

## Submission by Mary Rose Scott

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Dear Sirs

### **Access to Justice Review**

Further to my email correspondence with Tom Walker in March, I enclose a submission to the Panel for the Access to Justice Review in connection with its call for evidence.

In summary of my legal background, and experience of the matters that are the subject of the Review, having studied jurisprudence at Balliol College, Oxford, I was admitted as a Solicitor of the Supreme Court of Judicature of England and Wales in 1988 after completing a training contract with Slaughter and May (a leading commercial law firm in the City of London). I practiced as a corporate tax lawyer with Slaughter and May and the international law firm Baker & McKenzie for five years, before moving to Jersey in 1993.

I re-qualified as a solicitor of the Royal Court of Jersey in 1996, while working in the Commercial Department of Mourant (now, Mourant Ozanne), and was a partner with that practice, specialising in Jersey financial and commercial law, from 1997, before retiring from practice in 2003. At the time of retiring, I had certain concerns that the training and regulation of Jersey lawyers and the operation of the Jersey legal aid scheme were not in the public interest

A demand for my legal skills and the benefit of my professional experience has led to me investigating the possibility of resuming a part-time practice (specialising in commercial law) from home. I am daunted, even repelled, from doing this by changes to the law, affecting my

ability to practise legally, that have occurred since my retirement from legal practice in 2003.

These changes require me, in order to practise, to:-

- (i) join, in breach of Jersey human rights legislation, an organisation that is conflicted at every level;
- (ii) support an anti-competitive practice operated by that organisation contrary to Jersey law;
- (iii) in doing so, break the oath that I swore in court upon registration as a Jersey Solicitor; and
- (iv) pay another lawyer to support that anti-competitive practice and a charitable scheme that I do not consider to be in the public interest.

This is a strong deterrent from someone trained in professional ethics to the extent that I was, from practising Jersey law at all. I wish I could say that I believe the same applies to all Jersey lawyers but, as will be evident from my submission and the fact that the Jersey legal profession continues to practise, I believe that the financial necessity, public necessity or the training of Jersey lawyers (particularly those who have followed a different career path from me) is such that it isn't. It seems that a barrier to entry to the Jersey legal profession is the extent to which people purporting to be professionals can tolerate the position.

I currently am not a member of the Jersey Law Society, which enables and requires me to make my Submission independently from the Jersey Law Society.

I hope my Submission will be illuminating for, and helpful to, the Panel.

Yours sincerely

  
Moz (Mary Rose) Scott

## SUBMISSION TO ACCESS FOR JUSTICE REVIEW

Prepared by MOZ (MARY ROSE) SCOTT

### INTRODUCTION

*“...An effective legal and judicial system is not a luxury but a key component of a well-functioning state and an essential ingredient in long term development.” James Wolfensohn – ex president of the World Bank.*

This Submission is divided into three parts. Its main body contains the various submissions that I wish to make to the attention of the Panel for the purposes of its review (for ease of reference, the scope of the review and a definition of justice are set out in Appendix Six of this Submission). The Schedules provide further information on the submissions made and the Appendices expand on such information.

For the purposes of brevity, I have chosen not to include extracts of Jersey legislation, which is publicly available. I also have referred to lawyers who are qualified to practise Jersey law (whether they are Jersey Advocates or Jersey Solicitors) as ‘Jersey lawyers’.

I am conscious that the Jersey Law Society will be providing much of the detail of the current legal aid scheme separately. I therefore have attempted not to describe the scheme in detail other than for the purposes of observing some continuing inconsistencies in its application to Jersey advocates and Jersey solicitors respectively. I also have restricted my comments to the effects on the Jersey public and the Jersey legal profession.

Some of the information provided by me nevertheless may overlap with the Submission to the Panel made by the Jersey Law Society. Having not seen that Submission, I apologise to the Panel where this occurs.

I would like to acknowledge the help of the various members of the Jersey Law Society whom I have approached for information for the purposes of making this Submission, all of whom have been

obliging. In particular, I would like to thank Neville Benbow, Chief Executive of the Jersey Law Society, for attending to my many enquiries.

Hopefully, the adoption by the States of Jersey of Proposition P72/103 and the work to be undertaken by the Panel will remedy the concerns identified in this Submission.

### **SCOPE OF SUBMISSION**

This Submission focuses on the following three areas of the legal system that are within the scope of the Review.

- Training of Jersey lawyers
- Regulation of Jersey lawyers
- Administration of the Jersey legal aid scheme

My submission is that current legal regulation in these areas is shambolic (or, in the case of legal aid, non-existent) and has failed to adapt to the different specialisations of Jersey lawyers in a way that serves public interest.

Of particular concern is that:

- (i) the only statutory regulation of the conduct of lawyers consists of an oath in customary Jersey French that is ill-defined and unfairly interpreted; and
- (ii) the rest of the machinery for regulating Jersey lawyers is, at best, in breach of good practice; at worse, in breach of Jersey's own human rights legislation and

competition law (rendering parts of it void or unenforceable);

- (iii) there is no statutory regulation of the practise of law other than in the capacity of an advocate or solicitor;
- (iv) the result of this muddled thinking, along with current legislation and inconsistent practice regarding the training of lawyers, has compromised the quality and availability to the public of Jersey lawyers and Jersey legal advice;
- (v) the dispensation of legal aid in Jersey currently is operated as a charitable system by Jersey lawyers whose commercial interests conflict with the public interest; and
- (vi) the legal aid scheme is performed, or supported by, Jersey lawyers with a similar conflict of interest, who are coerced to do so regardless of their legal specialisation and in breach of human rights legislation.

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## PART ONE

### TRAINING OF JERSEY LAWYERS

This Submission submits the following.

1. Specialisation within the Jersey legal profession should be encouraged to enable the Jersey public to have access to expert advice in different areas of law.
2. The training of Jersey lawyers compares unfavorably to the training of English lawyers, despite incorporating elements of that training. Training of Jersey lawyers should be more structured, tailored and incentivised towards the respective intended fields of practice and specialisation of Jersey lawyers.
3. The syllabus of the Jersey qualifying examination should be expanded to contain more content on professional ethics, particularly in the field of non-contentious work.
4. The practice of law other than in the capacity of a Jersey lawyer should be recognised and a formal training path for paralegals, such as conveyancing clerks or legal executives, who assist in the provision of legal services to the public, should be initiated.
5. Public perception on what is meant by a Jersey Advocate, as opposed to a Jersey Solicitor, should be explored by a independent Panel (i.e., not practising members of the Law Society), mainly comprised of practising English solicitors and lay persons representing Jersey clients, to consider whether such titles are misleading to the Jersey public with respect to those respective lawyers' legal skills.
6. The Panel should review the Jersey legal path, along with the current training syllabuses of English Barristers and English Solicitors, including compulsory assessments and courses and consider:-
  - 6.1 the fitness of the current Jersey legal training path for the practice by Jersey lawyers of non-contentious work
  - 6.2 whether Jersey lawyers should be encouraged to specialise in non-contentious legal work at a vocational level with an optional qualification in advocacy;
  - 6.3 whether the training path of Jersey lawyers should allow Jersey advocates to specialise in, and practice, contentious work only and to train at vocational level in contentious work accordingly;

- 6.4 with respect to the situation to be explored in paragraph 6.3, whether Jersey lawyers qualified solely to practice contentious work should be allowed an additional training path that allows them to practise unsupervised non-contentious work;
- 6.5 the desirability of an additional vocational training syllabus for Jersey Solicitors who:-
  - 6.5.1 have only passed the Jersey qualifying examination without having obtained an English law degree or passed CPE to compensate for any lack of knowledge regarding the interpretation of English statutes; and/or
  - 6.5.2 have not completed any vocational training in England;
- 6.6 whether the appellations of Jersey lawyers should be changed, depending on whether they have been trained to specialise at vocational level in contentious work or non-contentious work;
- 6.7 the regulation of the work experience that forms part of the training path of all Jersey lawyers, in particular, expected content and supervision, taking into account the nature of their study at vocational level and their intended field of practice; and
- 6.8 whether the exemption from the work experience requirement afforded to holders of a *Certificat d'Etudes Juridiques Françaises et Normandes* who propose to practise non-contentious work should be dispensed with or modified in some way.

7 The Panel referred to in Submission 6 should also consider:-

- 7.1 whether, in the interests of perceived fairness, the length of the work experience requirement for Advocates who have qualified as English barristers (having completed pupillage), and who intend solely to practise contentious work and those who have qualified as English solicitors who intend solely to practise non-contentious work, should be reduced, bearing in mind that:-
  - 7.1.1 a training contract for an English solicitor is a year longer than pupillage; and
  - 7.1.2 under the current Jersey legal training system, few lawyers complete their study for the Jersey qualifying examination in less than two years while working in a Jersey legal environment; and
- 7.2 the way in which the legislative intent of Article 2 of the Advocates and Solicitors (Jersey) Law 1995, with respect to the Professional Skills Course (see paragraph 6.3.5 of Schedule One, headed '*Factors that may discourage Jersey lawyers from choosing vocational training that is most appropriate for their intended area of specialisation*') should be clarified.

- 8 As in England and Wales with respect to the professional organisations for English barristers and English solicitors, the concept of compulsory student memberships of the regulatory equivalent to the Jersey Law Society (see the submissions in Part Two of this Submission regarding ‘The Regulation of Jersey Lawyers’) should be introduced to help instill an awareness in trainees of the professional code of conduct applicable to qualified Jersey lawyers.
- 9 Unnecessary court appearances by Jersey advocates should be reduced by changing the relevant law requiring them to make such appearances (this might help keep down legal costs too) to reduce the convenience of a sponsoring law firm being a factor in the choice of whether a lawyer qualifies as a Jersey Advocate or a Jersey Solicitor.
- 10 The administration of legal aid should be taken out of the hands of the Jersey lawyers by the States of Jersey to reduce the extent to which the choice of whether a lawyer qualifies as a Jersey Advocate or a Jersey Solicitor is influenced by convenience to a sponsoring law firm in servicing its legal aid obligations.

Schedule One to this Submission contains information in support of these submissions.

## PART TWO

### REGULATION OF JERSEY LAWYERS

This Submission submits the following.

1. The current machinery for legal regulation of Jersey lawyers is, at best, in breach of good practice; at worse, in breach of Jersey's own human rights legislation.
2. The only statutory regulation of the conduct of Jersey lawyers consists of an oath in customary Jersey French that is ill-defined and unfairly interpreted.
3. Self-regulation by the Jersey Law Society creates a conflict of interest and a public perception that it is futile to pursue complaints against Jersey lawyers.
4. A Jersey-qualified lawyer, such as myself, who would like to practice (in my case resume practice) of Jersey law, is currently unlawfully required by Jersey law to become a member of an organisation that has significant conflicts of interest at all levels and (as explained in Part Three of this Submission) forces me to :-
  - (a) support an anti-competitive practice operated by the Jersey Law Society contrary to Jersey law;
  - (b) break the oath that I swore in court upon registration as a Jersey Solicitor; and
  - (c) pay another lawyer to support that anti-competitive practice and a legal aid scheme that I do not consider to be in the public interest,and to submit to the jurisdiction of that organisation.
5. This is not in the public interest as it disincentivises me from practicing, which in turn deprives members of the community of my services and increase the costs of local businesses (evidence of this is included in Appendix Six).
6. The regulation of Jersey lawyers must be separated from the representative functions of the Jersey Law Society, as a matter of law and good practice. The role of the Jersey Law Society should be confined to promoting the interests of its members as a representative

organisation offering training and support to Jersey lawyers, membership of which should be voluntary.

7. A separate statutory organisation should be set up to regulate the conduct of Jersey lawyers and to deal with complaints. Without requiring membership, Jersey lawyers should be required to submit to the jurisdiction of that regulatory organisation, subject to appeal to the Jersey court or a separate and independent Ombudsman.
8. The oaths sworn by Jersey lawyers should be reviewed, repealed and replaced to reflect a clear legislative intent on the part of the States of Jersey.
9. The meaning of practise should be defined by legislation with respect to the practising of law and the practising of law as a Jersey lawyer.
10. Certain paralegals should be allowed to practice specialized areas of law and regulated separately.
11. The administration of the legal aid system must be taken over by the States of Jersey to avoid it being imposed upon Jersey lawyers as part of their regulation.

Schedule Two contains information in support of these submissions

## PART THREE

### **ADMINISTRATION OF THE JERSEY LEGAL AID SCHEME**

This Submission submits the following.

1. The current machinery for legal aid contravenes good practice and Jersey's own human rights legislation and competition law.
2. The current Jersey legal aid scheme is not in the public interest as it is operated by an organisation, i.e., the Jersey Law Society, whose objects are to act in the interests of its members, rather than the public interest, and has the effect of restraining the training and career paths of Jersey lawyers, discouraging specialisation.
3. The current involvement of the Jersey Law Society in the administration of legal aid in Jersey has led to a requirement, based upon an unlawful forced membership of the Jersey Law Society and to help spread the costs of the scheme, that any Jersey lawyer, in order to practise (or, in my case, resume practice):-
  - (a) perform work under the legal aid scheme, regardless of its applicability to that lawyer as a matter of law and regardless of that lawyer's specialisation (taking into account only that lawyer's ability to appear in court); and
  - (b) in doing so:-
    - (I) to be in breach of the oath sworn by that lawyer in court upon registration as a Jersey lawyer to uphold Jersey's laws;
    - (II) to be forced to support an anti-competitive practice operated by the Jersey Law Society that is not in the public interest or the interest of members of the Jersey Law Society's own members; and
    - (III) in my case, as a lawyer specialising in an area not covered by legal aid, pay another lawyer, who specialises in criminal and family law, to perform that work or reduce my earning capacity by no longer specialising and performing the legal aid work myself.
4. This is not in the public interest as it disincentivises lawyers, who do not specialise in criminal and family law from practicing, reducing the choices of members of the public. It also gives an unfair competitive advantage to large Jersey law firms with their own specialist legal aid departments.

5. The States of Jersey must, as a matter of urgency, take over the administration of legal aid to:-
  - 5.1 restore order to the legal system and the confidence of Jersey lawyers in that legal system and the manner of their regulation;
  - 5.2 enable Jersey lawyers to specialise freely and without supporting an anti-competitive practice; and
  - 5.3 ensure that the system is operated in the interests of the public, without conflicts on the part of the Jersey lawyers offering their services under the scheme or compulsory labour in breach of Jersey human rights legislation.
6. The oaths of all Jersey lawyers should become statutory and redefined to state their obligations clearly without reference to responsibilities that are best administered by the welfare state.
7. Charitable work on the part of Jersey lawyers should be encouraged and acknowledged.
8. The Jersey Law Society should be approached to appraise the willingness of its members to contribute financially, and on a temporary and transitional basis, to the establishment of a replacement scheme to take legal aid off their hands. This could possibly be through a temporary increased practising fee, that is no more than the average cost of performance of the amount of legal aid certificates that a Jersey lawyer would expect to perform under the current scheme, and which might be credited to lawyers willing to undertake paid legal aid work as part of the new scheme.

Schedule Three contains information in support of these submissions.

## SCHEDULE ONE

### Training of Jersey lawyers

#### ***1. Differences between 'contentious' and 'non-contentious' legal work***

As this Schedule explains under the heading '***4. The English legal profession and its differences from the Jersey legal profession***', the English legal system (and, to some extent, the Jersey legal system) makes a distinction between '*contentious*' and '*non-contentious*' legal work.

Contentious legal work may be described as specialised court work relating to matters that need to be heard, or represented, in court. The main examples are criminal prosecutions and civil claims (such as disputes over debts and breaches of contract or defamation proceedings) that have not been settled out of court.

All other kinds of legal work is '*non-contentious*'. The bulk of legal work is non-contentious and includes the drafting of contracts, property conveyances and wills, the giving of legal advice, the negotiation of settlements, the administration of oaths outside court and the preparation and certification of documents to be used in court proceedings such as affidavits (i.e., sworn statements) and certified copies.

#### ***2. The nature of Jersey's split legal profession***

In the early days of the Jersey legal profession (there were no more than ten lawyers practicing in Jersey in 1904), most Jersey lawyers would expect to advise in all areas of laws and to represent their clients in court.

Part of this reason is because of the limited nature and availability of work at the time and the requirement for Jersey property transactions (other than short leases and licences) to be sworn in the Royal Court of Jersey, for which rights of audience were necessary to represent a client who could not attend the court in person. This led to Jersey lawyers being generally being trained as '*advocates*' and, up to recently, having their own Bar Association.

Lawyers who did not undertake court work (known at the time as *écrivains*' have also existed in Jersey but, in those days, were very much in the minority. They now are more usually known as Jersey solicitors.

Jersey advocates could undertake the same legal work as *écrivains*. At the time I queried this state of affairs, as a bemused English solicitor, the reason given to me was that there was not enough court work in Jersey for advocates to earn their living solely from court work.

### **3. Current structure of Jersey legal profession**

The Jersey legal profession still comprises Jersey advocates, Jersey solicitors and members of the Jersey court. A distinction between Jersey advocates and Jersey solicitors survives today insofar as Jersey advocates are permitted to plead in all Jersey courts and Jersey solicitors only are allowed to appear before the Petty Debts Court and the Licensing Assembly.

The main officers of the Jersey judiciary – the Bailiff, the Deputy Bailiff, the Attorney-General and Her Majesty's Solicitor-General for Jersey are appointed from the ranks of the Jersey legal profession and typically are Jersey advocates who have trained at the English legal Bar. This may be justifiable on the grounds that English barristers are trained in considering points of law that may be the subject of dispute in a court (see below).

These officers are primarily responsible for the training of Jersey lawyers, setting syllabuses and determining their contents with the voluntary help of members of the Jersey Law Society.

The legal profession and the nature of Jersey legal work have changed much since 1904. Notably, there has been a significant growth of the following:-

- (i) legislation to be interpreted by lawyers, leading to lawyers to specialise in particular areas of law in their particular jurisdiction; and
- (ii) large Jersey law firms specialising in advising international clients on company, trust and contract law (i.e., non-contentious work).

The majority of Jersey lawyers practising in Jersey today undertake non-contentious work and are employed within large Jersey law firms. Much of that work comes from firms of solicitors in the City of London and other international financial centres, corporate clients and wealthy non-resident individuals expecting a high standard of legal service.

For this reason, the largest law firms have a preference for employing individuals who have qualified as solicitors in England and Wales and worked for City law firms. This is because of the quality and relevance of their legal training, described in paragraph 5 (under the heading '*English legal vocational training*') below.

Jersey advocates continue to be able to practice all types of law, including non-court work and to deal directly with clients. They therefore are not the equivalent of English barristers

because Jersey Advocates are permitted under Jersey law to practice *all* areas of law. In short, they can act as both solicitors *and* barristers in Jersey, a situation that is currently impossible in England.

For some customary reason (that I find inexplicable), Jersey advocates are entitled to use the title ‘Advocate’ in front of their names, whereas Jersey solicitors cannot use any special title, suggesting a distinction of some Jersey lawyers over others.

Since the date of my own qualification as a Jersey lawyer, Jersey lawyers who have passed English legal vocational examinations are entitled to be called Jersey Advocates, and to have rights of audience at all levels of the Jersey courts, regardless of whether that English legal vocational training was in contentious or non-contentious legal work and regardless of that lawyer’s field of practice and specialisation. The title of Jersey Advocate now distinguishes Jersey lawyers who have completed vocational training in England from those who haven’t.

I haven’t enquired into the reason for this change but note that the change was made in 1998, at a time when Jersey solicitors were not compelled to participate in the legal aid scheme in the same way as Jersey advocates (more information on the distinctions between Jersey Advocates and Jersey Solicitors with respect to the Jersey legal aid scheme is provided elsewhere in this Submission). At the time of my qualification, Jersey lawyers were encouraged to qualify as Jersey Solicitors because their legal aid obligations (serviced by a specialist department within my firm) were considered less onerous.

Whilst Jersey Solicitors are comparable to English solicitors insofar as they have restricted rights of audience in court, the rights of audience of Jersey solicitors is more restricted than their English counterparts, being confined to the Petty Debts Court, before the Master who deals with preliminary applications in civil cases, before the Registrar and Deputy Registrar of the Family Division of the Royal Court, before a single judge of the Court of Appeal and in the Licensing Assembly.

#### ***4. The English legal profession and its differences from the Jersey legal profession***

At this point, it is worth looking at the distinction that is made in England and Wales between ‘solicitors’ and ‘barristers’, which is particularly relevant to the training, and skills of, of Jersey lawyers before they sit their Jersey legal examinations.

##### *4.1. Background*

The English legal profession is split into two separate professions with different but complementary roles – barristers and solicitors. The division mainly is due to the way the English justice system operated in the 18th and 19th century. The higher courts were based in London, requiring judges to regularly travel to the provinces to dispense justice.

A core of specialised lawyers grew up around these “circuits”, who developed a core set of advocacy skills, appeared before the court to represent clients, and had both professional and social relationships with the judiciary. These lawyers, who were said to be “called to the bar” – referring to the physical (but now mainly symbolic) barrier in an English court between the public and the machinery of the court – grew into the barrister profession. Their work has become known as ‘contentious’ works as it relates to public disputes argued in court.

By contrast, solicitors tended to stay in one place, doing “non-contentious” work, and having a closer relationship to their public clients. Much of their work was, and still is, geared towards avoiding disputes in court.

Although both English barristers and English solicitors were (and still are) officers of the English court, English barristers were not permitted under English Law to deal directly with members of the public and could only receive instructions from English solicitors. This meant that, as far as the English Parliament was concerned, the English public was protected from any professional misconduct on the part of English barristers. English barristers therefore needed less regulation on the basis that an English barrister’s instructing solicitor and the court would deal with any such professional misconduct.

In time, they slightly relaxed the restriction to enable members of the public to obtain a legal opinion from an English barrister without an English solicitor being in attendance. This was believed to be in the public interest because it would reduce the costs of obtaining such an opinion and was not a transaction in which the barrister would formally be representing the client or handing the client’s money.

#### *4.2 Current English legal profession*

Over the years, the two branches of the English legal profession became more and more distinct, with different governing bodies, separate methods of qualification and forms of regulation (see Paragraph 5 of Schedule Two (*‘Contrast of Jersey regulation of Jersey legal practitioners with English regulation of English legal practitioners’*)) with respect to the more extensive English regulation of English solicitors).

In the last couple of decades, some changes in practice and legislation have blurred the lines between them so that English solicitors may now represent clients in lower (non-appeal) courts, where the procedure is less complex than higher courts (in fact, the majority of lower court work *is* carried out by English solicitors).

In England, an analogy is often drawn between solicitors and barristers in the English legal profession and general practitioners and consultants in the medical profession. A patient first

approaches his GP (solicitor) about a problem, and if the GP decides specialist help is required, he finds a consultant (barrister) specializing in the ailment in which the patient is suffering. However, if the problem is not sufficiently serious to require a surgeon the GP is qualified to act himself.

The split between barristers and solicitors is so great that the two professions have separate training paths and virtually no routes between them. A student who has begun his training as a barrister may not switch to training as a solicitor unless he starts training from scratch.

The main points to note are:-

- (i) barristers in England and Wales are permitted and trained solely to perform court/legal dispute work (including the giving of legal opinions on the likely outcome of any proceedings taken in court, including on points of law where the law is unclear) and have rights of audience (i.e., a right to plead) in all courts of England and Wales;
- (ii) generally, barristers are not permitted to deal directly with the public and are instructed by solicitors (the latter being responsible for the payment of their fees);
- (iii) the vocational training of barristers focuses on advocacy skills, the drafting of pleadings and opinions, court procedure and the resolution of disputes;
- (iv) English solicitors are permitted, and primarily trained, to perform non-contentious work, plus contentious work in lower courts such as the English magistrates courts (in respect of minor criminal offences) and English county courts (in respect of smaller civil and debt claims);
- (v) Accordingly, as part of their vocational training, English solicitors are required to pass practical examinations, or to be assessed in, such matters as conveyancing, the administration of certain oaths, drafting wills and applying for probate, taxation, business law and practice (including trusts) and learn limited skills in court work and advocacy; and
- (vi) unlike barristers, English solicitors, being allowed to deal with the public directly, are trained to handle clients' money ethically through the operation of segregated client accounts and to understand the nature (and their personal liability for) undertakings; for the same reason, they are subject to far more regulation than barristers and receive more training in professional ethics, e.g., recognising and dealing with conflicts of interest.

Judges in the English courts are usually chosen from the ranks of barristers because of their specialist knowledge of court procedure and their comparative greater exposure to cases where the law itself is disputed.

Women were first admitted as English solicitors in 1922 and today account for over half the admissions to the profession.

As with Jersey lawyers, the growth of legislation and case law has led English barristers and English solicitors to specialise in different areas of law. Other legal practitioners, with more limited roles, also are recognised under English law, such as Legal Executives and Licensed Conveyancers.

## 5. *English legal vocational training*

There are profound differences in the vocational training of English barristers and English solicitors.

In the case of an English barrister, vocational training takes the form of:-

- (i) a one year Bar Professional Training Course (the “**BPTC**”), which is geared non-contentious-work and the giving of opinions on matters of law (English barristers, with their direct experience of judicial thinking are often sought for these ‘Counsel’s opinions’); and
- (ii) the completion of a one year ‘pupillage’ in an English barrister’s chambers ‘shadowing’ a supervisor before he or she is allowed to practice as a barrister, unsupervised.

Pupillage is regulated by the Bar Standards Board (the “**BSB**”) which, inter alia, requires supervisors to be accredited and trained and to provide certain work, further training and supervision to their pupils during the period of their pupillage. Although a written pupillage contract is recommended by the BSB, it is not compulsory.

An English solicitor is required to complete:-

- (i) the one year Legal Practice course for English Solicitors (the “**LPC**”), which encompasses training in non-contentious legal work (including understanding business accounts and training in the professional ethics that apply to solicitors as interfacers with the public);
- (ii) a regulated two year training contract with a firm of solicitors or other organisation authorised to take trainees (such as the legal department of a government authority), which, unlike in Jersey, can be reduced if the

candidate has gained suitable and relevant previous legal experience;  
and

- (iii) during that training contract, an eight-day long Professional Skills Course (the “PSC”) covering Client care, professional standards, advocacy and communication skills and financial and business skills (the course has an examination to be passed as well).

The training contract provider for a trainee English Solicitor is required to give the trainee solicitor work experience in at least three distinctive substantive areas of English law, including both contentious and non-contentious work. If the provider is unable to provide the requisite training, it must arrange a secondment to another training establishment, to meet this requirement.

The training provider must also allow the trainee solicitor to attend the Professional Skills Course, pay the course fees and grant study leave to attend it and pay a minimum wage. The training contract is required to contain certain employment and training information and must be registered with the Solicitors Regulation Authority. Further regulations govern the training of solicitors and it is the responsibility of the trainee to ensure that the provider follows them.

The training contract provider is required to conduct at least three formal appraisals with the trainee during the two years of the training contract (one in the first year, one in the second year and one at the end of the training period).

It is clear that the training of an English solicitor is more onerous and closely regulated than that of an English barrister. The justification for this is that English solicitors deal with the public: as a rule, English barristers don't.

## ***6. The current training of Jersey's lawyers***

### *6.1 Background*

Because Jersey lawyers are members of the Royal Court of Jersey, members of the Royal Court of Jersey, such as the Bailiff and Deputy Bailiff, have traditionally had responsibility for Jersey legal training.

The efforts of the Judicial Greffe and the office of the Bailiff and Deputy Bailiff, assisted by the Jersey Law Society, to tailor the training of Jersey lawyers to modern day practice have been impressive. Remarkable advances have been made in making consistent information available to Jersey law students through the Institute of Law and the Jersey Legal Information Board.

It should be noted that, by reason of their vocation, nearly all, if not all, of the Jersey lawyers who have been appointed to positions in the Royal Court have been trained as (or received vocational training for) English barristers. This has had an enormous influence on the content of Jersey legal training (an influence, I submit, that has been geared more towards contentious work than non-contentious legal work).

The requirements of that Jersey legal training are set out in provisions of Articles 3 and 4 of the Advocates and Solicitors (Jersey) Law 1997 (the “**1997 Law**”).

### *6.2 Levels of training*

The general training of all lawyers is split into

- (i) academic training, whereby the lawyer first learns the content of certain areas of law, and
- (ii) vocational training, tailored to the practice of law and the following of legal procedures.

Jersey’s comparative lack of resources for training its own lawyers has led to the Island’s legislators (and law firms) preferring non-Jersey legal training over local work experience as part of the training path of Jersey lawyers.

### *6.3 Academic training*

In most cases (always, in the case of a Jersey advocate), a Jersey lawyers is required to satisfy the academic level of training by acquiring a law degree outside Jersey or passing the Common Professional Examination in Law (the “**CPE**”) available in England Wales to non-law graduates seeking to ‘convert’ to law practice.

Most of Jersey’s lawyers, therefore, are educated at an academic level in a law of a country outside Jersey. Typically, they are educated in English law. This is useful insofar as many of Jersey’s laws are based on English statute (laws passed by the English parliament) and the Royal Court of Jersey has referred to English case law in interpreting such statutes.

The Jersey qualifying examination, which is required to be passed by all Jersey lawyers, goes some way to compensating for a lack of Jersey academic legal knowledge by requiring Jersey lawyers to be educated in areas of Jersey law that differ substantially from that of English law.

Its modules are as follow:-

Jersey Legal System and Constitutional Law  
Civil and Criminal Procedure  
Contract Law  
Law of Security Interests and Bankruptcy  
Law of Immoveable Property  
Testate and Intestate Succession

In addition, candidates must pass a module in Company Law, Family Law or Trusts Law.

#### *6.4 Vocational training*

##### *6.4.1 The incorporation of English legal vocational training into Jersey legal training*

A Jersey advocate must pass the BPTC or LPC without any requirement that the option be exercised with reference to the type of law (contentious or non-contentious) that Jersey advocate intends to practice.

This means:-

- (i) there are Jersey advocates, who have studied the BPTC (focusing solely on *contentious* legal work) who practice non-contentious work in Jersey; and
- (ii) there are Jersey advocates, who have studied the LPC (focusing solely on *non-contentious* legal work), who are permitted to carry out all levels of court work, despite their lack of specialist training in court work.

The situation in paragraph (ii) has been remedied to some extent by the introduction by the Deputy Bailiff of an advocacy training scheme that is compulsory for all Jersey advocates

seeking to specialise in contentious work. The scheme entails annual attendance by these Jersey advocates of courses of two days in length in which English barristers expound upon technical advocacy skills.

There is no equivalent for Jersey advocates practising non-contentious work who have not studied on the LPC.

In my experience, as a former partner of a large law firm supervising trainee lawyers in the non-contentious work of our commercial law department, the trainees who had attended the LPC were more focused on the needs of clients than the trainees who had attended the BPTC. This is despite the fact that, in the area of law in which I practiced, it was more usual to interface with solicitors from abroad, and other professionals, than typical members of the public.

On the other hand, with respect to contentious work, I recently spoke to a Jersey advocate, who is a sole practitioner, who undertakes mainly court work. She had studied the LPC, rather than the BPTC and did not find the BPTC as useful as her work experience in the litigation departments of local law firms and the Deputy Bailiff's training scheme.

#### *6.4.2 Jersey-specific vocational legal training*

A small amount of vocational legal training, in the form of court procedure, is included in the modules on Civil and Criminal Procedure of the Jersey qualifying examination. The compulsory drafting of a contract that once was part of the Conveyancing examination is no longer included.

As a Jersey lawyer, who had trained as an English solicitor, I had privately expressed discomfort to other Jersey lawyers with regard to the lack of required training of Jersey lawyers (particularly Jersey Solicitors who had not undertaken the BPTC or LPC) in professional ethics, which I did not consider to be in the public interest. It was only in 2013, after the observation was made public (in an article by Advocate Renouf in the Jersey Law Review published as late as 2008), that the Jersey qualifying examination was amended to include legal ethics in its content.

The emphasis of the study guide for the Professional Ethics content of the Jersey qualifying examination study guide (the “the **Professional Ethics study guide**”) is on the role of Jersey advocates undertaking court work. This is apparent by the extent to which it refers to specific provisions of the Code of Conduct set down by the English Bar Standards Board (the

**‘English Barristers’ Code of Conduct’)** without referring to any specific provisions of the Code of Conduct of the English Solicitors Regulatory Authority (the **‘English Solicitors’ Code of Conduct’**).

The Professional Ethics study guide does little more than refer to the Jersey Law Society’s Code of Conduct in respect of the professional ethics in respect of non-contentious work (e.g., the giving of undertakings and the rules regarding the holding of client’s monies). These subjects, and the administration and witnessing of oaths, receive much greater attention in the LPC and (given the nature of vocational training in contentious legal work) probably none in the BPTC.

Other than what is available in the way of vocational training in the modules of the Jersey qualifying examination, a Jersey solicitor is not required to complete any vocational training other than ‘employment.’

#### *6.4.3 The work experience component of Jersey legal vocational training*

All Jersey lawyers are required to be employed in a “*relevant office*” for a fixed period before they are allowed to qualify as a Jersey lawyer. A “*relevant office*” is an advocate’s or a solicitor’s office in Jersey, the Law Officers’ Department or the Judicial Greffe. Typically, this work experience is performed while the trainee studies for the Jersey qualifying examination.

This period of employment is two years in the case of a Jersey Advocate and longer for Jersey solicitors by at least a year (suggesting that a year’s work experience in a Jersey law office can compensate for not having taken the LPC).

A Jersey solicitor must be employed in a “*relevant office*” for at least five years prior to qualification if he or she has undertaken no formal legal academic training other than passing the Jersey qualifying examination (suggesting that two years’ work experience in a Jersey law office can compensate for not having completed any university level legal academic study (whilst not being regarded as sufficient for the person ever to be described as a Jersey advocate and to have rights of audience in all of Jersey’s courts).

Regardless of this, and in stark contrast to English vocational legal training, there is no regulation of the content or nature of supervision of the work experience requirement of *any*

Jersey lawyer.

A structured training contract is likely to be attractive to prospective trainees and to future employers of those trainees alike, but only those larger firms, with partners trained as English solicitors, are likely to offer them.

No reduction of the required length work experience is available for qualified English solicitors, who will have completed a two year training contract) or qualified English barristers (who will have completed a years pupillage), despite their extra training and relevant work experience in what is likely to be the specialisation that they will practice in Jersey. This means it takes longer for such a lawyer to acquire the seniority necessary for partnership in a Jersey law firm than a lawyer who returned to Jersey to qualify immediately after passing the BPTC or LPC.

#### *6.4.4 The study of the Certificat d'Etudes Juridiques Françaises et Normandes in lieu of an Jersey advocate's work experience*

Paragraph 2 of Schedule 3 to the 1997 Law allows a person who has obtained a *Certificat d'Etudes Juridiques Françaises et Normandes* of the University of Caen to dispense with the need for work experience in a Jersey legal environment before qualifying as a Jersey Advocate.

This is a throwback to a time when a former Bailiff, possibly with his judicial role in mind, used to encourage aspiring Jersey advocates to attend a customary law course at Caen on the basis that, instead of the English common law that supplements English statutes, Jersey has a customary law that falls outside the scope of English university law degrees.

However, the customary law taught in Caen is not the same customary law as that of Jersey. The usefulness of the course is likely to be restricted to cases where Jersey customary law is particularly obscure. It therefore is more potentially useful to a Jersey advocate aspiring to a court role or advanced contentious work, or a Jersey advocate specialising in Jersey property law (which involves a substantial amount of Jersey customary law), than a Jersey advocate practising non-contentious work other than Jersey property law.

Whilst there is an argument for some accreditation for attending the course, partners in the commercial law and trust departments of large Jersey law firms have questioned whether a

period at a French university could fairly be regarded as fully equivalent to work experience in a Jersey law firm.

*6.4.5 Factors that may discourage Jersey lawyers from choosing vocational training that is most appropriate for their intended area of specialisation.*

It has become common for at least the large Jersey law firms to fund the costs of attending the BPTC or LPC. I do not have information on the comparative costs of the two courses or the extent to which trainees sponsored by those firms are encouraged to take the LPC in preference to the BPTC or vice-versa, bearing in mind.

I do, however, note that, because of the commercial interests of the firms sponsoring trainee Jersey lawyers, factors extraneous to the intended specialisation of Jersey lawyers have played a factor in encouraging lawyers to qualify as Jersey Advocates or Jersey Solicitors. The legal aid scheme (discussed elsewhere in this Submission) was one of those factors at the time I qualified as a Jersey Solicitor.

The number of Jersey advocates specialising in non-contentious work without having studied the LPC or qualified as an English Solicitor, may outnumber other Jersey lawyers for the following reasons:-

- (i) Jersey legislation potentially requires more examinations to be passed over a longer period if a Jersey advocate favours English legal vocational training in the form of that provided to English solicitors over that provided to English barristers (see Appendix One for an explanation of this position;
- (ii) a false perception (but widely held by those trained as English barristers!) that English Barristers are superior to English Solicitors;
- (iii) the failure of Jersey legislation to embrace, or give credit for, training as a English Solicitor or to extensively compensate for a Jersey Advocate or Jersey Solicitor for not having received such training; and
- (iv) the convenience for large firms employing such advocates who might be called upon to step into other routine court appearances such as the swearing of Jersey property conveyances in the Royal Court and service obligations under the current legal aid scheme legal aid.

I submit that, as non-contentious legal work is the bulk of Jersey legal work, Jersey lawyers should be encouraged to specialise in this area at a vocational level and any incentives to doing so for extraneous reasons removed. The Jersey legal training path for Jersey lawyers

intending to practise non-contentious work should be reviewed by a Panel of practicing English solicitors and lay persons representing Jersey clients.

Jersey lawyers wishing to perform contentious legal work should follow a separate training path, if that is to be their specialisation and sole intention, or an additional training path if they wish to perform non-contentious work as well.

## **SCHEDULE TWO**

### **Regulation of Jersey legal practitioners**

#### ***1. Background***

The only form of statutory regulation of Jersey lawyers takes the form of requiring them to swear in court an ill-defined oath, in archaic French, upon their registration in court and, in the case of Jersey Advocates (and in very limited circumstances, Jersey Solicitors), *the Loi (1961) sur l'exercice de la profession de droit à Jersey*, a law so obscure that it does not appear to form part of the content of the syllabus for the Jersey qualifying examination.

Like barristers and solicitors in England, Jersey lawyers are regarded as officers of the Jersey court and are, upon qualification, registered in its roll<sup>7</sup>. Discipline of conduct of Jersey lawyers was originally a court matter and the Royal Court has an inherent jurisdiction over the rights of Jersey lawyers to practice.

This is reflected in the 1997 Law, which entitles a Jersey lawyer to practise law if he or she has been 'admitted to the Bar' or 'admitted as a solicitor' (i.e., registered in the list or 'roll' of members of the Royal Court).

There is no Jersey legislation that permits the independent practise of Jersey law by other legal practitioners such as conveyancers or legal executives who operate in narrow specialised fields of non-contentious legal practice.

It follows, although it is not stated in any Jersey legal statute, that the Royal Court has the ability to 'strike off' Jersey lawyers from its roll (using English legal terminology). There certainly have been cases of Jersey advocates having been suspended from the roll, following a finding of professional conduct by the Jersey court, but there is no statute or Jersey case law or even formal rules of the Jersey court making clear in what circumstances this might occur.

There are some difficulties with the court regulating the conduct of Jersey lawyers because lawyers have a duty to serve both the court and their clients. That may give rise to a conflict between those interests and there are no clear rules on how the court should resolve such matters.

Matters of alleged professional misconduct by Jersey lawyers heard by the Royal Court have included a claim (in 2003) against two advocates regarding the misapplication of monies held in two client accounts and (in 2002, in an unreported judgment) a claim against a Jersey advocate who accessed the file of a client of his firm in order to use its information for his own purposes, which were adverse to those of the client. In the latter case, the court suspended the advocate in question for 2 months.

As noted by Advocate Falle in an article in the Jersey Law Review on the Advocate's Oath, 'the text of the oath does not amount to a comprehensive code of conduct'. In 1977, in the case of *Re an Advocate*, the Court of Appeal stated the urgent need for clear rules of procedure in disciplinary matters, both for the benefit of the public and the profession, which was echoed in paragraph 6.15 of the Report of the Legal Practice Committee RC 35/93, which recommended the urgent introduction of legislation.

## ***2. Role of Jersey Law Society in regulation of Jersey legal practitioners***

Prior to the enactment of the Law Society of Jersey Law 2005 (the "**Jersey Law Society Law**"), the Jersey Law Society was a representative body for the Jersey legal profession, whose main role was to promote its interests.

### *2.1 Illegality of current structure of Jersey Law Society*

The Jersey Law Society Law incorporated the Jersey Law Society and not only entitled any Jersey lawyer to be an ordinary member of the Jersey Law Society, provided he or she wasn't suspended from practice, but requires a Jersey lawyer to be so in order to practice.

The preamble of the Jersey Law Society Law indicates that its main intent was to provide for the 'disciplinary control of' Jersey lawyers. Article 18 provides for the Jersey Law Society to have a disciplinary panel comprising of ordinary members of the Law Society, who must have practiced for at least 10 years, as well as lay members.

These may be outnumbered by the Jersey lawyers unless the Chief Minister specifies otherwise and no such order appears to have been made. This Submission submits that the composition of the disciplinary panel may deter members of the public from bringing complaints owing to a perception that the Jersey legal profession will look after its own.

Whilst the compulsion of Jersey lawyers to be ordinary members of the Law Society would appear desirable to enforce the disciplinary and complaints procedures set out in the Jersey Law Society Law, unfortunately, and somewhat bewilderingly, in view of the date of the Human Rights (Jersey) Law 2000 (the “**Human Rights Law**”), Article 3 of the Jersey Law Society Law, in prohibiting any Jersey lawyer from practicing Jersey law unless he or she became an ordinary member of the Jersey Law Society, is in breach of the Human Rights Law.

Part One of Appendix Two contains extracts from an article explaining why the lack of choice given to Jersey lawyers in forming an association constitutes a breach of Article 2 of the Human Rights Law insofar as it incorporates Article 11 of the European Convention on Human Rights ‘the **Convention**’) concerning forced association.

## *2.2 Conflict of interest in current structure of Jersey Law Society*

I have not confirmed what the objects of the Jersey Law Society were before the enactment of the Jersey Law Society Law. However, Article 8 of the Jersey Law Society Law requires the Jersey Law Society to pursue the following as part of its objects:-

- (a) to encourage and promote the upholding of the rule of law;
- (b) to promote high standards of professional conduct among practitioners; and
- (c) to regulate, foster and protect the interests of its members and the practice of law in Jersey.

In order to regulate its members, Article 38 of the Jersey Law Society’s bye-laws requires its ordinary members to observe the Code of Conduct. The current content of that Code of Conduct is discussed in Paragraph 4 of this Schedule under the heading “***The Jersey Law Society’s Code of Conduct***”).

Without wishing to impute any lack of professionalism or bad intent on the part of the Jersey Law Society in drafting its Code of Conduct, it should be noted that, in regulating its members, the Jersey Law Society’s duty is to act in the interests of its members, rather than the public. There therefore is a case for reviewing the Code of Conduct from a public interest standpoint.

### *2.3 Need to split functions of Jersey Law Society*

The conflict of interest, along with the breach of Article 2 of the Human Rights Law of the current mechanism for the regulation of Jersey lawyers, merits the establishment of a separate statutory authority for the regulation of Jersey lawyers and a restoration of the functions of the Jersey Law Society solely as a voluntary organisation representing the interests of, and offering support to, its members.

A similar split of functions occurred in England (perhaps in response to its own human rights legislation) with the enactment of the English Legal Services Act 2007. This hived off the regulation of legal services into a separate Legal Services Board that oversees regulatory bodies established to regulate different areas of legal practice.

The previous regulatory functions of the English Law Society were transferred to a separate and independent regulatory authority, under the regulatory umbrella of the Legal Services Board, known as the Solicitors' Regulation Authority (the "**SRA**"). The objects of the SRA and the English Law Society reflect the separation of regulatory and representative functions. The Bar Council similarly divested its regulatory functions into the Bar Standards Board (the "**BSB**").

The objects of the Legal Services Board are set out in Part Two of Appendix Two

There currently is no form of regulation of paralegals other than, to the extent that they are working for a Jersey lawyer, Paragraph 2 of the Code of Conduct, the contents of which are set out in Part Three of Appendix Two.

### **3. *The meaning of 'practise'***

There is no definition in Jersey law of the term 'to practice law', or to practice law 'as a Jersey advocate' or 'as a Jersey solicitor', which makes the position of certain Jersey lawyers who have retired from law firms, but continue to work in other capacities, uncertain. It would appear that, whereas someone advising in Jersey law (like an English Solicitor or a paralegal in Jersey) is not regulated, a Jersey lawyer, simply by having qualified as such, will be.

The SRA in England regards any person practising law in the capacity of a English solicitor to be practicing law as an English Solicitor. It is unclear whether that means that, just because an English Solicitor is capable of practising law, all work of a legal nature that is performed by that

English Solicitor that should be regarded as the practice of law by that English solicitor.

The position is no clearer under Jersey law. Neville Benbow of the Jersey Law Society expressed the view to me that he would regard a Jersey lawyer as practicing law if engaged to advise on law.

However, Neville Benbow has also expressed the view that in-house lawyers would not be regarded as practising law (and therefore avoid the costs of compulsory continuing education and legal aid obligations) if they do not hold themselves out as calling themselves advocates.

This would appear to make a number of retired lawyers, who are known to be such and who act as independent legal consultants, directors of local companies or head up certain statutory Boards to fall within the definition, requiring them to be ordinary members of the Jersey Law Society and to be subject to its Code Of Conduct including requirements for insurance cover of the same amount as a Jersey lawyer in full-time practice, compulsory continuing education requirements and to perform legal aid certificates (in short a Jersey lawyer retiring from full-time practice would need to retire any work where his or her legal skills and experience is useful).

The legislative intent regarding the regulation of legal practise should be made clearer, as must the Jersey Law Society's Code of Conduct.

#### ***4. The Jersey Law Society's Code of Conduct***

The Code of Conduct of the Jersey Law Society is a much sparser document than either the English Barristers Code of Conduct and the English Solicitors' Code of Conduct.

The study guide for the Professional Ethics content of the Jersey qualifying examination indicates that the reason for this is the benefit of the Code of Conduct being 'more concise and accessible'.

The English Barristers Code of Conduct and the English Solicitors' Code of Conduct are indeed daunting in their size and amount of detail: however, they serve as reference guides when matters of professional conduct need to be considered by a legal practitioner and, at least in the case of English Solicitors, are not required to be studied in detail as part of their vocational training.

The study guide for the Professional Ethics content of the Jersey qualifying examination (the "**Jersey Professional Ethics Study Guide**") mentions that, in considering cases of alleged professional conduct by Jersey lawyers, the Jersey court has referred to both the English Barristers

Code of Conduct and the English Solicitors' Code of Conduct, when considering alleged professional misconduct on the part of Jersey lawyers to 'fill in the gaps'.

At the same time, the Royal Court said in 2007 (in the case of *Abacus v De Figueiredo*) that 'allowances may need to be made for the size of the local Bar and the limited number of firms available to clients to choose from.'

This indicates that the Code of Conduct of the Jersey Law Society is not clear and, to the extent that there are any 'gaps' involving a conflict or difference in approach between the English Barristers Code of Conduct and the English Solicitors' Code of Conduct, Jersey lawyers will not know their obligations without the matter being determined by the Royal Court.

At the same time, the officers of the Royal Court have been trained in the English Barristers Code of Conduct and cannot be regarded as specialists in the English Solicitors' Code of Conduct (nor can any Jersey lawyer who has not been trained as an English Solicitor). It is noticeable that the Jersey Professional Ethics Study Guide refers more to the English Barristers Code of Conduct than the English Solicitors' Code of Conduct.

An example of the different approaches between lawyers trained as English barrister and lawyers trained as English solicitors may be seen by contrasting in the content of the Jersey Code of Conduct in respect of conflicts of interest with the Code of Conduct adopted by the SRA (see Part Four of Appendix Two)

This Submission submits that it cannot be in the public interest for:-

- (i) the Jersey Code of Conduct to be more orientated towards the practice of contentious work than non-contentious work; and
- (ii) Jersey lawyers to be governed by a Code of Conduct with 'gaps' in it, the details of which have not been fully considered on behalf of the public and published to lawyers.

##### ***5. Contrast of Jersey regulation of Jersey legal practitioners with English regulation of English legal practitioners***

Because English barristers, being restricted to contentious legal work, have restricted contact with the English public, the English Parliament has not considered the regulation of English barristers (which is still largely self-regulated through the English courts and the Bar Standards Board) as of such importance as the regulation of English solicitors.

For this reason, Parliament went as far as to enact the Solicitors Act 1974, despite English solicitors already having their own regulatory committee within the English Law Society.

In 1983, the English Law Society established the Office for the Supervision of Solicitors to deal with complaints about solicitors. But after a split between their regulatory and representative functions, the SRA is now responsible for regulating solicitors under the umbrella of the Legal Services Board.

There is also an independent Legal Ombudsman set up by the Office for Legal Complaints under the Legal Services Act 2007

The Legal Services Board is responsible for overseeing the regulation of all lawyers in England and Wales. For these purposes, a Consumer Panel of lay people, representing consumer interests, advises it on consumer issues.

There are eight separate regulators, overseen by the Legal Services Board, directly regulating the different types of legal practitioner on a day-to-day basis.

The different types of legal practitioner, and their approved regulators, are as follows:

Solicitors — regulated by the SRA

Barristers — regulated by the BSB

Legal executives —regulated by ILEX Professional Standards Board (the independent regulatory arm of the Institute of Legal Executives)

Licensed conveyancers — regulated by the Council for Licensed Conveyancers

Patent and Trade mark attorneys — regulated by the Chartered Institute of Patent attorneys, the Institute of Trade Mark Attorneys, and the Intellectual Property Regulation Board

Law costs draftsmen —regulated by the Association of Costs Lawyers; and the Costs Lawyer Standards Board; and

Notaries — regulated by the Master of the Faculties.

The SRA is responsible for the issuance of practicing certificates to English Solicitors, who in turn must pay an annual practising fee.

The annual fee charged by the SRA currently is £384 (membership of the English Law Society is non-compulsory and free). The annual practising fee charged by the Jersey Law Society currently is £600.

## **SCHEDULE THREE**

### **Administration of Jersey legal aid system**

#### ***1. Need for Jersey to provide legal aid***

Article 6.4(d) of the Convention requires everyone charged with a criminal offence to have the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

There is no other requirement external to Jersey law in respect of the provision of free legal advice, which is provided by different jurisdictions in different ways.

Reasons for providing legal aid in addition to the requirement of the Convention include:-

- promotion of the role of law
- increased confidence in the fairness and accessibility of the justice system
- avoidance of costs to the community as a result of better justice outcomes (litigants in person generally represent themselves in court more poorly than lawyers trained to represent clients)
- increased efficiency of the justice system and the courts (litigants in person lengthen court proceedings and take up the time of court officials, delaying the hearing of other cases and increasing the costs of hearing for paying clients)

#### ***2. The current Jersey legal aid scheme.***

##### ***2.1 The problems for the Law Society in administering legal aid.***

Jersey law makes no express provision for legal aid. The current legal aid scheme started as a charitable system from a voluntary interpretation given by Jersey Advocates, back in 1904, of the customary oath given by them upon being registered in the Royal Court. A brief summary

There is an inconsistency between the position of Jersey Advocates and Jersey Solicitors with respect to the performance of legal aid, which is discussed, along with the background to the current legal aid system, in Part One and Part Two of Appendix Three respectively.

To spread the cost of its performance across the profession, the Jersey Law Society now requires *all* Jersey lawyers to perform the tour de role system pursuant to Paragraph 3 of its Code of Conduct. This puts the Jersey Law Society in a position of conflict with its own objects, insofar as it is required to promote the interests of its members.

Even worse, in making performance of the current legal aid scheme a compulsory scheme for its members, rather than a voluntary one (at least in the case of Jersey solicitors and to the extent that there is any argument that performance of the Jersey legal aid system is not otherwise compulsory as a matter of Jersey law), Paragraph 3 fails to comply with Article 4(2) of the Convention, which prohibits of forced or compulsory labour.

The situation is exacerbated by the compulsory adherence of members of the Jersey tour de role. Because of the advantages that the scheme gives to lawyers of more than 15 years standing over lawyers of less than 15 years standing (at least to the extent there is argument that participation in the Jersey legal aid system is not otherwise compulsory for Jersey solicitors), and to lawyers specialising in criminal and family law over lawyers who don't, the Jersey legal aid scheme appears to offend the provisions of Article 8(1) of the Competition (Jersey) Law 2005 (the '**Competition Law**'), which prohibits persons carrying on a business from prohibits making an arrangement that has the object or effect of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey.

## *2.2 Further problems with the legal aid scheme from the perspective of a practicing lawyer*

Participation in the legal aid scheme also poses a professional conflict for individual Jersey lawyers for the following reasons set out below.

### *2.2.1 Conflicts in legal position and lack of clarity regarding interpretation of the oaths of Jersey lawyers.*

- I. Paragraph 3 of the Code of Conduct may be in breach of Jersey's human rights legislation and Jersey competition law (see Paragraph 2.1);
- II. the oaths of Jersey lawyers require them to defend and observe the laws and customs of

Jersey;

- III. failure by a Jersey lawyer to observe the Jersey Law Society's Code of Conduct is a disciplinary matter that could result in that Jersey lawyer being prevented from practicing law; and
- IV. because of the different nature of the oaths taken by Jersey solicitors and Jersey advocates, it is not clear, at least in the case of Jersey Solicitors, and even less in the case of Jersey Solicitors of more than fifteen years' standing, if performance of the *tour de rôle* *does* satisfy their obligations under their respective oaths to assist widows, paupers and orphans

This affects the ability of Jersey lawyers to comfortably practice and the availability of Jersey lawyers. A letter acknowledging this position and its effect is included in Appendix Six.

#### 2.2.2 *Administration of tour de rôle*

The good faith of legal aid clients often is in doubt and their true financial position cannot be easily ascertained. Some legal aid clients claim to have no income or assets at all, in unlikely circumstances.

One of my partners at Mourant Ozanne (who has since retired) made the observation how legal aid clients seem to find money for weddings but not divorces.

A system operated by the States of Jersey as part of the social welfare system could circumvent such abuse.

#### 2.2.3 *Position of lawyers not skilled in legal aid work*

The current legal aid system allocates cases on an ad hoc basis regardless of a lawyer's area of expertise. It does, however, allow the legal obligations of one Jersey lawyer to be performed by another Jersey lawyer, although the validity of this interpretation of the oaths of Jersey lawyers does not appear to have been tested in the Jersey court.

A Jersey lawyer practicing as a sole legal practitioner specialising in an area of legal practice

other than criminal and family law (in the vast majority of legal aid certificates are allocated under the *tour de rôle*) is faced with the choice of either:-

- (i) practising law outside of their area of expertise and thereby becoming a general practitioner; or
- (ii) paying another Jersey lawyer, who practises criminal and family law, to perform his or her obligations under the *tour de rôle*.

A disincentive to that sole legal practitioner learning sufficient law and procedure to perform the legal aid obligations is that the time in so doing reduces that lawyer's capacity to take on fee-paying work and dilutes his or her ability to offer the benefits of specialisation. Furthermore, it is not possible to predict how time-consuming the legal aid would be. It could consume the lawyer's ability to earn any fees at all.

As a specialist in commercial law, I have enquired into the possibility of another Jersey lawyer, who generally practices criminal and family law, performing my obligations under the *tour de rôle* for me.

The lawyer concerned has informed me that she would charge me £500 for each 'low-risk' duty solicitor certificate that is issued to me (unfortunately, this is very limited because, being a Jersey Solicitor, I am advised by the Acting Bâtonnier (who administers the legal aid scheme) that I would not be assigned any duty advocate work) and £3,500 for any 'live certificates'. These are legal aid certificates that could involve more extensive legal work.

As I cannot predict the nature of the Jersey legal aid certificates that would be assigned to me, it is reasonable for me to charge clients on the basis that I will end up paying the higher amount to outsource each legal aid certificate assigned to me, particularly as I do not propose to practise my specialization 'full time'.

A full time specialist lawyer outsourcing his or her legal aid has a greater opportunity to spread the risk but, even then, might question his or her ability to successfully do so and, at best, seek some form of insurance to cover that spread.

The main problem with outsourcing my legal aid obligations is that I cannot control how much I will be charged for this service, even in the unlikely event that the outsourcing of legal aid becomes so profitable that lawyers offering such a service compete to sell it to me (see Paragraph 6).

Even then, their costs of servicing their legal aid obligations will, by virtue of their chosen field of practice, be less than mine.

I understand from Neville Benbow that the legal aid also poses a problem for Jersey lawyers

employed in-house, which seems to have been circumvented by them not calling themselves advocates. This begs the question what Jersey legislation means by the practice of law.

#### *2.2.4 Position of lawyers skilled in legal aid work*

##### *I. Lawyers working in the legal aid departments of commercial law firms*

Several firms, specialising in areas of other than criminal and family law (generally, commercial law), have established specialist legal aid departments to service the legal aid obligations of their main lawyers at a lower cost.

These departments will be overseen by Jersey lawyers specialising in areas of other than criminal and family law, many of will undertake private client work as well. This is likely to be of much less volume than the legal aid work but the legal aid work will effectively be paid for by the fees charged by the main lawyers working in the commercial department of that firm.

Because the lawyers or legal assistants working in the specialist legal aid department will be perceived as not bringing in the same amount of income as the fees charged by the other lawyers in the areas of the firm, their partnership prospects are reduced, despite their expertise in their own specialisation. This may encourage the employment of paralegals, with no partnership aspirations, rather than Jersey lawyers (who are likely to be more expensive)

Although the Jersey legal aid system presents an opportunity for practitioners of criminal and family law to charge other lawyers, specialising in areas outside criminal and family law, for the performance of those lawyers' legal aid certificates of lawyers (see Paragraph 6), this still is unlikely to command fees of the same level as the fees charged for the performance of commercial law.

##### *II. Lawyers working outside the legal aid departments of commercial law firms*

The lawyer who has offered to perform my legal obligations for me has a risk that her own legal aid obligations could consume her fee earning capacity. Performing my legal aid obligations in addition to her own work takes on an additional risk legal aid could consume her time completely but, at least, she can charge me for that risk and is comfortable with practicing criminal and family law.

In return for taking on my legal aid work, that lawyer has a source of income in addition to that of her general fee paying work. If enough other Jersey lawyers pay her to perform legal aid certificates, she could specialise in criminal and family law completely or (even

in just one of those areas if she comes to an exchange arrangement with another general practitioner).

However, the existence of specialist legal departments in large Jersey law firms, that service the legal aid certificates of lawyers in those firms not specialising in criminal and family law, limit that source of income.

### 2.3 *Problems with the legal aid scheme from a client's perspective*

- I. Members of the Jersey Law Society have a conflict of interest in performing their obligations under the tour de role. Jersey lawyers are seeking to make a living from their profession and providing free legal services is obstructive to this aim. It therefore is in their interests to provide these free legal services as cheaply as possible.

With this in mind, they may delegate work to paralegals or legal executives who, despite paragraph 1(5) of the Jersey Law Society's Code of Conduct requiring 'appropriate arrangements are in place for supervision' of such staff, may not be supervised as closely or qualified and experienced to a level that serves the legal applicant best. 'Appropriate arrangements' are not defined by the Code of Conduct.

This can compromise (and, in some circumstances known to me outside my own practice as a lawyer, has compromised) the quality of legal advice provided under the legal aid scheme.

- II. Some law firms may require a Jersey advocate to service legal aid work, even though the advocate's main practice area may be in other area of legal specialisation. I have encountered Jersey advocates who take on legal aid cases unenthusiastically, particularly where the fine for a minor criminal infraction of which a Jersey legal client is accused is a fraction of the cost of that advocate's time for defending that client.
- III. The operation of the tour de role is such that a client is assigned a Jersey lawyer and has no choice of lawyer

While it is understandable that a client without financial resources might be restrained from demanding the assistance of any lawyer of that client's choosing (particularly if that lawyer doesn't specialise in criminal and family law or to avoid all legal aid clients demanding the same lawyer), this gives the client less control over their own destiny. If

they are unhappy with the performance of the Jersey lawyer who has been assigned to them, their options are unclear.

### *3. Alternative legal aid schemes*

Typically, legal aid is provided by governments as part of their welfare provision and usually is means tested.

In England, legal aid is paid by the Legal Aid Agency, on behalf of the English government, to solicitors and barristers in private practice, according to a scale. A limited number of public defenders are directly employed by the Legal Aid Agency in *Public Defender Service* offices; they provide advice in police stations and advocacy in magistrates and crown courts.

Exceptions to civil legal aid include most personal injury cases (which are now dealt with under Conditional Fee Agreements), and cases associated with the running of a business.

A paid legal aid system, as in Guernsey, that might permit specialism would be more in the Jersey public interest than the current system. Alternatively, a dedicated legal aid chambers, that is part of the Social Security system, or a Public Defenders' Office that is part of Jersey court and in which conflicts/complicated cases are outsourced to other firms might be considered.

One of the main deterrents to the States of Jersey having become more actively involved in the dispensation of legal aid may have been the cost of funding legal aid.

This Submission submits, if funding is a problem for the States of Jersey, that it might explore a temporary funding arrangement with the Jersey Law Society.

They could look at the possibility of Jersey lawyers making a temporary contribution towards funding, perhaps in the form of a practicing fee paid by to a new statutory regulatory authority.

The contribution of individual lawyers might be calculated by an averaging of the costs of Jersey lawyers currently performing (or outsourcing) legal aid obligations and could be 'sold' to Jersey lawyers as a means of insuring against the uncertain costs of performing legal aid.

It could be possible, depending on the nature of the new legal aid system, for this contribution to be made by financial payment or the performance of lawyers specializing in criminal and family law of legal services according to a fixed scale.

It might also lead to future tax breaks for Jersey lawyers insofar as any funding by them might be regarded as a loan.

## **APPENDIX ONE**

### **Training of Jersey lawyers**

Because of the way in which the 1997 Law is drafted, it is arguable that the examination in the PSC, that is undertaken by English solicitors in the course of their training contract, is an examination 'included in any course validated by the Law Society of England and Wales for admission as a solicitor of the Supreme Court of England and Wales'.

If this is the case, it would not be possible for anyone who chooses not to take the BPTC, to qualify as a Jersey advocate without completing the training contract of an English Solicitor. This could be a further disincentive to lawyers wishing to specialise in non-contentious legal work from studying the LPC

I understand that the Royal Court admits lawyers who have only taken the LPC but this would appear to be contrary to legislative intent.

## **APPENDIX TWO**

### **Regulation of Jersey lawyers**

#### **PART ONE**

##### **Relevant extracts from**

##### **‘NEGATIVE FREEDOM OF ASSOCIATION: ARTICLE 11 OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS’**

(An Article By Wino J.M. Van Veen

Associate Professor, Faculty Of Law, Free University Of Amsterdam

published In Volume 3, Issue 1, September 2000 of

The International Journal Of Not-For-Profit Law)

‘A differentiation is made between positive and negative freedom of association. Positive freedom of association relates to the freedom to form and enter into an association. The converse, negative freedom of association, implies that no one can be compelled to form or join an association. Although the concept of freedom of association is usually thought of in the positive sense, negative freedom of association is just as fundamentally important. The voluntary nature of the association is an essential factor. It should not be possible to force an individual to be associated with an organisation that has been established pursuant to civil law. Thus, it is generally assumed that freedom of association protects not only the right to form and participate in voluntary organisations but also protects citizens from being forced to form or participate in such organisations.

In practice, however, it is apparent that in many countries forced association is common practice, with respect to both relationships that involve only citizens and/or private-law entities and relationships between the government and citizens or organisations established pursuant to civil law. It thus appears that negative freedom of association is not receiving the attention it deserves.’

‘Forced association can occur in various forms, one of which is de jure, in which case the membership of an association is legally imposed. That would be the case, for example, if the possession of a particular capacity automatically entailed membership of a certain association by law (or if that were legally permitted). That capacity could consist, e.g., of the possession of a certain piece of real property or the possession of particular qualifications required to exercise a certain profession.

A second form of forced association is forced association de facto, in which case the interested party is given a choice as to whether to become and remain a member of an association, but the refusal to do so would have serious negative consequences for the relevant person. An example would be membership of a trade union on pain of loss of employment, or membership of an interest group (whether or not contractually stipulated) on pain of being forced to terminate certain activities or give up (ownership) rights etc.’

‘...in order to determine the scope of freedom of association, it is essential to determine what, exactly, an association is within the meaning of Article 11 of the [Convention]. First, it must be noted that organisations governed by public law are not covered by the freedom of association provided for in Article 11 of the [Convention]. An example of such an organisation would be a professional association that is established by law and that is vested with powers pursuant to public law. Compulsory membership of such a professional association would not constitute an infringement on freedom of association if and to the extent that it does not impede the relevant professionals from voluntarily establishing and becoming members of another professional association.’

‘The case of *Sigurður A. Sigurjónsson v. Iceland*, related to membership of an organisation (‘Frami’) that was (primarily) governed by private law, which was a condition for obtaining a permit to work as a taxi driver.’

The Icelandic government tried to counter the invocation of [Article 11 of the [Convention], on the basis of violating negative freedom of association with the argument that the applicant was entirely free either to accept this or to seek employment in another field.

The Court made short work of that view, stating that the fact that forced association was involved, on pain of losing the permit, was a form of coercion that strikes at the very substance of the right guaranteed by Art. 11 and itself amounts to an interference with that right...

The European Court’s decision thus leaves little room for doubt that also de facto forced association infringes negative freedom of association as guaranteed by Article 11 of the [Convention], and it must therefore be reviewed on the basis of that Article

## **PART TWO**

### **Objects of the Legal Services Board**

#### *1. The regulatory objectives of the Legal Services Board*

(1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

(3) The “professional principles” are—

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

## **PART THREE**

### **Paragraph 1(5) of the Code of Conduct of Jersey Law Society**

5) A member's firm shall properly manage and administer its practice and shall ensure that appropriate arrangements are in place for supervision of qualified and unqualified staff, and for making them aware of those parts of this Code of Conduct which are relevant to their respective roles in the firm.

## **PART FOUR**

### **Comparison of Codes of Conduct and Code of Conduct of SRA regarding Conflicts of Interest**

#### **PARAGRAPH 2 OF THE JERSEY LAW SOCIETY'S CODE OF CONDUCT**

'A member or a member's firm must not act where the member's or that firm's own interests conflict with those of the client or, subject to the last sentence of this Sub Rule (3), in any matter where a

conflict of interests or duty, or a significant risk thereof, arises between two or more clients of a member's firm. Neither a member nor a member's firm may act for two or more clients in relation to matters in which there is dispute between those clients. A member must bear in mind the obligation to advise in the best interests of the client, the duty owed to each individual client and the extent to which such duty continues in respect of a former client following termination of the retainer. In non-contentious transactions, a member or a member's firm may act for more than one client whose interests conflict in the transaction only with the written consent of all clients who are party to such a transaction.'

### **SUMMARY OF CHAPTER 3 OF THE SOLICITORS' REGULATION AUTHORITY CODE OF CONDUCT 2011**

Chapter 3 of the Solicitors' Regulation Authority Code of Conduct 2011 provides that a lawyer may only act with appropriate safeguards, if

(i) where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it:

- (a) the lawyer has explained the relevant issues and risks to the clients and the lawyer has a reasonable belief that they understand those issues and risks;
- (b) all the clients have given informed consent in writing to the lawyer acting;
- (c) the lawyer is satisfied that it is reasonable for the lawyer to act for all the clients and that it is in their best interests; and
- (d) the lawyer is satisfied that the benefits to the clients of you doing so outweigh the risks;

(ii) where there is a client conflict and the clients are competing for the same objective, if:

- (a) the lawyer has explained the relevant issues and risks to the clients and has a reasonable belief that the clients understand those issues and risks;
- (b) the clients have confirmed in writing that they want the lawyer to act, in the knowledge that the lawyer acts, or may act, for one or more other clients who are competing for the same objective;

- (c) there is no other client conflict in relation to that matter;
  
- (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and
  
- (e) the lawyer is satisfied that it is reasonable for the lawyer to act for all the clients and that the benefits to the clients of lawyer doing so outweigh the risks.

## **APPENDIX THREE**

### **Administration of the Jersey Legal Aid Scheme**

#### **PART ONE**

##### **Background to current legal aid scheme**

Jersey law makes no provision the dispensation of legal aid. Such as there is arises from

Part of the oath sworn by Jersey lawyers upon admission to the Roll of Advocates or Solicitors (as the case may be) requires an advocate to attend to the needs of the poor, including widows and orphans (“...*Vous.. assisterez aux veuves, pauvres et orphelins...*”).

The current scheme arises from a decision by the Jersey Bar in 1904 to interpret the customary oath of Advocates sworn in court as an Advocate through the operation of a Tour de Role that would only require Advocates of less than 15 years’ qualification as a Jersey Advocate to give free legal advice and representation to the people assigned to them by the Bâtonnier.

The legal basis for the interpretation of this oath is extremely doubtful, particularly in view of what either be regarded as its exclusion of Jersey advocates of more than fifteen years’ standing from performance of legal aid duties or the permission given to them to delegate the performance of their obligations under their oath to Advocates of less than 15 years’ standing.

The interpretation has never been tested in a Jersey court: in a professional misconduct hearing in 1998, involving Advocate Philip Sinel, Counsel accepted that, in refusing to perform the tour de role, Advocate Sinel was in breach of his oath rather than challenged the interpretation in court.

The decision of his Counsel may have rested upon a formal legal Opinion of another Counsel that had been obtained by the Jersey Bar or Law Society. I have not seen that Counsel’s Opinion but I suspect, that insofar as the Opinion may have suggested any possibility that the interpretation would be upheld in court, this is because, in the absence of Jersey statute, Jersey law is customary law. Ninety-four

years of the *tour de rôle* legal aid scheme having been operated by Advocates to satisfy the oath, without any legal challenge, may have satisfied Counsel that the interpretation had become a matter of Jersey customary law.

It is customary for Jersey Advocates to renew their oath annually in court. Failure of an Advocate to do so deprived him of rights of audience. The Code of Conduct of the Jersey Law Society now requires all members to adhere to the terms of their oaths.

It was not obligatory for Jersey Solicitors to swear an oath similar to the customary oath of Advocates until the enactment of the 1997 Law. Article 8 of that Law requires an oath, with the same content as the customary oath of Jersey advocates, to be sworn by Jersey Solicitors.

If it was the intention of the States of Jersey that the oath sworn by Jersey Solicitors should be interpreted in the same way as the customary oath of Advocates, that intention was not stated clearly. This has led to an inconsistency in which those oaths should be interpreted as a matter of law, which is explained in Part Two of this Appendix below.

Paragraph 3 of the Jersey Law Society's Code of Conduct now requires all its members to discharge their respective oaths through the *tour de rôle* scheme adopted by the resolution of the Jersey Bar in 1904 (notwithstanding that it only applied to Jersey Advocates, rather than Jersey Solicitors at the time).

The legal aid scheme, either at a customary level, at least, in the case of Jersey Advocates, or by virtue of Paragraph 3, offends the prohibition on compulsory labour in Article 4(2) of the Convention.

## **PART TWO**

### ***Explanation of inconsistency in interpretation of oaths of Jersey advocates and Jersey Solicitors***

There currently is an inconsistency between the correct legal interpretation of the respective oaths of Jersey Advocates and Jersey Solicitors, sworn in connection with their registration as such in court. This is because whereas, the oaths of Jersey Advocates are not written down in statute, forming part

of Jersey's customary law, the oaths of Jersey Solicitors are set out in the 1997 Law.

The interpretation of English statutes by the Jersey courts generally follows English case law.

English case law would hardly support a statute importing something as involved as the *tour de role* legal aid scheme in construing the words "...*Vous.. assisterez aux veuves, pauvres et orphelins...*", let alone any suggestion that that obligation would only need to be performed for the first fifteen of the career of the Solicitor making the oath.

The customary interpretation of the corresponding customary oath for Jersey Advocates may therefore not be interpreted by a Jersey court in the same way.

In the absence of the current statutory mechanism requiring practising Jersey Solicitors to be members of the Jersey Law Society, and Paragraph 5 of the Jersey Law Society's Code of Conduct requiring all Jersey lawyers of less than fifteen years' standing to perform the *tour de role*, it may be possible for Jersey Solicitors to argue that they are not required, as a matter of customary law to perform the *tour de role*.

## APPENDIX FOUR

### Scope of Access to Justice Review

#### *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;

#### *Meaning of 'justice'*

The Oxford English dictionary definition refers to:-

- the administration of law, equity and legal processes
- maintenance of legal, social, or moral principles by the exercise of authority or power; assignment of deserved reward or punishment; giving of due deserts
- the people administering the law; a judicial assembly, a court of justice
- the quality or fact of being just; the principle of) just dealing or conduct; integrity, impartiality, fairness.
- conformity (of an action or thing) to moral right or to reason or truth

## **APPENDIX FIVE**

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

The Chief Minister lodged a Proposition regarding *Justice policy and resources:responsibility* (P.92/2013) on 31st July 2013.

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. The Proposition was debated by the States Assembly on 25th September 2013 and was adopted (39 votes pour; 4 votes contre; and 0 abstentions).