The average time to complete transactions.

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<sup>15</sup> <http://www.scrutiny.gov.je/Pages/Review.aspx?ReviewId=239>

- 53.3. Whether there is evidence of –
- 53.3.1. a widespread problem with late failures of transactions;
  - 53.3.2. transactions aborted at a late stage tended to cause one or more parties to incur significant legal and other fees, plus considerable inconvenience;
  - 53.3.3. material negative impact on utility providers and other third parties arising from aborted transactions;
  - 53.3.4. material legal, financial, administrative and other complications remaining unidentified until the final days of a transaction process.
- 53.4. Whether there are –
- 53.4.1. specific bottlenecks affecting the average rate of progress of transactions;
  - 53.4.2. if so, specific options for alleviating such bottlenecks.
- 53.5. Any other matters relating to the existing system of domestic property transactions, arising through evidence gathered.

**Final Recommendation: The Legislation Advisory Panel to consider the outcome of the Scrutiny Review on Domestic Property Transactions when it is complete.**

## Mediation

54. Among the submissions it was noted that –
- 54.1. 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; and
  - 54.2. that mediation and similar techniques may be particularly useful when addressing commercial disputes.
55. At the request of the Access to Justice Expert Group, a review of mediation services was undertaken by Neville Benbow, Chief Executive Officer of The Law Society of Jersey, in consultation with Citizens Advice Jersey, Jersey Legal Information Board, Family Mediation Jersey and the Master of the Royal Court.
56. The purpose of the review was to define mediation (specifically in relation to its applicability and usage) and to examine (in respect of Jersey): types of mediation available; usage of such mediation; access to mediation; the cost of mediation; and the benefits of mediation.

57. The report set out the following steps (and areas of further exploration) for consideration to improve the accessibility and use of mediation in Jersey, so as to improve access to justice –

- “1. While effective mediation services are available in Jersey to meet the core needs of the local community, the use of mediation, other than in respect of disputes dealt with in the Petty Debts Court, is relatively low.*
- 2. There is considered to be sufficient capacity within the mediation services that are currently available to meet the perceived latent demand across all types of disputes which are suitable for mediation, although an increase in the jurisdiction of the Petty Debts Court may result in some pressure on resources in that area.*
- 3. The availability of mediation, as an effective means of dispute resolution, particularly in relation to issues which are suitable for community mediation, is not well known. Improved public knowledge in relation to mediation is likely to improve public perception in relation to access to justice.*
- 4. Mediation, more often than not, leads to a successful conclusion, with individuals generally more satisfied with the outcome than resorting to court proceedings (particularly given the time delays in matters being considered, the stress associated with appearing in court and the costs incurred which, even in the event of a successful outcome, are not fully recoverable).*
- 5. The use of mediation is beneficial in reducing the impact (time and cost) on the court service.*
- 6. The cost of mediation services (other than commercial or lawyer-led mediation) is low and considered, generally, to be affordable, particularly when compared to the cost of court proceedings. (While not reviewed within the context of this report, although commercial or lawyer-led mediation costs may be significant, they are likely to be considerably lower than the costs associated with contested litigation.)*
- 7. Consideration should be given to aligning the cost of mediation services to create a level-playing field (albeit that access to mediation is not generally beyond the means of private individuals in Jersey). This may involve subsidy of family mediation services (replacing the Judicial Greffe grant with a formal subsidy on usage). It should be noted that, in England and Wales, family mediation is available, for eligible individuals, under the Legal Aid Scheme. As the Legal Aid Scheme is not publicly funded in Jersey, public money would be required to achieve parity with the approach in England and Wales.*
- 8. Greater use of mediation in Jersey should be advocated and promoted to enhance access to justice.*
- 9. Key stakeholders – Lawyers and other professionals, Jersey Advisory and Conciliation Service, Citizens Advice Jersey, Jersey Consumer*

*Council and other agencies – should seek to promote the use of mediation as a cost-effective and timely means of alternative dispute resolution as a first step before consideration is given to referring a matter to the Court. Care does, however, need to be exercised to ensure that such an approach does not result in deadlines for certain actions (e.g. lodging an unfair dismissal claim) being missed or other steps compromised.*

10. *A co-ordinated approach to the promotion of mediation across the various mediation channels is advocated (noting the proposals in train for promoting the use of Community Mediation).*
11. *Compulsory mediation is not supported or recommended. Individuals should not be compelled to undertake mediation, although its use should be presented and recommended as an effective alternative to court proceedings. While the use of mediation in the Petty Debts Court is ostensibly compulsory, there are sufficient safeguards in place through which a dissenting party may insist that the matter be heard in court without reference to mediation. In relation to family matters, it may be feasible to require that consideration be given to mediation, perhaps as a condition before Legal Aid is granted, although care needs to be exercised (supported by effective safeguards) such that the voluntary nature of mediation is not compromised.”*
58. On 7th July 2016, the Advisory Panel held a public hearing with Neville Benbow, CEO of the Law Society of Jersey, Malcolm Ferey, CEO of Citizens Advice Jersey, and Matthew Thompson, Master of the Royal Court, in order to consider these recommendations further.
59. The Advisory Panel is very supportive of the work described in the submission and during the public hearing. The Panel considers that the availability of such services to citizens at an early stage provide a good opportunity for disputes to be resolved in a timely, proportionate and conciliatory manner.

**Final Recommendations: It is suggested that the Judicial Greffe, together with JLIB, CAJ and any other mediation and alternative dispute resolution service providers continue to work together to:**

- **Increase publicity and information on the availability of such services;**
- **Align and co-ordinate, where possible, such services; and**
- **Encourage greater use of such services, in a wider range of disputes, where appropriate and with necessary safeguards, as an initial alternative to court proceedings.**

#### **Jersey Law Commission Review of Administrative Redress in Jersey**

60. The Advisory Panel had previously noted the work of the Jersey Law Commission on access to administrative justice which had also been supported by the Legislation Advisory Panel.

61. On the 29th April 2016, the Jersey Law Commission issued its consultation paper entitled 'Improving Administrative Redress in Jersey' which set out interim proposals for modernising how grievances against public bodies in Jersey are handled. The Consultation Paper was available on the Jersey Law Commission website<sup>16</sup> and from the States Assembly Information Centre.
62. The Consultation paper covered internal complaints, tribunals, appeals and reviews to Ministers, the operation of the States of Jersey Complaints Panel, the possibility of a public services ombudsman, administrative appeals to the Royal Court and judicial review.
63. The Jersey Law Commission invited anybody with an interest to attend a presentation of the interim proposal, question and answer session and discussion as well as inviting written responses on any aspect of the final report which could be submitted by email, by post or via the website. The consultation closed on 29th July 2016.
64. The Advisory Panel welcomed the Consultation paper as an opportunity for all members of the public to give their views on the Jersey Law Commission's proposed recommendations. It encouraged as many members of the public as possible to take this opportunity and hoped that it would start an important conversation within the Island as to how to improve administrative redress, including access to justice in Jersey<sup>17</sup>.
65. Following the Consultation the Jersey Law Commission will prepare a Report containing its final recommendations which it will submit to the Chief Minister for consideration.
66. As the Report and final recommendations are likely to be completed during Autumn 2016 it is suggested that the Legislation Advisory Panel should consider the final recommendations made by the Jersey Law Commission.
67. Both the Chief Minister and the Legislation Advisory Panel support the work of the Jersey Law Commission in keeping Jersey's law under review with the aim of simplifying and modernising it and have commended the Commission for this important piece of work<sup>18</sup>.

**Final Recommendation: The Legislation Advisory Panel should consider the Report and final recommendations of the Jersey Law Commission following the consultation entitled 'Improving Administrative Redress in Jersey' and make recommendations to the Chief Minister which would improve access to administrative justice in Jersey.**

#### **Information, Languages, Plain English and Simplification and Reform of Laws**

68. Submissions suggested that –

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<sup>16</sup> <https://jerseylawcommission.org/contact/administrative-redress-consultation/>

<sup>17</sup> <http://www.gov.je/News/2016/Pages/LawCommissionConsultation.aspx>

<sup>18</sup> <http://www.gov.je/News/2016/Pages/LawCommissionConsultation.aspx>

- 68.1. the use of the French language in court and in laws can create a barrier to access to justice;
  - 68.2. better information on Court processes might go some way to reducing the intimidating nature of court processes;
  - 68.3. certain information resources, texts and decisions, are only available in French and this creates a barrier to non-French speakers;
  - 68.4. legislation should be available in other languages than English;
  - 68.5. plain English legal information should be made more widely available;
  - 68.6. further objective and statistical evidence would be beneficial in identifying the legal needs of citizens;
  - 68.7. published legislation should be linked to the reports provided by government departments in order to explain the purpose and intended effect of each Law;
  - 68.8. simplification of laws could lead to improvements to access to justice; and
  - 68.9. some areas of Law, such as divorce and property law, are somewhat antiquated and need reforming.
69. The Advisory Panel's view is that Jersey is well served by a variety of bodies described below that are responsible for and have taken forward initiatives to improve access to justice through better provision of plain English legal information and in the simplification and reform of Laws.

### **Jersey Legal Information Board**

70. JLIB is a body incorporated under the Jersey Legal Information Board (Incorporation) (Jersey) Law 2004<sup>19</sup>. The objects of JLIB include –
- “... the promotion of the accessibility of the written law and legal processes to the public and of an integrated and efficient legal system, through the use of information technology and by other means”.*
71. The members of JLIB include representatives of the Government of Jersey, the judiciary, States Greffe, Judicial Greffe, Citizens Advice Jersey and Law Society of Jersey. It is therefore well placed to deliver those objects which are delivered, primarily through the medium of the Jerseylaw.je website which has recently been modernised<sup>20</sup>.
72. The Jerseylaw.je website provides access to all Jersey legislation (including translations of legislation that is currently in the French language)<sup>21</sup>, judgements

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<sup>19</sup> <https://www.jerseylaw.je/laws/revised/Pages/16.335.aspx>

<sup>20</sup> <https://www.jerseylaw.je/Pages/default.aspx>

<sup>21</sup> <https://www.jerseylaw.je/laws/revised/Pages/search.aspx>

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of Jersey's courts<sup>22</sup>, legal books and texts on Jersey law<sup>23</sup> and information on community mediation<sup>24</sup>.

73. JLIB also has a number of other projects in progress that are likely to have a positive impact on access to justice. These include –
- 73.1. investigating, testing and implementing the use of live video links across Jersey's justice system;
  - 73.2. providing an increased number of translations of Jersey legislation that is in the French language on the Jerseylaw.je website;
  - 73.3. increasing the range of legal resources available on the Jerseylaw.je website to include: the Tables des Decisions; linking Acts of Court to judgements; the Royal Charters; and a number of other historic court documents including Orders in Council;
  - 73.4. working with the Judicial Greffe to provide better information for court users and in particular litigants in person on the Jerseylaw.je website, to include: video guidance on court procedures; improved guidance notes and a guide to civil litigation in Jersey;
  - 73.5. working with Citizens Advice Jersey and Departments to provide plain English advice notes on legal issues through the medium of the Citizens Advice website;
  - 73.6. undertaking a media campaign on radio, web-sites, the local press and social media in order to raise awareness of Community Mediation and Family Mediation services;
  - 73.7. investigating the use of electronic bundling for public law children's cases; and
  - 73.8. researching the legal needs of citizens in order to inform future improvements to access to justice.
74. The Advisory Panel strongly supports the work of JLIB and in particular the Jerseylaw.je website in providing access to legal resources and information to citizens and in identifying other ways in which access to justice can be promoted.

**Final Recommendation: The Jersey Legal Information Board should continue its important work in providing access to justice through the promotion of the accessibility of the written law and legal processes to the public through the use of information technology and by other means.**

<sup>22</sup> <https://www.jerseylaw.je/judgments/Pages/Search.aspx>

<sup>23</sup> <https://www.jerseylaw.je/publications/Pages/Search.aspx>

<sup>24</sup> <https://www.jerseylaw.je/mediation/Pages/default.aspx>

### Citizens Advice Jersey

75. Citizens Advice Jersey (CAJ) is a charity that provides independent, confidential and impartial advice that Islanders need for the problems they face. Its role is to champion the rights of individuals and the promotion of equality and justice for all<sup>25</sup>.
76. As part of this work the Chief Executive of CAJ has been an active member of the Expert Group; providing a submission, taking part in the review of mediation and appearing before the Advisory Panel at the public hearing on mediation.
77. The Advisory Panel has noted and supports the valuable work undertaken by CAJ, supported by the Jersey Legal Information Board, in providing access to plain English legal information, access to mediation and in identifying other ways in which access to justice can be promoted.

**Final Recommendation: Citizens Advice Jersey should continue with their valuable work, supported by the Jersey Legal Information Board, in improving access to justice by providing access to plain English legal information and in identifying other ways in which access to justice can be promoted.**

### Jersey Law Commission and Legislation Advisory Panel

78. The Jersey Law Commission is an independent body created by Act of the States Assembly on 30th July 1996 (P.102/1996) in order to –
- “Identify aspects of Jersey Law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.”*
79. The Jersey Law Commission is to achieve this by –
- 79.1. receiving and considering any proposals for the reform of the law which may be made or referred to them;
- 79.2. to prepare and submit to the Chief Minister from time to time programmes for the examination of different branches of the law with a view to reform;
- 79.3. to undertake, pursuant to any such recommendations approved by the Chief Minister, the examination of particular branches of law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.

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<sup>25</sup> <https://www.cab.org.je/>

80. Although the Commissioners are unremunerated, the cost of legal research for the Consultation Paper has been funded by the Department for Community and Constitutional Affairs.
81. The Legislation Advisory Panel was established in 2006 following the move to Ministerial government. The Panel, whose membership is drawn from both executive and non-executive members, is appointed by the Chief Minister to advise him and make recommendations on –
- 81.1. matters that were formally dealt with by the Legislation Committee;
  - 81.2. legislation relating to the courts and court procedures, probate, wills and succession and customary law; and
  - 81.3. legislation that does not fall under the responsibility of a particular Minister.
82. The Advisory Panel has noted the work of the Jersey Law Commission and in particular the Review of Administrative Justice referred to above. The Review of Administrative Justice is a good example of the Jersey Law Commission and the Legislation Advisory Panel working together to identify a general area of Jersey law that requires examination by the Jersey Law Commission for the benefit of citizens.

**Final Recommendation: Jersey Law Commission to continue to work with the Legislation Advisory Panel in order to identify and make recommendations in respect of specific areas of Jersey law that are in need of simplification, reform or repeal.**