

# Appendix 1 – Current Provisions for the Selection, Appointment and Tenure of the Judiciary and Law Officers in Jersey

Department for Community and Constitutional Affairs

## Judiciary of the Royal Court of Jersey and Court of Appeal of Jersey

### Bailiff of Jersey

**Roles:** The Bailiff's judicial roles<sup>1</sup> include being: President of the Royal Court, *ex officio*; the sole judge of law in all civil, criminal and mixed causes<sup>2</sup>; and, President<sup>3</sup> and Judge<sup>4</sup> of the Court of Appeal *ex officio*.

**Incumbent(s)/Date of Appointment:** William James Bailhache (29.01.2015)

**Selection criteria:** No statutory provision. In practice, holds office of Deputy Bailiff and is qualified as an Advocate of the Royal Court.

**Selection Process:** No statutory provision. By custom and practice, Deputy Bailiff is recommended for appointment as Bailiff unless there is some adverse factor relating to their performance of the functions of Deputy Bailiff. Recommendation is made to the Lieutenant Governor who transmits to the Privy Counsellor with responsibility for relations with Jersey (currently the Lord Chancellor who is the UK Secretary of State for Justice) who makes the recommendation to Her Majesty.

**Appointed by:** Her Majesty<sup>5</sup>. Swears Oath in Royal Court on appointment<sup>6</sup>.

**Tenure:** No statutory provision. In practice, hold office 'during good behaviour' until retirement at the age of 70 which is traditionally expressed in the Bailiff's Letters Patent.

**Remuneration:** Receives such salaries, allowances and is entitled to such pensions or gratuities (if any) as may be determined by the States Employment Board after negotiation with the officers concerned. May not, within or without Jersey, occupy any other paid employment, or any public or parochial office<sup>7</sup>.

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<sup>1</sup> Although the Bailiff has other non-judicial roles, for example as President of the States Assembly, this paper does not seek to deal with any of the Bailiff's non-judicial roles.

<sup>2</sup> Article 15(1) Royal Court (Jersey) Law 1948; <https://www.jerseylaw.je/laws/revised/Pages/07.770.aspx>

<sup>3</sup> Article 9(2) Court of Appeal (Jersey) Law 1961; <https://www.jerseylaw.je/laws/revised/Pages/07.245.aspx>

<sup>4</sup> Article 2 Court of Appeal (Jersey) Law 1961

<sup>5</sup> Article 2(1) Departments of the Judiciary and Legislature (Jersey) Law 1965;

<https://www.jerseylaw.je/laws/revised/Pages/16.300.aspx>

<sup>6</sup> Article 7 and Schedule, Departments of the Judiciary and the Legislature (Jersey) Law 1965: "You swear and promise before God that well and faithfully you will exercise the office of Bailiff (Deputy Bailiff or Lieutenant Bailiff) under our Sovereign Lady Queen Elizabeth the Second in this Her Island of Jersey; that you will be faithful and bear true allegiance to Her Majesty, Her heirs and successors, according to law; that you will uphold and maintain the honour and glory of God; that you will uphold and maintain the laws and usages and the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them; that you will administer justice to all manner of persons without favour or partiality; and that you will take heed of the good advice and counsel of the Jurats as the case may require; all of which you promise on your conscience."

<sup>7</sup> Article 8 Departments of the Judiciary and Legislature (Jersey) Law 1965

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**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>8</sup>.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints and discipline process set out in Bailiff Complaints Procedure<sup>9</sup>.

**Disciplinary Responsibility:** No statutory provision. In practice, the corollary of the appointment power is that it is possible for Crown appointees to be dismissed by the Her Majesty on the advice of the Privy Counsellor with responsibility for relations with Jersey where it has been established that there has been serious misconduct. Disciplinary powers for Lieutenant-Governor set out in Bailiff Complaints Procedure.

### Deputy Bailiff of Jersey

**Role:** Deputy Bailiff's judicial roles include: Judge of the Royal Court; Judge of the Court of Appeal *ex officio*<sup>10</sup>; and, discharging the Bailiff's functions in his absence<sup>11</sup> and, on the authority of the Bailiff, may discharge any function appertaining to the office of Bailiff<sup>12</sup>.

**Incumbent(s) /Date Appointed:** Timothy Le Cocq (02.04.2015)

**Selection criteria:** No statutory provision. In practice, is qualified as an Advocate of the Royal Court.

**Selection Process:** No statutory provision. By custom and practice, a recommending panel consisting of the Bailiff, a Lieutenant Bailiff and the Chair of the Jersey Appointments Commission carries out interviews following consultation with the judiciary, legal profession<sup>13</sup> and the Bailiff's Consultative Panel<sup>14</sup>. The recommending panel makes a recommendation to the Lieutenant Governor who transmits the recommendation to the Privy Counsellor with responsibility for relations with Jersey (currently the Lord Chancellor who is the UK Secretary of State for Justice) who makes the recommendation to Her Majesty.

<sup>8</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGreffre/Pages/CodeConduct.aspx>

<sup>9</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Bailiff%20Complaints%20Procedure%2020150901%20JR.pdf>

<sup>10</sup> Article 2 Court of Appeal (Jersey) Law 1961

<sup>11</sup> Article 5(1) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>12</sup> Article 9(1) and (2) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>13</sup> Including the existing Crown Office holders, the Jurats, members of the judiciary and senior members of the legal profession in Jersey

<sup>14</sup> Which comprises the Chief Minister, the Chairman of the Privileges and Procedures Committee, the Minister for Treasury and Resources, the Chairman of the Comité des Connétables and 5 other members elected by ballot by the States for a period of 3 years.

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**Appointed by:** Her Majesty<sup>15</sup>. Swears Oath in Royal Court on appointment<sup>16</sup>.

**Tenure:** No statutory provision. In practice, hold office ‘during good behaviour’ until retirement at the age of 70 which is traditionally expressed in the Bailiff’s Letters Patent.

**Remuneration:** Receives such salaries, allowances and is entitled to such pensions or gratuities (if any) as may be determined by the States Employment Board after negotiation with the officers concerned. May not, within or without Jersey, occupy any other paid employment, or any public or parochial office<sup>17</sup>.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>18</sup>.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints process set out in Bailiff Complaints Procedure<sup>19</sup>.

**Disciplinary Responsibility:** No statutory provision. In practice, subject to disciplinary control of the Crown. The corollary of the appointment power is that it is possible for Crown appointees to be dismissed by the Her Majesty on the advice of the Privy Counsellor with responsibility for relations with Jersey where it has been established that there has been serious misconduct. In practice, disciplinary powers for Lieutenant-Governor set out in Bailiff Complaints Procedure.

### **Ordinary Judges of the Court of Appeal of Jersey**<sup>20</sup>

**Role:** The Court of Appeal sits to hear appeals against some decisions of the Royal Court in both criminal and civil proceedings<sup>21</sup>. The Judges of the Court of Appeal sit on the Court of Appeal which is constituted when not less than three of them are sitting together<sup>22</sup>.

There is a close relationship between the Court of Appeal of Jersey and the Court of Appeal for Guernsey. For many years, the composition of the panel of Court of Appeal judges has generally been almost identical in both Jersey and Guernsey (save that the

<sup>15</sup> Article 2(1) Departments of the Judiciary and Legislature (Jersey) Law 1965

<sup>16</sup> Article 7 and Schedule, Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>17</sup> Article 8 Departments of the Judiciary and Legislature (Jersey) Law 1965

<sup>18</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGrefte/Pages/CodeConduct.aspx>

<sup>19</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Bailiff%20Complaints%20Procedure%2020150901%20JR.pdf>

<sup>20</sup> The role of the Bailiff as President of the Court of Appeal, and both the Bailiff and Deputy Bailiff as Judges of the Court of Appeal are dealt with above. This section deals with the ordinary Judges of the Court of Appeal (i.e. not the Bailiff or Deputy Bailiff).

<sup>21</sup> Articles 1, 12, 22 Court of Appeal (Jersey) Law 1961

<sup>22</sup> Article 9(1A) Court of Appeal (Jersey) Law 1961

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Deputy Bailiff of Jersey is a member of the Court of Appeal of Jersey). This provides an advantage for the consistent development of the law in both Bailiwicks. It has also been the practice to look to include as members of the panel judges from either Scotland or Northern Ireland or both as well as from England and Wales, in order to provide a variety of judges from different jurisdictional backgrounds.

**Incumbent(s) / Date of Appointment:** Bailiff, *ex officio*, as President of the Court of Appeal (see above); Deputy Bailiff, *ex officio* (see above); Mr James Walker McNeil QC (15.05.2006); Mr John Vanderlure Martin QC (10.09.2007); Mr Nigel Peter Pleming QC (21.07.2008); Miss Clare Montgomery QC (22.09.2008); Mr Jonathan Rupert Crow QC (26.03.2012); Sir Richard Collas, Bailiff of Guernsey, *ex officio* (24.09.2012); Mr Robert Logan Martin QC (22.07.2013) Mr Anthony George Bompas QC (01.07.2014); Mr David Perry QC (01.10.2014); Mr David William Kinloch Anderson QC (01.10.2014); Mr David Doyle QC First Deemster of the Isle of Man, *ex officio* (15.01.2015); Sir Michael Birt (01.02.2015).

**Selection criteria:** Ordinary Judges of the Court of Appeal must hold or have held judicial office in the Commonwealth, or have been at least 10 years in practice at the Bar in Jersey (whether as a Law Officer of the Crown or otherwise), England and Wales, Scotland, Northern Ireland, Guernsey or the Isle of Man<sup>23</sup>.

In practice, given that Royal Warrants expire when the judge attains the age of 72 it is unlikely that a judge who is over 69 or over would be appointed.

**Selection Process:** No statutory provision.

*Appointments from Guernsey and the Isle of Man:* In practice, the Bailiff of Guernsey and the First Deemster of the Isle of Man are appointed as Court of Appeal Judges in Jersey. In practice, the Bailiff of Jersey and the First Deemster of the Isle of Man are also appointed as Court of Appeal Judges in Guernsey.

*Appointments from Scotland:* In practice, the Lord President and the Dean of the Faculty of Advocates advertise for expressions of interest and receive applications. After consultation with the Bailiffs of Jersey and Guernsey, the Lord President and one of the other Judges of the Court of Session will make a nomination to them. The Bailiffs will submit the appointments papers to the UK Ministry of Justice for submission to the Lord Chancellor and Secretary of State for Justice recommending appointment. The formal note signed by the Lord Chancellor and Secretary of State for Justice is sent to

<sup>23</sup> Article 2 Court of Appeal (Jersey) Law 1961

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the Crown Office for onward transmission to Her Majesty together with a draft of the Warrant. If Her Majesty approves the appointment, the UK Ministry of Justice notifies the Bailiffs, confirms the final draft of the Warrant with Crown Office and seeks advice on the proposed swearing-in date. The UK Ministry of Justice then formally issues the Warrant to both Crown Dependencies. Arrangements are then made with the appointee for a swearing-in date so that the appointment can become effective.

*Appointments from England and Wales:* In practice, where a High Court Judge is required, the Lord Chancellor and Secretary of State for Justice writes to the Lord Chief Justice of England and Wales requesting his views as to suitable candidates to be appointed to the Courts of Appeal in Jersey and Guernsey. When expressions of interest are obtained, the Bailiffs of Jersey and Guernsey are consulted and the Lord Chief Justice of England and Wales will then make a recommendation to the Lord Chancellor and Secretary of State for Justice. The process then follows the same as set out for Scotland above. Where a Deputy High Court Judge is required (who is normally someone who is also still in legal practice in England and Wales) the Bailiffs of Jersey and Guernsey identify whether there are particular skill sets for the person to be appointed which would be desirable (for example, whether they are experts in the criminal law, trust law, commercial law etc.) and notify the UK Ministry of Justice, Courts and Tribunals Judicial Appointments Team who notify Deputy High Court Judges in England and Wales of the vacancy, seeking expressions of interest. When the applications are received, the UK Ministry of Justice will consult formally with the Bailiffs of Jersey and Guernsey where there is a full review of the applications, references and experience, and also with the Head of Division of the High Court where the applicant has a specialism. Following the consultation, an applicant is selected and a recommendation is made to the Lord Chancellor and Secretary of State for Justice. The process then follows the same as for Scotland above.

**Appointed by:** Her Majesty<sup>24</sup>. Takes Oath upon taking office<sup>25</sup>.

<sup>24</sup> Article 2 Court of Appeal (Jersey) Law 1961

<sup>25</sup> Article 5 and Schedule 1 Court of Appeal (Jersey) Law 1961: "Vous jurez et promettez par la foi et serment que vous devez à Dieu que bien et fidèlement vous exercerez la charge de Juge de la Cour d'Appel du Bailliage de Jersey; que vous soutiendrez et maintiendrez l'honneur et gloire de Dieu, et de sa pure parole; que vous conserverez et garderez les droits de Sa Majesté notre Souveraine Dame Elizabeth Deux, par la Grâce de Dieu Reine du Royaume-Uni de la Grande Bretagne et de l'Irlande du Nord et de ses autres Royaumes et Territoires, Chef du Commonwealth, Défenseur de la Foi, et qu'à Sa dite Majesté vous serez vrai et loyal sujet; que vous maintiendrez, soutiendrez et défendrez tous les lois, libertés, usages et anciennes coutumes dudit Bailliage, vous opposant à quiconque les voudrait enfreindre; et que vous administrerez bonne et brève justice à un chacun, sans acception de personne"<sup>25</sup>. Unofficial translation: " You swear and promise by faith and oath that you owe to God that faithfully you will be carry out the role of Judge of the Court of Jersey Bailiwick of Appeal; you will support and will maintain the honour and glory of God, and his pure word; you will keep and will guard the rights of Her

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**Tenure:** Hold office during good behaviour<sup>26</sup>.

In practice, on retirement from office the Bailiffs of Jersey and Guernsey and the First Deemster of the Isle of Man automatically cease to be members of the Court of Appeal in Jersey unless a fresh warrant is issued. The remaining members of the Court of Appeal have terms of office expiring when they reach the age of 72.

**Remuneration:** Determined by the Minister for Treasury and Resources and are entitled to reimbursement of all travelling and other expenses incurred by them in the discharge of their functions<sup>27</sup>.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>28</sup>.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints process set out in Judicial Complaints Procedure<sup>29</sup>.

**Disciplinary Responsibility:** No statutory provision. In practice, the corollary of the appointment power is that it is possible for Crown appointees to be dismissed by the Her Majesty on the advice of the Privy Counsellor with responsibility for relations with Jersey where it has been established that there has been serious misconduct. In practice, disciplinary powers for Bailiff set out in Judicial Complaints Procedure.

### Commissioners of the Royal Court

**Role:** Commissioners of the Royal Court are part-time judges appointed to preside over the Royal Court<sup>30</sup>. When presiding over the Royal Court a Commissioner has the powers and duties of the Bailiff when acting in that capacity<sup>31</sup> and such other judicial functions of the Bailiff as the Bailiff may from time to time authorize or require<sup>32</sup>.

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*Majesty our Sovereign Lady Elizabeth the Second, by the Grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth, Defender of the Faith, and that to the said Majesty you will be true and loyal subject; you will maintain, support and defend all laws, liberties, ancient customs and usages of that Bailiwick, opposing anyone who would break them; and that you will administer proper and quick justice to everyone, without exception to anyone . . ."]*

<sup>26</sup> Article 3 Court of Appeal (Jersey) Law 1961

<sup>27</sup> Article 6 Court of Appeal (Jersey) Law 1961

<sup>28</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGrefe/Pages/CodeConduct.aspx>

<sup>29</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>30</sup> Article 10(1) Royal Court (Jersey) Law 1948

<sup>31</sup> Article 12(1) Royal Court (Jersey) Law 1948

<sup>32</sup> Article 12(2) and 10(6)(b) Royal Court (Jersey) Law 1948



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In practice, Commissioners of the Royal Court are requested to sit in the Royal Court: where necessary or desirable to assist the administration of justice having regard to pressures upon the court diary; where a case comes on at very short notice and falls into the class of priority cases (for example, defendant in custody or welfare of children); where the case is expected to run for several weeks and it would be unrealistic for the Bailiff or Deputy Bailiff to sit for that length of time on that case; where the case raises a particular specialism where it might be desirable to appoint a specialist Commissioner to deal with it (for example, a patent case); where for particular reasons it may be desirable to avoid any perception of conflict by having an external judge preside over it.

**Incumbent(s) / Date of Appointment:** Mr Bruce Blair QC (17.06.2004-12.04.2019); Mr Julian Clyde-Smith (15.02.2007-23.09.2020); Miss Pamela Scriven QC (17.07.2007-18.01.2019); Sir Christopher Pitchers (08.12.2008-02.10.2017); Mr David Hunt QC (11.12.2012-09.11.2018); Mr Mark Herbert QC (29.05.2013-25.10.2019); Mr Peter Beaumont CBE, QC (02.12.2013-10.01.2019); The Hon Michael Beloff QC (07.04.2014-18.04.2017); Sir John Nutting QC (07.04.2014-28.08.2017); Sir Michael Birt (09.02.2015-25.08.2018)

**Selection criteria:** Commissioners of the Royal Court must hold or have held judicial office in the Commonwealth or have been in practice for at least 10 years either as a Solicitor (*Ecrivain*) of the Royal Court or at the Bar in Jersey (whether as a Law Officer of the Crown or otherwise), or in England, Wales, Scotland, Northern Ireland, Guernsey, or the Isle of Man<sup>33</sup>.

**Selection Process:** No statutory provision.

*Appointment of retired Bailiffs of Jersey:* In practice, retired Bailiffs, if they agree, are appointed as Commissioners of the Royal Court on or after retirement.

*Appointments from the judiciary outside of Jersey:* In practice, the Bailiff identifies whether there are any Deputy or retired High Court Judges with the relevant skill set for the case in question, who would be interested in being appointed as a Commissioner of the Royal Court. The Bailiff will usually consult with members of the Court of Appeal of Jersey and with the office of the Lord Chief Justice in England and Wales and may advertise for expressions of interest.

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<sup>33</sup> Article 10(2) Royal Court (Jersey) Law 1948

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*Appointments without judicial experience in Jersey from outside or from within Jersey:* The Bailiff usually appoints such people for a specific case or cases, and subject to review thereafter to look at their appointment for a specified term, usually of three to five years, which is often renewed on expiry.

In some cases it may be possible to anticipate the need to appoint a Commissioner of the Royal Court some time in advance. In many others however, the reasons which suggest that it would be desirable to have a Commissioner preside only become apparent shortly before the case has its first hearing. In some instances there are important procedural hearings which take place well before the case ultimately goes to trial.

**Appointed by:** The Bailiff may, from time to time, appoint Commissioners to preside over the Royal Court<sup>34</sup>. Every Commissioner is required to take the following oath before the Superior Number of the Royal Court on appointment<sup>35</sup>.

**Tenure:** A Commissioner of the Royal Court may be appointed for the purposes of hearing such civil, criminal or mixed causes as the Bailiff thinks fit and may be appointed to hear a particular cause or matter or for a term specified at the time of appointment<sup>36</sup>. The Bailiff has the discretion, with the Commissioner's agreement, to extend the term of appointment and may, from time to time, authorize or require the Commissioner to exercise such other judicial functions of the Bailiff as the Bailiff specifies<sup>37</sup>.

**Remuneration:** Commissioners of the Royal Court receive such remuneration as may be determined, after consultation with the Bailiff, by the Minister for Treasury and Resources, and are entitled to reimbursement of all travelling and other expenses incurred by them in the discharge of their functions which are defrayed out of the annual income of the States<sup>38</sup>.

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<sup>34</sup> Article 10(1) Royal Court (Jersey) Law 1948

<sup>35</sup> Article 11 of the 1948 Law: "You swear and promise before God that well and faithfully you will exercise the office of Commissioner; that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law; that you will uphold and maintain the laws and usages and the privileges and freedoms of Jersey and that you will vigorously oppose whomsoever may seek to destroy them; that you will administer justice to all manner of persons without favour or partiality; and that you will take heed of the good advice and counsel of the Jurats as the case may require."

<sup>36</sup> Article 10(3)-(5) Royal Court (Jersey) Law 1948

<sup>37</sup> Article 10(6) Royal Court (Jersey) Law 1948

<sup>38</sup> Article 10(8)-(9) Royal Court (Jersey) Law 1948



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In practice, the daily rate paid is fixed at the same level as Court of Appeal Judges, also fixed in accordance with the rate payable for Deputy High Court Judges in England and Wales.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>39</sup>.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints process set out in Judicial Complaints Procedure<sup>40</sup>.

**Disciplinary Responsibility:** The Bailiff has the power to terminate the appointment as he thinks fit, on the ground of incapacity or misbehaviour<sup>41</sup>. In practice, Judicial Complaints Procedure provides other disciplinary powers to the Bailiff.

### Jurats of the Royal Court

**Role:** The Royal Court sits, save when it is formed as a Criminal Assize<sup>42</sup> as either the Inferior Number or as the Superior Number. As the Inferior Number, the court is composed of the Bailiff (or their Deputy or a Commissioner) and two Jurats. As the Superior Number the Royal Court consists of the Bailiff and at least five Jurats<sup>43</sup>. In either configuration, the Jurats are the sole judges of fact and are also responsible for assessing the damages, if any, or determining the sentence or fine in criminal and mixed cases<sup>44</sup>. Jurats also have a number of other functions in relation to elections, granting liquor and gambling licenses, probation and in relation to appeals from disciplinary decisions in relation to Honorary Police and States of Jersey Police.

**Incumbent(s) / Date of Appointment:** Jurat Paul Nicolle (25.02.2010); Jurat Collette Crill (21.04.2011); Jurat Anthony Olsen (15.06.2011); Jurat Michael Liston OBE (23.01.2012); Jurat Charles Blampied (21.09.2012); Jurat Geoffrey Grime (24.09.2014); Jurat Jeremy Ramsden (30.10.2014); Jurat Sally Sparrow (30.04.2015); Jurat Rozanne Thomas (08.09.2015); Jurat Jane Ronge (19.11.2015); Jurat Pamela Jean Pitman (28.07.16); Jurat Robert Anthony Christensen MBE (6.01.17)

**Selection criteria:** Jurats of the Royal Court must be at least 40 years old, a British subject and be born in Jersey or have been ordinarily resident in Jersey for the 5 years

<sup>39</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGreffes/Pages/CodeConduct.aspx>

<sup>40</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>41</sup> Article 10(7) Royal Court (Jersey) Law 1948

<sup>42</sup> With a jury for the purposes of certain serious criminal cases.

<sup>43</sup> Article 16 Royal Court (Jersey) Law 1948

<sup>44</sup> Article 15(2)-(4) Royal Court (Jersey) Law 1948

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preceding appointment<sup>45</sup>. The following circumstances, in summary, disqualify a person from being appointed: holding paid office or other place of profit under the Crown or the States, administration of the States or parochial authority; having a curator appointed or an attorney without whom they may not act in matters real or personal; being subject to bankruptcy proceedings; having within 7 years been convicted of a criminal offence in the Commonwealth and subject to imprisonment of more than 3 months; holding a liquor licence, being a brewer or being employed by a person holding a liquor licence or a brewer<sup>46</sup>.

**Selection Process:** Jurats are appointed by the Electoral College which consists of the Bailiff (who is its President), the Jurats, the Connétables, elected States members, members of the Jersey Bar and Solicitors (*Ecrivain*) of the Royal Court. The Lieutenant-Governor, the Dean, the Attorney General and Solicitor General are also members of the Electoral College but are not entitled to vote nor to propose or second a candidate for appointment as a Jurat. The Greffier of the States also attends the Electoral College meetings and acts as its Clerk and records its proceedings. When there is a vacancy, a copy of a letter from the Bailiff announcing this is delivered to each member of the Electoral College. The members of the Electoral College can then nominate persons for appointment and those persons must be seconded by another member of the Electoral College. If there are the same or less nominees than posts then the persons duly nominated are appointed. If there are more candidates duly nominated than there are vacancies to be filled, then an election by secret ballot is held at a specially convened meeting of the Electoral College (with a quorum of 40 members) held in the Royal Court. If the first ballot results in an equal ballot of votes for each candidate the Bailiff calls for another vote. If the result of the second ballot is inconclusive then the Bailiff is permitted to vote and declare the final result of the ballot<sup>47</sup>.

**Appointed by:** Jurats are appointed by the Electoral College. The Bailiff may appoint one or more Jurats of the Royal Court of Guernsey to act as a Jurat for the purpose of such particular cause or matter as the Bailiff may determine. The Bailiff may make such an appointment only after consulting the Bailiff of Guernsey and the Jurat(s) appointed must swear an oath. They cease to hold office on discharging the duties for which they

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<sup>45</sup> Article 2(1) Royal Court (Jersey) Law 1948

<sup>46</sup> Article 3 Royal Court (Jersey) Law 1948

<sup>47</sup> Articles 1 and 4 Royal Court (Jersey) Law 1948

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were appointed<sup>48</sup>. Every Jurat appointed by the Electoral College is required to take an oath before the Superior Number of the Royal Court<sup>49</sup>.

**Tenure:** Hold office up to the age of 72 years but any person who has ceased to hold the office of Jurat and has not attained the age of 75 may be appointed by the Bailiff to act as Jurat for any period or in relation to any cause or matter as the Bailiff may determine. A Jurat who for a continuous period of 12 months, without good reason, fails to discharge the duties of a Jurat's office or in the opinion of the Royal Court, is permanently unable, through physical or mental incapacity, or for any other reason, efficiently to carry out the duties of the office, may be called upon to resign. A Jurat who refuses to resign may be removed from office by Order of Her Majesty in Council on the petition of the Superior Number of the Royal Court<sup>50</sup>. Jurats of the Guernsey Royal Court appointed as a Jurat in Jersey cease to hold office on discharging the duties for which they were appointed<sup>51</sup>.

<sup>48</sup> Article 9A Royal Court (Jersey) Law 1948

<sup>49</sup> Article 7 and Schedule 2 Royal Court (Jersey) Law 1948: "*Vous ..... puisqu'il a plu à ..... Dieu vous appeller légitimement en cette Charge, jurez et promettez par la foi et serment que vous devez à Dieu, que bien et fidèlement vous exercerez l'état et charge de Juré-Justicier, en la Cour Royale de notre Souveraine Elizabeth Deux, par la Grâce de Dieu, Reine de la Grande Bretagne, de l'Irlande et des Dominions Britanniques d'outre mer, Défenseur de la Foi, en cette son Isle de Jersey, la Majesté de laquelle vous reconnoissez sous Dieu, suprême Gouverneur en tous ses Royaumes, Provinces, et Dominions, renonçant à toutes supériorités foraines et étrangères; Vous garderez le droit de Sa Majesté, et de ses sujets, et soutiendrez l'honneur et gloire de Dieu, et de sa pure et sacrée parole; Vous administrerez bonne et brève justice également tant aux riches qu'aux pauvres, sans acception de personne, suivant les Loix, Coutumes et Usages confirmés par nos Privilèges, en les soutenant avec nos libertés et franchises, vous opposant à quiconque les voudroit enfreindre. Item vous ferez punir et châtier tous Traîtres, Meurtriers, Larrons, Blasphémateurs du sacré Nom de Dieu, Yvrognes et autres personnes scandaleuses, chacun selon son démérite, vous opposant à tous séditions, à ce que la force demeure au Roi et à sa Justice. Vous assisterez à la Cour toutes fois et quantes que vous en serez requis, si vous n'avez une excuse légitime, et en tel cas vous mettrez un autre Justicier en votre place, donnant votre avis, opinion et conseil, selon la pureté de votre conscience. Vous honorerez et ferez respecter la Cour, et garderez et ferez respecter la Cour, et garderez et ferez garder le droit des Veuves, Orphélins, Etrangers et autres personnes indéfendues; finalement en vos conclusions, vous vous rangerez et conformerez au meilleur et plus sain avis de Monsieur le Bailly, et de Messieurs de la Justice; Vous le promettez sur votre conscience.*" [Unofficial translation: "You ..... since it has pleased God legitimately to call you to this charge, swear and promise by the Faith and oath which you owe to God, that well and faithfully you will exercise the office and charge of Jurat of the Royal Court of Our Sovereign Lady Elizabeth II, by the Grace of God, Queen of Great Britain, of Ireland and of the overseas British dominions, Defender of the Faith, in this her Island of Jersey, which majesty you recognize under God, supreme Ruler in all her realms, provinces and dominions, renouncing all other foreign authorities; you will uphold the law of her Majesty and her subjects, and uphold the honour and glory of God, and his pure and sacred word; you will administer good and swift justice equally amongst the rich and the poor, without exception of any person, following the law, customs and usages confirmed by our Privileges, upholding them with our liberties and honesty, opposing any whomsoever would wish to infringe them. You will punish and castigate all traitors, murderers, thieves, blasphemers of the sacred name of God, drunkards and other scandalous persons, each in accordance to their wrong, opposing all insurgents, so that the power remains with the King and his justice (sic). You will assist the court at all times and whenever might be required of you, absent any legitimate excuse, in which case you will seek to be replaced by another Jurat, giving your advice, opinion and counsel, in accordance with the purity of your conscience. You will honour and cause the Court to be respected, and keep and cause the Court to be respected, and protect and cause to be protected the rights of widows, orphans, foreigners and other undefended persons; finally in your conclusions, you will align yourself and conform to the best and most healthy advice of the Bailiff, and the men of the Court; which you promise upon your conscience."]

<sup>50</sup> Article 9 Royal Court (Jersey) Law 1948

<sup>51</sup> Article 9A Royal Court (Jersey) Law 1948

# Appendix 1 – Current Provisions for the Selection, Appointment and Tenure of the Judiciary and Law Officers in Jersey

## Department for Community and Constitutional Affairs

**Remuneration:** Do not receive any remuneration but are entitled to an honorarium from the proceeds of the sale of Jurat Stamps<sup>52</sup> and an expenses payment.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>53</sup>.

**Complaints and Discipline Process:** No statutory process. Not currently covered by Judicial Complaints Procedure<sup>54</sup>.

**Disciplinary Responsibility:** A Jurat who refuses to resign may be removed from office by Order of Her Majesty in Council on the petition of the Superior Number of the Royal Court<sup>55</sup>.

### **Master of the Royal Court and Family Court Registrars**

**Role:** The Judicial Greffier is the clerk to the Royal Court. The Deputy Judicial Greffier is entitled to discharge the Judicial Greffier's functions in his or her absence<sup>56</sup>. On the authority of the Judicial Greffier, any sworn member of the Judicial Greffe (which includes the Deputy Judicial Greffier and Greffiers Substitute) may discharge any function appertaining to the office of Judicial Greffier<sup>57</sup>. The Judicial Greffier, the Deputy Judicial Greffier or a Greffier Substitute attends at all sittings of the courts and judicial tribunals to record the acts and decisions of those courts and tribunals and to generally carry out all the duties of clerk<sup>58</sup>. The Judicial Greffier also carries out analogous duties in respect of the Court of Appeal<sup>59</sup>.

Historically, the Judicial Greffier also dealt with interlocutory applications in civil cases. When acting in that judicial capacity his status is equivalent to an English district or county court judge<sup>60</sup>. Those duties are now generally undertaken by the Master, who is in law a Greffier Substitute, but has been given the title Master informally. Non-contentious applications before the Royal Court, such as the registration of deeds polls and registration of doctors, are still dealt with by the Judicial Greffier.

<sup>52</sup> Loi (1938) sur les honoraires des Jures-Justiciers; <https://www.jerseylaw.je/laws/revised/Pages/07.420.aspx>

<sup>53</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGreffie/Pages/CodeConduct.aspx>

<sup>54</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>55</sup> Article 9 Royal Court (Jersey) Law 1948

<sup>56</sup> Article 5(1) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>57</sup> Article 9(6) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>58</sup> Article 11 Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>59</sup> Article 7(2) Court of Appeal (Jersey) Law 1961

<sup>60</sup> Murphy v Collins 2000 JLR 276

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In the Family Division of the Royal Court, there are a Registrars of the Family Court who carry out judicial functions but who also act in that capacity following appointment as a Greffier Substitute<sup>61</sup>.

**Incumbent(s) / Date of Appointment:** Master – Advocate Matthew Thompson (02.09.2013); Family Division Registrars – Judy Marie O’Sullivan (02.09.2002), Carol Elizabeth Canavan (02.01.2011 (locum), 02.09.2013 (permanent)).

**Selection criteria:** No statutory provision. In practice, the Master and Registrars have a legal qualification.

**Selection Process:** No statutory provision.

**Appointed by:** Master and Registrar, as Greffier Substitutes, are designated by the Judicial Greffier with the consent of the Bailiff<sup>62</sup>. Master and Registrars (as Greffiers Substitute) are required to swear an oath upon appointment<sup>63</sup>.

**Tenure:** No statutory provision.

**Remuneration:** No statutory provision. In practice, the salaries and allowances paid to the Judicial Greffier and Deputy Judicial Greffier are determined by the States Employment Board.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>64</sup>.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints process set out in Judicial Complaints Procedure<sup>65</sup>.

**Disciplinary Responsibility:** No statutory provision, however, it is assumed that a Greffier Substitute could be dismissed by the Judicial Greffier<sup>66</sup>.

<sup>61</sup> Article 3(3) of the Matrimonial Causes (Jersey) Law 1949 and Article 14 Royal Court (Jersey) Law 1948; [https://www.jerseylaw.je/laws/revised/Pages/12.650.aspx#\\_Toc329785087](https://www.jerseylaw.je/laws/revised/Pages/12.650.aspx#_Toc329785087)

<sup>62</sup> Article 6 Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>63</sup> Article 7 and Schedule Departments of the Judiciary and the Legislature (Jersey) Law 1965: “*You swear and promise before God that well and faithfully you will exercise the office of Judicial Greffier (Deputy Judicial Greffier or Acting Judicial Greffier or Greffier Substitute); that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law; and that you will uphold and maintain the laws and usages of this Island.*”

<sup>64</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGreffie/Pages/CodeConduct.aspx>

<sup>65</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>66</sup> Article 6 Departments of the Judiciary and the Legislature (Jersey) Law 1965



# Appendix 1 – Current Provisions for the Selection, Appointment and Tenure of the Judiciary and Law Officers in Jersey

Department for Community and Constitutional Affairs

## Judiciary of the Magistrate's Court, Petty Debts Court and Youth Court

### Magistrate, Assistant Magistrate and Relief Magistrates

**Role:** The Magistrate, Assistant Magistrate<sup>67</sup> and Relief Magistrates<sup>68</sup> sit as judges in the Magistrate's Court, Petty Debts Court and Youth Court.

The Magistrate's Court is a court of summary jurisdiction dealing with criminal matters which may incur a fine of no more than £10,000 or a sentence of imprisonment of not more than 12 months<sup>69</sup>.

The Petty Debts Court has jurisdiction over all civil disputes the value of which does not exceed £10,000, certain proceedings in respect of contact leases<sup>70</sup> and the eviction of tenants<sup>71</sup>.

The Youth Court has the same powers as the Magistrate's Court and has jurisdiction to hear charges against children and young people<sup>72</sup>. The Youth Appeal Court hears appeals from the Youth Court<sup>73</sup>.

**Incumbent(s) / Date of Appointment:** Magistrate – Bridget Shaw (15.03.2013); Assistant Magistrate – Peter Harris (17.05.2013); Relief Magistrates – David Le Cornu (14.11.1997); Nuno Santos-Costa (12.12.2008); Matthew Thompson (01.01.2012); Sarah Fitz (11.03.2016).

**Selection criteria:** *Magistrate/Assistant Magistrate* – must be either: a Jurat of the Royal Court; an Advocate or Solicitor of the Royal Court of at least 10 years standing or who have held office as a Crown Officer; in or has been in office as a Judge in the Commonwealth; or have practiced for at least 10 years either at the Bar or England or Wales, Northern Ireland or Guernsey, as a Solicitor of the Senior Courts of England

<sup>67</sup> Article 1 Loi (1864) concernant la charge de Juge d'Instruction; <https://www.jerseylaw.je/laws/revised/Pages/07.525.aspx>; Loi (1853) établissant la cour pour la repression des moindres délits; <https://www.jerseylaw.je/laws/revised/Pages/07.140.aspx>; Loi (1867) sur la cour pour le recouvrement de menues dettes; <https://www.jerseylaw.je/laws/revised/Pages/07.175.aspx>; Criminal Justice (Young Offenders) (Jersey) Law 2014; <https://www.jerseylaw.je/laws/revised/Pages/08.380.aspx>

<sup>68</sup> Article 6 Loi (1864) concernant la charge de Juge d'Instruction

<sup>69</sup> Article 3(1) Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949; <https://www.jerseylaw.je/laws/revised/Pages/07.595.aspx>

<sup>70</sup> Article 1 Petty Debts Court (Miscellaneous Provisions) Law 2000; <https://www.jerseylaw.je/laws/revised/Pages/07.615.aspx>

<sup>71</sup> Article 1 Loi (1946) concernant l'expulsion des locataires réfractaires; <https://www.jerseylaw.je/laws/revised/Pages/07.350.aspx>

<sup>72</sup> Articles 25 and 26(1) Criminal Justice (Young Offenders) (Jersey) Law 2014

<sup>73</sup> Article 29 Criminal Justice (Young Offenders) (Jersey) Law 2014



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and Wales, as a member of the Faculty of Advocates or as a Solicitor in Scotland or as a Solicitor of the Court of Judicature of Northern Ireland<sup>74</sup>.

In practice, the nature of the Magistrate's functions requires that persons to be appointed must have a good understanding of Jersey criminal law and the civil law of Jersey regarding tort and contract. In addition, candidates must be able to demonstrate the highest standards of integrity, impartiality, independence, diligence, competence, common sense and compassion.

*Relief Magistrate* – required to have the necessary qualifications to perform the functions of the Magistrate<sup>75</sup>. In practice, the professional and personal requirements are as for the Magistrate. A Relief Magistrate, once appointed, is not free to practice as an Advocate before the Magistrate's Court, Petty Debts Court or the Youth Court. No one employed within the Law Officers' Department would be appointed due to the Attorney Generals' responsibility for criminal prosecutions.

**Selection Process:** No statutory provision.

*Magistrate, Assistant Magistrate and Relief Magistrates:* In practice, the Bailiff will carry out the following process: on the occurrence of a vacancy, and advertisement will be placed in the Jersey Evening Post inviting applications to the Bailiff's Chambers. An information pack will be available from the Bailiff's Chambers with the requisite information about the post which is advertised and a period of at least three weeks will be allowed before the closing date. The candidates wishing to be appointed to the post will submit an application form and a CV. The Bailiff will appoint a shortlisting/interview Panel. This Panel will usually comprise the Bailiff or Deputy Bailiff, the Lieutenant Bailiff and, except possibly in the case of the appointment of a new Magistrate, the Magistrate. The Bailiff would request a member of the Jersey Appointments Commission to assist in the shortlisting and interview process in respect of the Magistrate and the Assistant Magistrate. The Panel will draw up a shortlist of candidates for interview and following those interviews, to be conducted by the Panel (and in the case of the Magistrate and Assistant Magistrate with the representative of the Jersey Appointments Commission) a recommendation will be made to the Bailiff. Having received the recommendation of the shortlisting/interview Panel, the Bailiff will make an appointment. He may ask the interview Panel to attend upon him to give him further information in relation to the shortlisting and interview process. Enhanced

<sup>74</sup> Article 1(2) Loi (1864) concernant la charge de Juge d'Instruction

<sup>75</sup> Article 6 Loi (1864) concernant la charge de Juge d'Instruction

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Disclosure and Barring checks and references will be taken up on each successful candidate prior to their taking the oath of office in the Royal Court.

*Urgent appointment of a Relief Magistrate:* In practice, the Bailiff selects and appoints Relief Magistrates where there is an urgent need.

### **Appointed by:**

*Magistrate/Assistant Magistrate* - appointed by the Bailiff<sup>76</sup>.

*Relief magistrates* – appointed by the Bailiff if there is an absence or vacancy in the office of Magistrate or for any other reason for which the Bailiff considers it necessary, during that absence or vacancy or for such period as the Bailiff may consider necessary<sup>77</sup>.

All take an oath on appointment before the Royal Court to well and faithfully discharge the duties of his or her office<sup>78</sup>.

### **Tenure:**

*Magistrate/Assistant Magistrate* – remains in office until the age of 70 years, but the States may keep him or her in office for an additional fixed period<sup>79</sup>.

*Relief Magistrates* – appointed for such period as the Bailiff may consider necessary<sup>80</sup>. In practice, all Relief Magistrates (other than the Master) are expected to commit to at least 20 half days sittings per annum as a minimum commitment, whether they are actually required to sit as frequently or not. Initially, appointment is for a limited period of 12-24 months. This enables a review of the Relief Magistrate's performance to take place after the initial period. Thereafter, the appointment is for a 3 year period. Occasionally the period of appointment is shorter to bring the reappointment date into line with the other Relief Magistrates or when a Relief Magistrate will reach retirement age before the 3 year period expires. Renewal takes place by agreement provided there are no concerns about the Relief Magistrate's competence or conduct. Relief Magistrates are expected to retire on reaching the age of 72.

### **Remuneration:**

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<sup>76</sup> Article 1(1) Loi (1864) concernant la charge de Juge d'Instruction

<sup>77</sup> Article 6 Loi (1864) concernant la charge de Juge d'Instruction

<sup>78</sup> Article 2(1) Loi (1864) concernant la charge de Juge d'Instruction

<sup>79</sup> Article 2(2) Loi (1864) concernant la charge de Juge d'Instruction

<sup>80</sup> Article 6 Loi (1864) concernant la charge de Juge d'Instruction

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*Magistrate/Assistant Magistrate* – receives such salary and allowances and is entitled to such pensions and bonuses as shall determined from time to time by the States Employment Board following consultation with the Magistrate<sup>81</sup>.

*Relief Magistrate* – No statutory provision.

### **Judicial Standards:**

Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>82</sup>.

### **Complaints and Discipline Process:**

No statutory provision. In practice, Magistrate, Assistant Magistrate and Relief Magistrate complaints process set out in Judicial Complaints Procedure<sup>83</sup>.

### **Disciplinary Responsibility:**

*Magistrate/Assistant Magistrate* - by an Order of Her Majesty in Council<sup>84</sup>. In practice, Judicial Complaints Procedure provides sanctions available to the Bailiff including that the Bailiff may recommend to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Magistrate from office. Such an order is, in effect, made by a committee of the Privy Council acting on the advice of the Privy Counsellor with responsibility for relations with Jersey.

*Relief Magistrate* – appointed for such period as the Bailiff may consider necessary<sup>85</sup>. In practice, Judicial Complaints Procedure provides the sanctions available to the Bailiff.

### **Youth Court Panel Members**

**Role:** The members of the Youth Court Panel sit with the Magistrate in the Youth Court<sup>86</sup> and sit with the Bailiff in the Youth Appeal Court<sup>87</sup>.

**Incumbent(s) / Date of Appointment:** Mrs Trish Barry (31.08.08); Mr Paul Battrick MBE (31.08.08); Mrs. Debbie Prosser (31.08.08); Mrs. Laura MacDonald (31.08.08); Mr. Gary Martin (31.08.08); Ms. Fiona Phipps (13.04.12); Ms. Jean Cross (13.04.12);

<sup>81</sup> Article 3 Loi (1864) concernant la charge de Juge d'Instruction

<sup>82</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGrefe/Pages/CodeConduct.aspx>

<sup>83</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>84</sup> Article 2(3) Loi (1864) concernant la charge de Juge d'Instruction

<sup>85</sup> Article 6 Loi (1864) concernant la charge de Juge d'Instruction

<sup>86</sup> Article 24 and Schedule Criminal Justice (Young Offenders) (Jersey) Law 2014

<sup>87</sup> Article 29 Criminal Justice (Young Offenders) (Jersey) Law 2014

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Ms. Joanna Moore (13.04.12); Mr. Matthew Beddoe (29.09.16); Mrs. Tracey Peters (29.09.16); Mr. Jonathan Bugbird (29.09.16); Mr. David McFadzean (29.09.2016).

**Selection criteria:** No statutory provision.

**Selection Process:** No statutory provision.

**Appointed by:** Superior Number of the Royal Court as it thinks necessary<sup>88</sup>. Take an oath to discharge the duties attached to the office well and faithfully<sup>89</sup>.

**Tenure:** May not remain on the Panel for longer than 10 years and shall retire on the member's 60<sup>th</sup> birthday<sup>90</sup>.

**Remuneration:** No statutory provision.

**Judicial Standards:** Set out in Code of Conduct for Members of the Judiciary for Jersey<sup>91</sup>.

**Complaints and Discipline Process:** No statutory provision. Not currently covered by Judicial Complaints Procedure<sup>92</sup>.

**Disciplinary Responsibility:** The Superior Number of the Royal Court may make appointments to, or deletions from, the Youth Court Panel as it considers necessary<sup>93</sup>.

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<sup>88</sup> Schedule, 1(2) and (5) Criminal Justice (Young Offenders) (Jersey) Law 2014

<sup>89</sup> Article 24 and Schedule, 1(3) Criminal Justice (Young Offenders) (Jersey) Law 2014

<sup>90</sup> Article 24 and Schedule 1(4) Criminal Justice (Young Offenders) (Jersey) Law 2014

<sup>91</sup> <https://www.gov.je/Government/NonexecLegal/JudicialGrefte/Pages/CodeConduct.aspx>

<sup>92</sup> <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020160408%20JR.pdf>

<sup>93</sup> Article 25 and Schedule 1(5) Criminal Justice (Young Offenders) (Jersey) Law 2014

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Department for Community and Constitutional Affairs

## Judiciary for the Tribunals of Jersey

### Chairman and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal

**Role:** The Jersey Employment and Discrimination Tribunal (“JEDT”) has jurisdiction to determine complaints in respect of matters relating to employment<sup>94</sup> and discrimination<sup>95</sup>.

The Tribunal has the following members: a Chairman, between 1 and 5 Deputy Chairmen and Lay Members (between 2 and 8 lay members with knowledge and experience of or interest in trade unions or matters relating to employees generally, between 2 and 8 lay members with knowledge or experience of or interest in employers’ associations or matters relating to employers generally and between 2 and 8 lay members with knowledge and experience of or interest in matters relating generally to equality and discrimination, or to discrimination and protected characteristics within the meaning of the Discrimination Law)<sup>96</sup>.

In proceedings before the JEDT relating to an individual employment dispute one member, being the Chairman or a Deputy Chairman, constitutes the JEDT unless the Chairman directs otherwise<sup>97</sup>.

In all other disputes within the jurisdiction of the JEDT, or where the Chairman has made a direction or disputes which concern both an individual employment dispute and a prohibited act of discrimination or which relate to a complaint under the Discrimination Law, the JEDT is constituted by 3 members comprising the Chairman or a Deputy Chairman and 2 Lay Members selected by reference to the type of dispute.<sup>98</sup>

**Incumbent(s) / Date of Appointment:** Chairman – Mrs. Hilary Griffin (23.05.2017); Deputy Chairmen - Advocate Claire Davies (30.03.17); Advocate Mike Preston (18.02.2017); Mr. Michael Salter (23.05.2017); Advocate Ian Jones (23.05.2017).

**Selection Criteria:** The Chairman and Deputy Chairmen must hold a qualification in law<sup>99</sup>.

<sup>94</sup> Employment (Jersey) Law 2003; <https://www.jerseylaw.je/laws/revised/Pages/05.255.aspx>; Employment Relations (Jersey) Law 2007; <https://www.jerseylaw.je/laws/revised/Pages/05.260.aspx>

<sup>95</sup> Discrimination (Jersey) Law 2013; <https://www.jerseylaw.je/laws/revised/Pages/15.260.aspx>

<sup>96</sup> Regulation 2 Employment and Discrimination Tribunal (Jersey) Regulations 2014; <https://www.jerseylaw.je/laws/revised/Pages/05.255.70.aspx>

<sup>97</sup> Regulation 8 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>98</sup> Regulation 9 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>99</sup> Article 2(1)(a)-(b) Employment and Discrimination Tribunal (Jersey) Regulations 2014

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**Selection Process:** *Chairman* – is a senior States’ office prescribed under Art. 16(1) of the Employment of States of Jersey Employees (Jersey) Law 2005.<sup>100</sup> Prescribed to be a States’ Employee under Art. 15(3) of the Employment of States of Jersey Employees (Jersey) Law 2005.<sup>101</sup> Recruitment overseen by the Jersey Appointments Commission in accordance with Jersey Appointments Commission guidelines<sup>102</sup>.

*Deputy Chairmen* – Office prescribed under Art. 15(3) of the Employment of States of Jersey Employees (Jersey) Law 2005.<sup>103</sup> Prescribed to be a States’ Employee under Art. 15(3) of the Employment of States of Jersey Employees (Jersey) Law 2005.<sup>104</sup> Recruitment overseen by the Jersey Appointments Commission in accordance with Jersey Appointments Commission guidelines.<sup>105</sup>

In practice, positions are advertised in the Jersey media and through the Jersey Law Society and Jersey Advisory and Conciliation Service following which structured interviews take place. The recent recruitment panel for the positions of Chairman and Deputy Chairman consisted of the Judicial Greffier, the Viscount, the Deputy Bailiff and a Jersey Appointments Commissioner who selected and recommended the appointments.

**Appointed by:** States Assembly on the recommendation of the Minister for Social Security after consultation with the Jersey Appointments Commission.<sup>106</sup> Takes oath before the Royal Court<sup>107</sup>.

**Tenure:** Up to 5 year term of office as specified by the States Assembly upon appointment. Reappointment for second up to 5 year term of office at request of a member by Minister having consulted with the Jersey Appointments Commission.<sup>108</sup> May resign by notice in writing to Minister for Social Security<sup>109</sup>.

<sup>100</sup> Regulation 3(2)(a) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>101</sup> Reg. 3(2)(c) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>102</sup> Reg. 3(3) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>103</sup> Reg. 3(2)(b) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>104</sup> Reg. 3(2)(c) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>105</sup> Reg. 3(3) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>106</sup> Reg. 3(4) Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>107</sup> Reg. 4 Employment and Discrimination Tribunal (Jersey) Regulations 2014: “*Will well and faithfully discharge the duties attached to the office of [Chairman of the Tribunal / Deputy Chairman of the Tribunal / Lay Member of the Tribunal]*”

<sup>108</sup> Reg. 5 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>109</sup> Reg. 6 Employment and Discrimination Tribunal (Jersey) Regulations 2014



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**Remuneration:** *Chairman/Deputy Chairmen* - £736/£552 per day or part thereof together with reasonable expenses as determined by the Minister for Social Security.<sup>110</sup>

**Judicial Standards:** Ceases to hold office only if: ceases to hold a qualification in law; becomes bankrupt; subject to curator or guardianship; absent without consent for 6 months from meetings or unavailable to perform functions; fails or refuses to take the oath of office; removed from office by Royal Court on grounds of neglect of duties or misconduct proved to the satisfaction of the Royal Court.<sup>111</sup>

**Complaints and Discipline Process:** No statutory provision.

**Disciplinary Responsibility:** Royal Court on grounds above.<sup>112</sup>

### The Law Officers

#### Her Majesty's Attorney General and Her Majesty's Solicitor General

**Roles:** *Attorney General* - In summary, the Attorney General is: responsible for carrying out criminal prosecutions; an *ex officio* member of the States (together with the Solicitor General) with a right to speak but not vote; legal adviser to the Crown, the States Assembly and Ministers, is responsible for representing the *partie publique* (the public interest); has powers in respect of law enforcement, for example, including powers under the Investigation of Fraud (Jersey) Law 1991<sup>113</sup>, the Criminal Justice (International Co-operation)(Jersey) Law 2001<sup>114</sup> and the Extradition (Jersey) Law 2004<sup>115</sup>; and is titular head of the Honorary Police.

*Solicitor General* - is the Attorney General's deputy, to assist him in his role, to act in his absence or incapacity<sup>116</sup> and to discharge any function, on the authority of the Attorney General, appertaining to the office of Attorney General<sup>117</sup>. The Solicitor General generally has no independent functions. In discharging the Attorney General's functions, the Solicitor General has the same precedence and prerogatives and shall

<sup>110</sup> Reg. 7 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>111</sup> Reg. 6 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>112</sup> Reg. 6 Employment and Discrimination Tribunal (Jersey) Regulations 2014

<sup>113</sup> <https://www.jerseylaw.je/laws/revised/Pages/08.640.aspx>

<sup>114</sup> <https://www.jerseylaw.je/laws/revised/Pages/08.300.aspx>

<sup>115</sup> <https://www.jerseylaw.je/laws/revised/Pages/17.325.aspx>

<sup>116</sup> Art. 5(1) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>117</sup> Art. 9(3) Departments of the Judiciary and the Legislature (Jersey) Law 1965

# Appendix 1 – Current Provisions for the Selection, Appointment and Tenure of the Judiciary and Law Officers in Jersey

## Department for Community and Constitutional Affairs

be subject to the same duties and obligations as the Attorney General would have or be subject to if the Attorney General were discharging that function<sup>118</sup>.

**Incumbent(s) / Date of Appointment:** *Attorney General* - Robert MacRae QC (05.05.2015); *Solicitor General* – Mark Temple QC (17.08.2015).

**Selection criteria:** Must be an Advocate or Solicitor<sup>119</sup>.

**Selection Process:** No statutory provision. By custom and practice, the vacancy will be advertised openly and lawyers possessing the requisite qualifications are invited to apply. Consultation then takes place with members of the judiciary and legal profession<sup>120</sup> and with the Bailiff's Consultative Panel<sup>121</sup>. Consultees give their opinion on the candidates by reference to their abilities listed in the job description. The applicants are then interviewed by another panel, which the Carswell Review dubbed the Recommending Panel<sup>122</sup>. It is the Recommending Panel that then makes a recommendation to the Lieutenant Governor for transmission to the Crown. By convention, the Privy Counsellor with responsibility for relations with Jersey will then in turn recommend that person for appointment by the Queen.

**Appointed by:** Her Majesty<sup>123</sup>. The Bailiff also has the power to appoint an advocate or solicitor who is an officer in the Law Officers' Department, for a period not exceeding 7 days, to discharge the functions of Attorney General in the absence or incapacity of both the Attorney General and the Solicitor General<sup>124</sup>. Swear an oath on appointment<sup>125</sup>.

**Tenure:** No statutory provision. In practice, retirement is at the age of 70.

<sup>118</sup> Art. 9(4) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>119</sup> Art. 2(5) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>120</sup> Including the existing Crown Office holders, the Jurats, members of the judiciary and senior members of the legal profession in Jersey.

<sup>121</sup> The Bailiff's Consultative Panel comprises the Chairman of the Comité des Connétables, the Chief Minister, the Chairman of the Privileges and Procedures Committee, the Minister for Treasury and Resources and five other members of the States elected by the States by ballot every three years.

<sup>122</sup> The Recommending Panel consists of the Bailiff, a Lieutenant Bailiff and the Chairman of the Jersey Appointments Commission.

<sup>123</sup> Art. 2(1) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>124</sup> Article 5(2) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>125</sup> Article 7 Departments of the Judiciary and the Legislature (Jersey) Law 1965; "You swear and promise before God that well and faithfully you will exercise the office of Attorney General (Solicitor General or Acting Attorney General) under our Sovereign Lady Queen Elizabeth the Second in this Her Island of Jersey; that you will be faithful and bear true allegiance to Her Majesty, Her heirs and successors, according to law; that you will uphold and maintain the honour and glory of God; that you will uphold and maintain the laws and usages of this Island; and that you will ensure, so far as you are able, that all transgressors of the law meet their just deserts; all of which you promise on your conscience."

# Appendix 1 – Current Provisions for the Selection, Appointment and Tenure of the Judiciary and Law Officers in Jersey

Department for Community and Constitutional Affairs

**Remuneration:** The salaries, allowances and pensions of the Attorney General and Solicitor General are determined by the States Employment Board after negotiation with the officer concerned<sup>126</sup>. The Attorney General and Solicitor General are not permitted to, within or without Jersey, occupy any other paid employment, or any public or parochial office. However this does not prohibit the Attorney General, or in the Attorney General's absence, the Solicitor General, where the Attorney General considers it in the public interest so to do, from advising or acting in any private cause or matter, and in such case the Attorney General's fees shall be paid the States<sup>127</sup>.

**Standards:** No statutory provision. In practice, hold office 'during good behavior'.

**Complaints and Discipline Process:** No statutory provision. In practice, complaints and disciplinary process set out in Law Officers' Complaints Process<sup>128</sup>.

**Disciplinary Responsibility:** No statutory provision. In practice, holds appointment under the Crown and is subject to the disciplinary control of the Crown<sup>129</sup>. The corollary of the appointment power is that it is possible for office holders to be dismissed by the Queen on the advice of the Privy Counsellor with responsibility for relations with Jersey (usually the UK Secretary of State for Justice) where it is established that there has been serious misconduct. In practice, disciplinary powers of Lieutenant Governor are set out in Law Officers' Complaints Process.

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<sup>126</sup> Article 8 Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>127</sup> Art. 8(2)-(3) Departments of the Judiciary and the Legislature (Jersey) Law 1965

<sup>128</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Law%20Officers%20Complaints%20Procedure%2020160805%20ALS.pdf>

<sup>129</sup> See para. 2) Law Officers' Complaints Process