



## Law Officers' Department

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

## General principles and interpretation

- 1) This document deals with the procedure following a complaint against Her Majesty's Attorney General or Her Majesty's Solicitor General. Any reference in this document to "*the Attorney General*" shall also be a reference to the Solicitor General, unless the context provides otherwise.
- 2) The Attorney General holds appointment under the Crown and is subject to the disciplinary control of the Crown.
- 3) "*Qualified Person*" means:
  - a) a permanent Judge or former permanent Judge of the Crown Court or High Court of England and Wales or a higher Court in that jurisdiction;
  - b) a permanent Judge or former permanent Judge of a Court equivalent to those mentioned in a) in Scotland, Northern Ireland or any of the Crown Dependencies including Jersey, or any other Commonwealth jurisdiction;
  - c) an ordinary Judge or former ordinary Judge of the Jersey Court of Appeal;
  - d) a former Commissioner of the Royal Court; or
  - e) a leading counsel currently in practice at the Bar of England and Wales, Scotland or Northern Ireland.

## Application

- 4) This procedure shall apply when:
  - a) a person ("the complainant") makes a complaint in writing to His Excellency the Lieutenant-Governor ("the Lieutenant-Governor") against the Attorney General; or
  - b) it has otherwise come to the attention of the Lieutenant-Governor that the Attorney General may have been guilty of misconduct.

## Time-frame

- 5) An acknowledgment of the receipt of the complaint will be sent to the complainant within two working days and the Lieutenant Governor will aim to provide the complainant with a detailed response, either resolving the complaint or, where further actions are necessary, setting out the time-frame for those actions, within 25 working days.

## Threshold determinations

- 6) The Lieutenant-Governor shall, without further consideration, dismiss a complaint received under paragraph 4) a) if:
  - a) (subject to paragraph 6) it does not adequately particularise the matter complained of or is not in writing;
  - b) it is expressly or in effect a challenge to a decision taken by the Attorney General in connection with the Attorney General's duties as prosecution authority, and raises on question of misconduct;
  - c) it is expressly or in effect a complaint about the content of advice given by the Attorney General or in relation to the manner in which the Attorney General has discharged the duties of the Attorney General's office;
  - d) it is vexatious, malicious, frivolous or trivial;
  - e) it is plainly without substance;
  - f) it does not, even if true, require disciplinary action;
  - g) it raises a matter already dealt with and does not present any material new evidence;
  - h) it is about the private life of the Attorney General and could not reasonably be considered to affect the Attorney General's suitability to hold office; or
  - i) for any other reason it does not relate to misconduct by the Attorney General.
- 7) The Lieutenant-Governor shall not dismiss a complaint under paragraph 5) a) unless the Lieutenant-Governor has afforded the complainant an opportunity to provide adequate details of the complaint or an opportunity to put the complaint in writing. A complainant must provide any further details as requested or put the complaint in writing within 21 calendar days of any such request or such other period as the Lieutenant-Governor shall reasonably permit.
- 8) The Lieutenant-Governor may, after such preliminary inquiry as the Lieutenant-Governor deems fit, dismiss any complaint received under paragraph 5) a) on the grounds that it is of insufficient substance or seriousness to merit further investigation.
- 9) Before dismissing a complaint against the Attorney General under paragraphs 6) or 8), the Lieutenant-Governor may consult with the Bailiff.
- 10) The Lieutenant-Governor shall dismiss a complaint if it is received more than six months after the last of the events giving rise to the complaint unless the Lieutenant-Governor is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.
- 11) If the Lieutenant-Governor considers that engaging this procedure, in respect of a complaint or potential misconduct, might cause prejudice to an ongoing court case, the Lieutenant-Governor shall have the discretion to order a stay of any further action under this procedure pending the resolution of the court case or until the Lieutenant-Governor no longer considers that such prejudice would be caused.
- 12) The Lieutenant-Governor may, prior to making any threshold determination, take such advice and make such enquiries (including calling for a report from the Attorney General) as the Lieutenant-Governor thinks fit.

- 13) If the Lieutenant-Governor dismisses a complaint under paragraphs 6) or 8), the Lieutenant-Governor shall inform the complainant and the Attorney General in writing and provide reasons.
- 14) If any complaint makes allegations of criminal conduct against the Attorney General, the Lieutenant-Governor, having taken advice as the Lieutenant-Governor thinks fit, may decline to consider the request from a disciplinary perspective until any criminal investigation and process has been concluded and shall notify the complainant that the Lieutenant-Governor has so decided.

## **Informal resolution of minor complaints**

- 15) If the Lieutenant-Governor is of the view that a complaint is minor in nature, the Lieutenant-Governor may seek to resolve it informally and shall have discretion in determining the best approach to such resolution.

## **Summary process**

- 16) The Lieutenant-Governor may recommend to Her Majesty that the Letters Patent appointing the Attorney General be withdrawn without further investigation if, and only if, any one or more of the following circumstances apply:
  - a) the Attorney General has been convicted in Jersey of a criminal offence and sentenced to imprisonment (including a suspended sentence);
  - b) the Attorney General has been convicted elsewhere of any criminal offence which, if committed in Jersey, would have constituted a criminal offence, and has been sentenced to imprisonment (including a suspended sentence);
  - c) the Attorney General has been committed to prison for contempt of court (including a suspended committal order);
  - d) the Attorney General has been convicted of an offence in Jersey involving dishonesty, deception or perverting the course of public justice;
  - e) the Attorney General has been convicted of a sexual offence or violent offence in Jersey;
  - f) the Attorney General has become bankrupt within the meaning of the Interpretation (Jersey) Law 1954 or made a composition or arrangement with the Attorney General's creditors. This sub-paragraph shall not apply if the Attorney General has paid their debts in full before the Lieutenant-Governor received a complaint or became aware of the bankruptcy or arrangement; or
  - g) the Attorney General is subject to a disqualification order under the Companies (Jersey) Law, 1991.
- 17) Before a recommendation can be made under paragraph 16), the Lieutenant-Governor must give the Attorney General an opportunity to make representations as to:
  - a) whether the alleged ground is satisfied; and
  - b) if so, why the Attorney General should not be removed from office.
- 18) The Attorney General must provide the representations referred to above within 14 calendar days of the request for them. The Lieutenant-Governor may only make a recommendation under paragraph 16) if the Attorney General has made representations or a 14 calendar day period has elapsed without such representations being provided.

- 19) The Lieutenant-Governor shall prepare a report if the Lieutenant-Governor intends to make a recommendation to Her Majesty under paragraph 16). Such report must state that one or more grounds in paragraph 16) apply and state any representations made by the Attorney General. This report shall be sent with the recommendation to Her Majesty and the Attorney General must also receive a copy at the same time.

## **Procedure: Investigation**

- 20) If the Lieutenant-Governor does not dismiss or informally deal with a complaint or potential misconduct and the summary process in paragraph 16) is not engaged, the Lieutenant-Governor shall cause the matter to be investigated by a Qualified Person in a manner that seems appropriate to him.
- 21) Before appointing a Qualified Person under paragraph 20), the Lieutenant-Governor may consult with the Bailiff.
- 22) A Qualified Person appointed under paragraph 20) shall investigate the matter thoroughly and to achieve this the Qualified Person may conduct interviews, request documents and take such other steps as required to ensure procedural fairness. Following the conclusion of the investigation, the Qualified Person shall submit an investigation report to the Lieutenant-Governor.
- 23) The Attorney General shall be under an obligation to provide such assistance as may be necessary to the Qualified Person appointed to investigate the matter.
- 24) An investigation report submitted to the Lieutenant-Governor pursuant to paragraph 22) shall conclude whether or not there is sufficient evidence of misconduct to justify any further action under the Procedure. If the report concludes that there is insufficient evidence of misconduct, the investigator shall recommend to the Lieutenant-Governor to dismiss the matter.
- 25) If a report submitted to the Lieutenant-Governor, pursuant to paragraph 22), concludes that there is insufficient evidence of misconduct, the investigator shall recommend to the Lieutenant-Governor to either seek an informal resolution or to appoint a disciplinary panel under paragraphs 28) and 29).

## **Procedure following receipt of investigation report**

- 26) Following the receipt of an investigation report pursuant to paragraph 22), the Lieutenant-Governor shall dismiss the matter if the report concludes that there is insufficient evidence of misconduct to justify any further action under this Procedure.
- 27) If the investigation report concludes that there is insufficient evidence of misconduct, the Lieutenant-Governor shall take the recommendations into account and either seek an informal resolution or appoint a Disciplinary Panel under paragraphs 28) and 29).

## **Panel process**

- 28) If the Lieutenant-Governor determines that a Disciplinary Panel (“the Panel”) is to be appointed to consider the matter, the Lieutenant-Governor shall request the Bailiff to nominate members to the Panel. The Bailiff may consult with the Lord Chief Justice of England and Wales in determining the persons to be nominated.
- 29) The Panel shall be comprised of three Qualified Persons and one shall be appointed as Chairman. A person appointed by the Lieutenant-Governor under paragraph 20) shall not be eligible for appointment to the Panel.
- 30) The case against the Attorney General shall be presented by a person appointed by the Lieutenant-Governor.
- 31) The Panel shall notify the Attorney General of the date, time and venue of the hearing at least 28 calendar days in advance. The hearing shall be held in Jersey unless the Panel determines, in exceptional circumstances, that an alternative location is more appropriate. The hearing shall also be held in private.
- 32) The notice to the Attorney General shall also include the following information:
  - a) the right for the Attorney General to be legally represented at the hearing and that the reasonable expenses of any legal representation shall be met by the Crown subject to any order to the contrary by the Panel at the conclusion of the proceedings; and
  - b) the identity of the persons who shall be on the Panel. The Attorney General shall be invited to make the Lieutenant-Governor aware of any actual or perceived conflicts of interest which the Attorney General contends that a person nominated to the Panel has.
- 33) The Panel shall be supplied with copies of the investigation report. The Panel may also request any documents which appear to be relevant or make any further inquiries it considers appropriate to fulfil its functions.
- 34) The Panel shall give the Attorney General or their representative and the person appointed to present the case against the Attorney General, an opportunity to be heard, to call such evidence as they think fit and to cross-examine witnesses.
- 35) The Panel may make whatever arrangements necessary or appropriate for hearing the complainant or other witnesses or obtaining other evidence and may, save as otherwise set out herein, determine its own procedure generally subject to the requirements of fairness.

## **Panel decision**

- 36) The Panel shall be entitled to take reasonable time, after the conclusion of the hearing, to make its decision. The Panel shall determine if the facts amount to misconduct, with the burden of proof resting on a person appointed under paragraph 30), such burden being discharged if the evidence satisfies the civil standard.
- 37) If the Panel is not satisfied that there has been misconduct, it shall recommend to the Lieutenant-Governor to dismiss the matter.

- 38) If the Panel is satisfied that there has been misconduct, the Panel shall make a recommendation to the Lieutenant-Governor that any one or more of the following actions be taken:
- a) no further action;
  - b) privately reprimand the Attorney General;
  - c) require the Attorney General to issue a written apology to the complainant;
  - d) publicly rebuke the Attorney General;
  - e) allow the Attorney General to remain in office subject to conditions or undertakings;
  - f) invite the Attorney General to resign; or
  - g) recommend that Her Majesty withdraw the Letters Patent appointing the Attorney General.
- 39) The Panel shall prepare a report which sets out:
- a) the facts of the case;
  - b) whether in its opinion there has been any misconduct; and
  - c) what recommendations are being made to the Lieutenant-Governor.
- 40) The Panel must send its draft report to the Attorney General, the Bailiff and the Lieutenant-Governor who may comment on the report within 14 calendar days of receiving it.
- 41) The Panel must take any comments received under paragraph 40) into account.
- 42) The Panel must send the final report to the Lieutenant-Governor who shall act in accordance with the Panel's recommendations. The Lieutenant-Governor shall, without delay, communicate their decision and provide a copy of the final report to the Attorney General, the Bailiff and, if relevant, the complainant.
- 43) For the avoidance of doubt, any recommendations made by the Lieutenant-Governor to Her Majesty in pursuance of this Procedure, may be made by means of communication with the Secretary of State for Justice, in the Lieutenant-Governor's rôle as Privy Counsellor for the Crown Dependencies, or such other Privy Counsellor who has responsibility for the Crown Dependencies at the material time.
- 44) In the event that there is a vacancy in the office of Lieutenant-Governor, the Bailiff shall discharge the functions of the Lieutenant-Governor under the Procedure. If, however, the Bailiff does not think it appropriate for him to discharge any function, the Bailiff may delegate the discharge of any or all of the functions under this Procedure to the Deputy Bailiff or the Senior Ordinary Judge of the Jersey Court of Appeal.

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