

Submission by Philip Syvret



Your Ref:
Our Ref: S2-33/dh/PWS

Access to Justice Review
Chief Minister's Department
Cyril Le Marquand House
The Parade
St Helier
Jersey
JE4 8QT

16 June 2014

Dear Sir

Re: Access to Justice in Jersey: Review

I write in response to your invitation to submit comments on the Access to Justice Review. I write in my capacity as President of the Chambre des Ecrivains. There are now approximately 70 Ecrivains or Solicitors of the Royal Court working in Jersey and advising clients as to Jersey Law. They have a like obligation to Advocates to contribute to the Legal Aid scheme for the first fifteen years of their call.

I have had the benefit of reading the submissions of Advocate David Cadin, Bâtonnier made to you under cover of his letter of the 22nd May 2014. He provides a lucid summary of the matters which your review will need to carefully consider. I concur and align myself with all of his comments. I do not propose therefore to repeat much of what he has said. I would however highlight or add the following:-

1. The means by which citizens achieve access to the machinery of justice is at present achieved by way of a careful balance of the contributing stakeholders. There is a significant contribution by the legal profession to that end which, in my view, is much undervalued. I am regularly surprised at how the present contribution is either misunderstood or ignored.
2. As Advocate Cadin says in his submissions, the Legal Aid system in particular is based upon an accepted goodwill between Government and the profession. That goodwill must be respected if it is to be maintained.
3. There have been recent examples where the Government has acted without proper consultation to impose legislative or regulatory changes. By way of example, the removal of exclusive rights of audience before States Committees is cited by Mr Cadin. Another example would be the removal of the scale fee for conveyancing work

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so as to comply with adopted competition law. The abolition of the scale fee, particularly in the light of reduced conveyancing volumes, has impacted significantly on the viability of the smaller Solicitors' firms and their ability to effectively service the Legal Aid burden. It is vital that in a small island there is sufficient diversity of legal firms to ensure a range of potential representation and to avoid conflicts of interest. I am aware that on occasions the Legal Aid office struggles to identify a firm that does not have a conflict of interest in a particular matter. Ensuring that the Island has sufficient "High Street Solicitors" firms alongside the firms which service the more recondite commercial areas is vital to the proper administration of justice.

4. The legal services market is already highly competitive. We are already competing for example in areas such as Personal Injury and Medical Negligence work with large UK Law firms. Where areas of law, as in negligence claims, are so closely aligned between Jersey and England, English firms are already making a competitive presence felt. However in my view islanders are often poorly served in going from a bespoke local solution to a computer driven template approach with a large UK Personal Injury firm. Costs are often duplicated when ultimately Jersey advice is required to issue proceedings locally. Nonetheless there can be no question that local firms provide a quality of service at nationally competitive rates.
5. It will be vital that the outcome of any review ensures that Jersey's unique jurisprudence is maintained. It is the uniqueness of Jersey history that has allowed it to develop its present position as a leading offshore finance centre. Alongside that history a unique jurisprudence rooted in Norman-French Law, whilst having a regard to the procedures and statutes adopted in England and other Commonwealth countries has developed. It is vital that rights of audience before the Jersey Courts are limited to those persons who are able to demonstrate the clear and effective knowledge of Jersey Law as required by the Advocates and Solicitors exams and the ongoing Continuing Professional Development requirements imposed by the Jersey Law Society. Any dilution of the rights of audience would inevitably dilute the unique local jurisprudence.
6. There is a divergence of views as to the appropriateness or sustainability of the present Legal Aid system. Certainly if the profession were asked to draft up a legal aid scheme for the 21st century it would not draft anything like the scheme that we presently have. I have mentioned above the question as to whether the scheme is sustainable for smaller firms. Certainly there is a valid argument that the present scheme is an impediment to competition because Advocates and Solicitors of below 15 years call are reluctant to set up in private practice on their own account because of the potential burdens of the Legal Aid Scheme, which renders somewhat ironic the fact that the loss of a major source of income to small Solicitors firms arose because of the competition law as I outlined above.
7. I have been a member of the Law Society Committee for approximately 10 years both as an ordinary member and now in my capacity as President of the Chambre des Ecrivains. In that role I have seen the inception of the new Disciplinary Procedures and arrangements in respect of fee disputes. Throughout that time, whilst there have



of course been disciplinary matters to consider, the profession has undoubtedly maintained a very high level of ethical standards. This is something of which the profession and the Island can be proud. Advocate Cadin's reference to the quote of Michael Beloff QC, a Court of Appeal Judge and, a highly experienced UK lawyer is rightly put. Jersey Advocates and Solicitors can certainly compete with the best as he says. The present disciplinary system, whilst somewhat cumbersome and open to improvement, works satisfactorily and ensures that complainant's concerns are properly addressed and considered. The appointment by the Law Society of a full time Chief Executive Officer has further improved the situation and in recent years I have seen a more pro-active approach to resolution of complaints being developed. In general from my position on the Committee having oversight of disciplinary matters I can say that the standards of conduct and ethics adopted by the profession compares very favourably with other jurisdictions.

I have no doubt that there will be a call upon the Law Society or the profession generally to make a comment on proposals as the Access to Justice Review advances. Certainly the Law Society would wish to submit to the Chief Minister the findings of the survey which is being undertaken by KPMG in relation to the profession's economic contribution to the Island to be taken into account during the course of this review. I trust however that these additional comments when read alongside those of my colleague Advocate Cadin will be of assistance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. W. Syvret', written in a cursive style.

Philip W Syvret
President of the Chambre des Ecrivains