

# JERSEY LAW COMMISSION



Comments on Proposition 23/2019  
(Lodged au Greffe on 25 February 2019 by the Chief Minister)

relating to

**DRAFT ACCESS TO JUSTICE (JERSEY) LAW  
201-**

## BACKGROUND

The Jersey Law Commission has been asked by the Legal Aid Review Panel to participate in the Scrutiny review in respect of the Draft Access to Justice (Jersey) Law 201- (the **Draft Law**). The request was initially made by letter dated 31 August 2018 signed by Deputy Steve Ahier as Chairman of the Legal Aid Review Panel. A copy of the invitation letter is annexed as Appendix A (*Invitation Letter*) to this Response.

The Draft Law was originally lodged pursuant to Proposition P.50/2018 (lodged au Greffe on 27 February 2018 by the Chief Minister)<sup>1</sup>. Proposition P.50/2018 was withdrawn by the Chief Minister in July 2018. The Draft Law, in an amended form, has been re-lodged for debate by the States of Jersey pursuant to a new proposition entitled *Draft Access To Justice (Jersey) Law 201-* (Proposition P23/2019, lodged au Greffe on 25 February 2019 by the Chief Minister) (the **Legal Aid Proposition**)<sup>2</sup>. The Jersey Law Commission has been asked to comment in respect of the Draft Law as re-lodged pursuant to the Legal Aid Proposition.

The role of the Jersey Law Commission and its method of working are set out in or derive from the proposition entitled *Jersey Law Commission: Establishment* (P102/1996) lodged au Greffe on 18 June 1996, by which it was established<sup>3</sup>. The role of the Jersey Law Commission is set out in Appendix B (*Role*) to this Response. The method by which the Jersey Law Commission carries out its functions is set out in Appendix C (*Method*) to this Response.

The system for providing and administering legal aid in Jersey and the Draft Law have been extensively reviewed and public consultations have been carried out in respect of the issues raised as described in Paragraph 2 (*Background*) of the Legal Aid Proposition.

In view of the reviews and consultations described in the Legal Aid Proposition, the Jersey Law Commission has not carried out its own consultation in relation to nor issued any reports on the topic of legal aid nor participated in the reviews and consultations described in the Legal Aid Proposition. In particular the Jersey Law Commission has no evidence to support comments on whether the proposed changes will improve the legal system for service users, the States or the legal profession. Accordingly the Jersey Law Commission makes no comment on the matters proposed by the Legal Aid Proposition except insofar as consultations and reports that have been carried out by the Jersey Law Commission (as listed on its website<sup>4</sup>) are relevant to the Legal Aid Proposition and the Draft Law to which it relates.

The Legal Aid Proposition comprises:

- The Report (the **Report**) in respect of the Draft Access to Justice (Jersey) Law 201- together with
  - Notes on Human Rights Implications (Appendix 1); and
  - Legal Aid Scheme (Further Revised) (the **Draft Legal Aid Guidelines**) (Appendix 2)
- An Explanatory Note relating to the Draft Law; and
- The text of the Draft Law 201-

The Legal Aid Proposition contemplates the establishment of a statutory basis for legal aid in Jersey (the **Legal Aid Scheme**, as defined in the Draft Law<sup>5</sup>) by and pursuant to the Draft Law<sup>6</sup>.

<sup>1</sup> <https://statesassembly.gov.je/assemblypropositions/2018/p.50-2018.pdf>

<sup>2</sup> <https://statesassembly.gov.je/assemblypropositions/2019/p.23-2019.pdf>

<sup>3</sup> <https://jerseylawcommission.files.wordpress.com/2018/04/jersey-law-commission-states-proposition-1996.pdf>

<sup>4</sup> <https://jerseylawcommission.org>

<sup>5</sup> Draft Access to Justice (Jersey) Law 201-, Article 1

The Legal Aid Scheme would operate in accordance with guidelines to be made by the Chief Minister with the assistance and advice of a Legal Aid Guidelines Committee and in accordance with the provisions of the Draft Law<sup>7</sup>. The Judicial Greffier would be responsible for the administration of the legal aid scheme and may delegate all or part of the administration to the Law Society of Jersey or others as appropriate<sup>8</sup>. Appendix 2 to the Report comprises Draft Legal Aid Guidelines for the legal aid scheme prepared in the light of the reviews and consultations described in the Report<sup>9</sup>.

The Legal Aid Proposition and the Draft Law also contemplate providing that, subject to provisions made by order by the relevant minister, an advocate or solicitor may enter into a conditional fee agreement with any person<sup>10</sup>.

## **COMMENTS OF THE JERSEY LAW COMMISSION**

In response to the invitation from the Legal Aid Review Panel, The Jersey Law Commission wishes to comment on the following aspects of the Legal Aid Proposition in the light of the topics upon which it has published Topic Reports or is carrying out reviews.

### ***Principle: Access to Justice***

The Jersey Law Commission welcomes the work that has been carried out in relation to the legal aid system with a view to eliminating anomalies and simplifying and modernizing the law. That work together with the other elements of the Draft Law designed to improve access to justice is consistent with the duties of the Jersey Law Commission and is a major underlying theme of its consultations and reports including its recent report on the topic of administrative justice in Jersey.

The scope of the review that the Jersey Law Commission has been able to carry out in respect of the proposals set out in the Legal Aid Proposition does not permit us to reach a conclusion as to whether the proposals are the best way or effective to simplify and modernise the provision of legal aid within the jurisdiction or improve access to justice in relation to the legal aid scheme in Jersey or otherwise. We are aware, however, of reports that criticisms have been made of the reforms proposed in the Legal Aid Proposition including as to their effectiveness to improve access to justice.

### ***Legal Aid Guidelines: Legal Aid Guidelines Advisory Committee***

For the purposes of the Legal Aid Scheme established in accordance with the Draft Law<sup>11</sup> the Draft Law provides that a committee to be known as the Legal Aid Guidelines Advisory Committee is to be established for the purpose of advising and assisting the Minister in making the Legal Aid Guidelines<sup>12</sup>. The Legal Aid Guidelines set out how the Legal Aid Scheme is to be administered.

The administration of the Legal Aid Scheme does not, of itself, give rise to human rights questions but its objective must be to ensure access to a fair trial<sup>13</sup>. It follows that the Legal Aid Guidelines must be drawn with this objective. Whether or not a trial is fair depends upon technical

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<sup>6</sup> Draft Access to Justice (Jersey) Law 201-, Article 3

<sup>7</sup> Draft Access to Justice (Jersey) Law 201-, Article 7

<sup>8</sup> Draft Access to Justice (Jersey) Law 201-, Article 4

<sup>9</sup> <https://statesassembly.gov.je/assemblypropositions/2019/p.23-2019.pdf>, Report, Section 2, Background

<sup>10</sup> Draft Access to Justice (Jersey) Law 201-, Article 11

<sup>11</sup> Draft Access to Justice (Jersey) Law 201-, Article 3

<sup>12</sup> Draft Access to Justice (Jersey) Law 201-, Article 6

<sup>13</sup> <https://statesassembly.gov.je/assemblypropositions/2019/p.23-2019.pdf>, Report, Appendix 1

and legal issues. It is possible for the composition of the Legal Aid Guidelines Advisory Committee as proposed<sup>14</sup> to include a majority of members who are not lawyers or without legal training and meetings of the Legal Aid Guidelines Advisory Committee may be quorate without any lawyer or person with legal training being present. It is not easy to see how the Legal Aid Guidelines Advisory Committee constituted as proposed and with a simple number quorum will meet the objective of ensuring access to a fair trial rather than meeting some collateral concern.

In setting out how the Legal Aid Scheme is to be administered the Legal Aid Guidelines Advisory Committee would be making administrative decisions (decisions that have legal effects on individuals, businesses and organisations as described in paragraphs 1.5-1.6 of the Jersey Law Commission's Topic Report *Improving Administrative Redress in Jersey*, No. 1/2017/TR<sup>15</sup>). The recommendations made in that Topic Report include the introduction of a "right to good administration"<sup>16</sup>. The Legal Aid Guidelines Advisory Committee needs to be constituted and to act in accordance with best administrative practice with a view to fulfilling that right. In order to meet these obligations it will be necessary for all members of the Legal Aid Guidelines Advisory Committee to be selected with a view to appropriate experience and knowledge and have appropriate training. There does not appear to be any provision described in the Legal Aid Proposition for the establishment of suitable eligibility criteria or training for the members. It is not easy to see, for example, how the specific incorporation of States members, nominated by the States, onto the Legal Aid Guidelines Advisory Committee will meet the objective of good administration rather than meeting some collateral concern.

**RECOMMENDATION: Prior to the constitution of the Legal Aid Guidelines Advisory Committee being determined, it should be reviewed to ensure that it serves the purposes for which it is to be established and is able to meet its obligations so that the risk of collateral issues tainting its decisions is minimised.**

#### ***Administration of The Legal Aid Scheme: Legal Aid Office***

The Draft Law provides that the Judicial Greffier is responsible for the administration of the Legal Aid Scheme<sup>17</sup>. Subject to that responsibility of the Judicial Greffier, except in relation to the responsibility for meeting payments under the Legal Aid Scheme and the power to make Rules of Court, the administration of any part of the Legal Aid Scheme may be entrusted to the Law Society or other person as the Judicial Greffier deems appropriate<sup>18</sup>. The Draft Law provides that the administration of the Legal Aid Scheme must be carried out in accordance with legal aid guidelines<sup>19</sup> (as defined in the Draft Law<sup>20</sup>) to be made and published by the Chief Minister<sup>21</sup>.

For the purposes of delegation to the Law Society the Legal Aid Proposition contemplates that an agreement would be made between the Judicial Greffier and the Law Society. In the Report this agreement is described as a "*formal service agreement*"<sup>22</sup>. The Draft Legal Aid Guidelines refer in connection with the proposed delegation to an "*entrustment agreement*"<sup>23</sup>.

Notwithstanding that administration of the Legal Aid Scheme is an important public administrative function the Draft Law makes no detailed provision for the mechanism by which the Judicial Greffier may delegate administration of the Legal Aid Scheme nor does it specify requirements in

<sup>14</sup> Draft Access to Justice (Jersey) Law 201-, Article 6(3)

<sup>15</sup> [https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom\\_topicreport\\_adminredress\\_final.pdf](https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_topicreport_adminredress_final.pdf)

<sup>16</sup> Recommendation 2.5, Topic Report *Improving Administrative Redress in Jersey*, No. 1/2017/TR

<sup>17</sup> Draft Access to Justice (Jersey) Law 201-, Article 4

<sup>18</sup> Draft Access to Justice (Jersey) Law 201-, Article 4

<sup>19</sup> Draft Access to Justice (Jersey) Law 201-, Article 4(4)

<sup>20</sup> Draft Access to Justice (Jersey) Law 201-, Article 1

<sup>21</sup> Draft Access to Justice (Jersey) Law 201-, Article 7(1)

<sup>22</sup> <https://statesassembly.gov.je/assemblypropositions/2019/p.23-2019.pdf>, Report, Section 4.1.2, para 3

<sup>23</sup> Draft Legal Aid Guidelines, Section headed Legal Aid Office, Para 1

relation to the permitted delegation. The Draft Legal Aid Guidelines also contain no specific provisions in this regard.

The mechanism for the conduct of the administration of the Legal Aid Scheme is referred to in the Report<sup>24</sup> (in the context of the cost and manpower implications of the Legal Aid Proposition) and is described in the Draft Legal Aid Guidelines, specifically under the heading *Legal Aid Office*. The Draft Legal Aid Guidelines state: “*the Legal Aid Scheme will be administered by a Legal Aid Administrator (unconnected to a law firm) who will be under the day-to-day supervision of the Law Society, but subject to the ultimate oversight of the Judicial Greffier*”<sup>25</sup>. Separately, in the context of administration of the Legal Aid Scheme, the Draft Legal Aid Guidelines refer to and describe the functions and responsibilities of “*the Legal Aid Office*”. We assume that the Legal Aid Administrator and the Legal Aid Office are connected but whether this is so and what the nature is of the relationship is not stated.

The Legal Aid Office is given a wide range of responsibilities, powers and discretions under the Draft Legal Aid Guidelines. A list of the references in the Draft Legal Aid Guidelines to the Legal Aid Office and its duties, functions and responsibilities is set out in Appendix D (*Duties, Functions and Responsibilities of the Legal Aid Office*) to this Response. The responsibilities of the Legal Aid Office include the administration of payments and it makes decisions in relation to whether an application for legal aid should be granted or declined and the terms of any grant. The Legal Aid Office has discretion in the decisions that it makes. In relation to residence requirements for Private Law applicants the Draft Legal Aid Guidelines specify as follows: “*Discretion will be held by the Legal Aid Office to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so*”<sup>26</sup>. The Legal Aid Office may assess contribution levels and set the relevant contribution percentage and monthly payments. Its decisions may be appealed. The role of the Legal Aid Office, as contemplated by the Draft Legal Aid Guidelines, is central to the administration of the Legal Aid Scheme and includes exercising quasi-judicial functions. On the face of the description of the role and responsibilities of the Legal Aid Office in the Draft Legal Aid Guidelines it appears that the Legal Aid Office may need to have a legal personality.

As contemplated by the Legal Aid Proposition it appears that the Legal Aid Office will be a public body making administrative decisions as described in the Jersey Law Commission Topic Report, *Improving Administrative Redress in Jersey* (Topic Report no. 1/2017/TR)<sup>27</sup>. An administrative decision for these purposes is “*a determination by a public body that has legal effects on a particular individual, business or organization*”. As such it will have a position within the framework of public bodies taking administrative decisions.

There is, however, no provision in the Legal Aid Proposition concerning the legal character, constitution or composition of the Legal Aid Office. This is in contrast to, for example, the Legal Aid Guidelines Advisory Committee, the constitution and membership of which is prescribed in the Draft Law<sup>28</sup> (even if the role of the Jersey Appointments Commission in relation to appointments to the Legal Aid Guidelines Advisory Committee is not clearly addressed within the Legal Aid Proposition or the Draft Law). Further, there is no consideration within the Legal Aid Proposition about the regulatory implications that may flow where a body has the functions described whether or not it has a legal personality.

The implications of having a legal personality and the details of how it carries out those functions may include whether, for example, the Legal Aid Office would be a body whose functions fall to be regulated by States Financial Directions in relation to the management of grants and the

<sup>24</sup> <https://statesassembly.gov.je/assemblypropositions/2019/p.23-2019.pdf>, Report, Section 4.3

<sup>25</sup> Draft Legal Aid Guidelines, Section headed Legal Aid Office, Para 1

<sup>26</sup> Draft Legal Aid Guidelines, Section headed Private Law – Residency – Private Law Only, para 2

<sup>27</sup> [https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom\\_topicreport\\_adminredress\\_final.pdf](https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_topicreport_adminredress_final.pdf)

<sup>28</sup> Draft Access to Justice (Jersey) Law 201-, Article 6

resource implications if that should be the case, or whether it would come under the aegis of the Jersey Appointments Commission. To the extent that the Legal Aid Office is “*established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting the public or a section of the public*” and it “*raises or disburses funds in pursuance of [those] purposes*”, it may also fall to be regulated under the Non-Profit Organizations (Jersey) Law 2008.

Whilst these are matters relating to the administration of the Legal Aid Scheme and not relating to the principle of the establishment of the Legal Aid Scheme in view of the central role of the Legal Aid Office in the administration of the Legal Aid Scheme and the experience of the public using the Legal Aid Scheme they need to be addressed in detail before the Legal Aid Scheme becomes effective.

**RECOMMENDATION: Prior to the Legal Aid Scheme becoming effective the mechanisms for administration of the Legal Aid Scheme including delegation of the function of administering the Legal Aid Scheme be reviewed and determined.**

### ***Champerly and Maintenance: Conditional Fee Agreements***

The Draft Law provides that:

*“Notwithstanding any other rule of law to the contrary, an advocate or solicitor may enter into a conditional fee agreement with any other person”<sup>29</sup>*

For these purposes a conditional fee agreement is defined as follows:

*“a conditional fee agreement is an agreement with a person providing legal services which provides for his or her fees and expenses, or any part of them, to be payable only in specified circumstances”<sup>30</sup>*

The relaxation of the current law in this regard by the Draft Law is not necessarily subject to any conditions or restrictions although the Draft Law does provide that a conditional fee agreement must not provide for a success fee<sup>31</sup>. For these purposes a success fee is defined as follows:

*“a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased in specified circumstances above the amount which would otherwise be payable”<sup>32</sup>*

The relevant minister (defined in the Draft Law as the Chief Minister<sup>33</sup>) is given the power but not the obligation to make certain provisions by Order in respect of conditional fee agreements. Such an Order may prescribe conditions applicable to a conditional fee agreement<sup>34</sup>.

The proposed provision that conditional fee agreements be permitted acknowledges that such agreements are not presently permitted under Jersey law. The Code of 1771 provides that:

*“Personne ne pourra contracter pour choses ou matières en litige”*

Contracts with clients in relation to contentious matters are also expressly forbidden under the oaths taken by advocates<sup>35</sup> and by solicitors<sup>36</sup> for admission to the Bar or admission as a solicitor,

<sup>29</sup> Draft Access to Justice (Jersey) Law 201-, Article 11(1)

<sup>30</sup> Draft Access to Justice (Jersey) Law 201-, Article 11(5)(a)

<sup>31</sup> Draft Access to Justice (Jersey) Law 201-, Article 11(4)

<sup>32</sup> Draft Access to Justice (Jersey) Law 201-, Article 11(5)(b)

<sup>33</sup> Draft Access to Justice (Jersey) Law 201-, Article 1

<sup>34</sup> Draft Access to Justice (Jersey) Law 201-, Article 11(2) and Article 11(3).

respectively. The Royal Court has concluded that third-party funding agreements may be permissible in certain circumstances notwithstanding these provisions<sup>37</sup>. Agreements between a party to litigation and those conducting the litigation in his or her behalf remain, however, prohibited under the law of Jersey.

*“As the English Court of Appeal made clear in Morris (para 24 above) the public policy considerations are very different in relation to agreements between a party to litigation and those conducting the litigation in his behalf. Although there has been a minor relaxation in England as a result of the statute which permits conditional fee agreements, the requirement of public policy that officers of the court should be inhibited from putting themselves in a position where their own interests could conflict with their duties to the court remains otherwise in force. In Jersey, no statutory relaxation of this principle has been introduced and in our judgment it remains in full vigour.”<sup>38</sup>*

The proposed Article 11(1) would appear to be a statutory relaxation such as the court has contemplated.

Before any such relaxation is brought into effect, however, the Royal Court has recommended that the issue be referred to the Jersey Law Commission for detailed consideration. In particular the Royal Court raised the issue of arrangements that might have the effect of giving lawyers conducting litigation on behalf of their clients a financial benefit from the outcome of that litigation.

*“We cannot leave this case without observing that the time has come to consider whether the provision should be repealed or amended. As the Court made clear in Barclays Wealth at paras 32-41, the provision was introduced to prevent maintenance and champerty. These concepts were introduced at a time when people would assign claims to nobles and others who could expect to be more favourably treated by the courts. That is of course no longer the case. On the other hand a simple repeal might not satisfactorily address the position of lawyers and others where there are arguments for ensuring that they should not benefit financially from the fruits of litigation on behalf of their clients. We respectfully suggest that it may be appropriate to refer the matter to the Jersey Law Commission for detailed consideration and recommendation.”<sup>39</sup>*

The prohibition on any conditional fee agreement providing for a success fee appears to be consistent with the observations of the court in relation to arrangements that might have the effect that the outcome of the case would benefit the lawyers conducting it but the Jersey Law Commission makes no comment in these comments on the Draft Law as to whether the prohibition is sufficient to address the concerns that prompted the court to refer the issue for detailed consideration and recommendation.

This Court of Appeal specifically endorsed the proposal by the Royal Court that the issue be given detailed consideration.

*“Though we have disagreed with the conclusion of the Royal Court on this point, we endorse the recommendation that it made by way of postscript (para 39), to the effect that the relevant provision of the Code of 1771 should be referred to the Jersey Law Commission. For the reasons given in Barclays Wealth, the field of third-party funding is a complex one in which different interests need to be accommodated and in which public*

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<sup>35</sup> Vous ne ferez aucun marché ni contrat avec vos Clients, d'aucune Cause en litige ou contentieuse, ni de partie d'icelle (Code of 1771, Serment Des Avocats De La Cour Royale)

<sup>36</sup> Vous ne ferez aucun marché ni contrat avec vos clients d'aucune cause ou affaire contentieuse, ni de partie d'icelle. (Advocates and Solicitors (Jersey) Law 1997, Schedule 1, Oath of Solicitors of The Royal Court )

<sup>37</sup> Barclays Wealth Trustees (Jersey) Limited v Equity Trust (Jersey) Limited ([2013] (2) JLR 22)

<sup>38</sup> In the matter of The Valetta Trust ([2011]JRC 227 (unreported) at paragraph 37) and ([2012] (1)JLR1] (reported))

<sup>39</sup> Booth v The Viscount ([2016] JRC 086 at paragraph 39)

*policy priorities have changed significantly since 1771. The law of Jersey would benefit from the consideration of these issues on a principled basis, and from clear recommendations for how they should be resolved in modern conditions.”<sup>40</sup>*

The Jersey Law Commission is in the course of carrying out the review suggested and recommended by the Royal Court endorsed by the Court of Appeal but the work is not complete and no report has been issued nor recommendations made in respect of the topic. Until the review called for by the Royal Court and the Jersey Court of Appeal is complete, the Jersey Law Commission makes no comment as to whether the provisions of the draft Law in relation to conditional fee agreements are complete or sufficient to address the concerns of the Royal Court or of the Court of Appeal.

**Recommendation: the provisions of the Draft Law relating to Conditional Fee Agreements should not become effective before consideration of any recommendations made in the light of the review called for by the Royal Court and the Jersey Court of Appeal.**

C.A.CHAPLIN

**Chairman  
The Jersey Law Commission  
28 May 2019**

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<sup>40</sup> Booth v The Viscount ([2016] JCA 218 at paragraph 22)

## Appendix A

### *Invitation Letter*



Scrutiny Office

Clive Chapin  
Chairman  
Jersey Law Commission  
% Corbett Le Quesne  
1a West's Centre  
St Helier  
Jersey  
JE2 4ST

31 August 2018

Dear Chairman,

#### **Draft Access to Justice (Jersey) Law 201- Review**

The Legal Aid Review Panel has been constituted in order to conduct a Scrutiny review in respect of the Draft Access to Justice (Jersey) Law 201-. The proposition has currently been withdrawn, but it is intended to be re-lodged to allow a debate to take place in October 2018. The proposition, if adopted, would place the legal aid scheme onto a statutory basis, as well as form a Legal Aid Guidelines Committee that would be responsible for consulting on and developing a new legal aid scheme for the Island. The proposition can be viewed [here](#).

We have agreed Terms of Reference for this review, which are as follows:

1. What changes are being proposed to Jersey's legal aid system through the draft Access to Justice Law?
2. What is the rationale for the proposed changes?
3. Will the changes improve the legal aid system for:
  - a. Service users
  - b. The States
  - c. The legal profession
4. Does the draft Access to Justice Law implement the desired policy objectives effectively?
5. Are there any other areas of concern or issues that need to be considered in relation to the draft Access to Justice Law?

We are currently gathering evidence relating to our review and I write to invite you to make a written submission. The Panel would like to hear your general thoughts and comments on the draft law in relation to its Terms of Reference. The Panel is particularly interested in your thoughts on the proposed scheme contained within the proposition, and your thoughts on Terms of Reference three and five.

We would be grateful to receive a written submission in the first instance, however, if you would like to speak to the Panel in person please let our Scrutiny Officer know (details below) who can make the appropriate arrangements.



**Contact:**

As the Panel is working within a tight timeframe, I would kindly ask if you could provide your written submission by **Friday 14th September 2018**, at the latest. If that deadline were likely to cause you any potential difficulties, I would ask that you advise us to that effect. You can get in touch in the following ways:

**Letter:** FAO – Simon Spottiswoode, Scrutiny Office, Morier House, St. Helier. JE1 1DD

**Email:** [s.spottiswoode2@gov.je](mailto:s.spottiswoode2@gov.je)

Please note that all written and oral submissions will be uploaded to the States Assembly website as a matter of course with the exception of any evidence received under a confidential or private agreement, which, in accordance with data protection legislation, will not be released into the public domain.

We would value your participation in this review and look forward to receiving your contribution.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Steve Ahier".

Deputy Steve Ahier  
Chairman, Legal Aid Review Panel

## **Appendix B**

### ***Role***

#### **The role of the Jersey Law Commission**

The Jersey Law Commission is a body established by the States of Jersey. It works in consultation with the Legislation Advisory Panel and the Department for Community and Constitutional Affairs but the Jersey Law Commission is an independent body whose reports will be made available, in the form determined by the Jersey Law Commission, to the public.

The role of the Jersey Law Commission is defined in its terms of reference, set out as follows in the Proposition of the States of Jersey by which the Jersey Law Commission was established:

*It shall be the duty of the Commission 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, and to those ends:*

- (a) to receive and consider any proposals for the reform of the law which may be made or referred to them;*
- (b) to prepare and submit to the Legislation Advisory Panel from time to time programmes for the examination of different branches of the law with a view to reform;*  
*and*
- (c) to undertake, pursuant to any such recommendations approved by the Legislation Advisory Panel, the examination of particular branches of the 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.*

## **APPENDIX C**

### ***Method***

#### **The working method of the Jersey Law Commission**

Upon accepting a topic for review the Jersey Law Commission appoints one of its members to act as the Topic Commissioner to conduct and co-ordinate all of the Jersey Law Commission's work on that topic. On his or her recommendation the Jersey Law Commission seeks expert support from lawyers practising in the field or academics learned in the subject as Topic Practitioner to assist him or her generally and to ensure that the work of the Jersey Law Commission remains relevant to the issues arising in relation to the topic. The Topic Commissioner is not paid in respect of the work undertaken for the Jersey Law Commission unless also acting as Topic Practitioner. The Jersey Law Commission typically agree a fee with the Topic Practitioner who then recovers that fee direct from the States of Jersey. Requisite legal research may be carried out by others: either by professional researchers under contract or by experts willing to give their time as a public service.

The procedure for the review of each topic will commonly fall into the following steps:

1. Finding out whether there is a problem, and if there is, defining exactly what it is;
2. Researching and summarising the existing law relevant to the topic;
3. Suggesting how the relevant law might be changed to solve the problem;
4. Preparing and publishing a consultation document based on items 1, 2 and 3;
5. Receiving and discussing representations made in response to the consultation document;
6. Preparing and publishing a final report.

## APPENDIX D

### ***Duties, Functions and Responsibilities of the Legal Aid Office***

The Draft Legal Aid Guidelines identify the role of the Legal Aid Office specifically as follows:

- Page 1: Under the heading **Legal Aid Scheme: Key Features** the third Key Feature includes the statement that *“The Legal Aid Office will, additionally, administer funding payments in eligible Public Law matters”*
- Page 2: Under the heading **Legal Aid Scheme: Key Features** the last two Key Features relate to appeals and complaints and refer to appeals against *“decisions made by the Legal Aid Office”*
- Page 7: Under the heading **Fee Adjudications**, in relation to financial contributions under the Legal Aid Scheme *“legally aided clients may, in the event of a dispute over the level of fees charged, seek fee adjudication through the Legal Aid Office”*
- Page 7: Under the heading **Residency – Private Law Only**, in relation to the Residency requirement for applications for assistance with Private Law matters *“discretion will be held by the Legal Aid Office to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so”*
- Page 7: Under the heading **Personal Contributions – Public Law**, in relation to the personal contributions required from applicants who are granted legal aid for public law matters *“the contribution percentage and monthly payments will be assessed by the Legal Aid Office .... based on assessment of documentary evidence in respect of an applicant’s income”*
- Page 8: Under the heading **Personal Contributions – Private Law**, in relation to the personal contributions required from applicants granted legal aid in a private law matter *“an individual’s contribution level will be assessed by the Legal Aid Office .... based on assessment of documentary evidence in respect of an applicant’s income”*. (In this context the Draft Legal Aid Guidelines provide that where there are changes in a client’s circumstances contributions may be re-assessed *“which will be undertaken by the appointed law firm”*). In addition letters of engagement issued by law firms are required to be clear about the liability of clients and invoices must identify costs and charges *“based on the personal contribution level determined by the Legal Aid Office”*
- Page 10: Under the heading **Legal Aid Credits**, in relation to Legal Aid Credits, they *“may be allocated by the Legal Aid Office”* in specified circumstances.
- Page 10: Under the heading **Legal Aid Office** in the Draft Legal Aid Guidelines the arrangements described for administration refer to the Legal Aid Scheme being administered by *“a Legal Aid Administrator (unconnected to a law firm) who will be under the day-to-day supervision of the Law Society, but subject to the ultimate oversight of the Judicial Greffier”*. The Administrator (*sic*) will have functions additional to administering the scheme. The paragraph continues: *“The Legal Aid Office will, additionally, administer funding payments in eligible matters”*.
- Page 10: In paragraph 2 under the heading **Legal Aid Office** reference is made to *“decisions made by the Legal Aid Office”* in the context of appeals against them.
- Page 10: Under the heading **Responsibilities** under the heading **Legal Aid Office** the responsibilities of the Legal Aid Office are set out in and comprise administration of, review of and decisions on applications including approval, notification of the relevant lawyer and declines of applications with an obligation, amongst other matters, to give details of the process for appealing against the decision.
- Page 11: Under the heading **Funding Administration** under the heading **Legal Aid Office** the Draft Legal Aid Guidelines provide that the *“Legal Aid Office will be responsible (on behalf of the Judicial Greffe) for the approval and administration of funding payments”* for specified activities where personal contributions are not required in some or all circumstances.

**APPENDIX D, continued**

***Duties, Functions and Responsibilities of the Legal Aid Office***

- Page 11: under the heading **Administration of Duty Lawyer and Duty Advocate Scheme** under the **Legal Aid Office** the Draft Legal Aid Guidelines provide that the “*the Legal Aid Office will administer the rota for the Duty Advocate and Duty Lawyer Schemes and the funding payments associated with this activity*”. The functions of the Legal Aid Office may also include a role in allocating credits for the provision of assistance at the Citizens Advice Clinic.

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