



Law Officers' Department

Disciplinary procedure for lawyers

Interpretation

- 1) The following definitions shall have effect for the purposes of this procedure.
 - a) "*A serious breach of the Code*" shall be a breach of the Code which is considered sufficiently serious that, in the case of an Advocate or Solicitor, it requires a reference to the Royal Court.
 - b) "*Advocate or Solicitor*" shall mean an Advocate or Solicitor of the Royal Court of Jersey.
 - c) "*Attorney General*" shall, unless the context requires otherwise, include reference to the Solicitor General.
 - d) "*a/the Director*" shall mean either the Director of the Civil Division or the Director of the Criminal Division.
 - e) "*the Code*" shall mean the Code of Conduct of the Law Officers' Department (July 2013).
 - f) "*GoJ Disciplinary Policy*" shall mean the Government of Jersey's Disciplinary Policy in force at the time of the complaint.
 - g) "*the Department*" shall mean the Law Officers' Department.
- 2) Save as otherwise specified, the terms used in this procedure have the same meaning that they have in the Code.

General principles

- 3) This document sets out the procedure for the investigation of a complaint against or conduct by a lawyer working in the Law Officers' Department, and the manner in which such complaints or conduct may be dealt with.
- 4) This procedure operates in conjunction with the GoJ Disciplinary Policy and nothing in this procedure derogates from the rights of a lawyer under the GoJ Disciplinary Policy. The Attorney General may vary or depart from the approach set out in this procedure in any given case, if the interests of justice require the Attorney General to do so, subject to the GoJ Disciplinary Policy not being departed from.
- 5) Nothing in this document qualifies or touches upon the powers and duties of the Attorney General to bring before the Royal Court, as the Attorney General sees fit, any issues relating to an Advocate or Solicitor.
- 6) At each stage of the process the Director or the Attorney General, as the case may be, must consider:
 - a) whether the complaint or conduct is such that the lawyer is able to remain in post pending the outcome of any investigation or disciplinary hearing; and

- b) whether the complaint requires a reference to the Attorney General in order that the Attorney General may consider bringing a matter concerning an Advocate or Solicitor before the Royal Court.
- 7) Nothing in this procedure shall prevent the Attorney General from notifying a legal professional body, in a jurisdiction other than Jersey, of conduct by a lawyer who is regulated by such a legal professional body.
- 8) The Attorney General may at any stage seek external independent advice on the matters contained within this procedure, the substance and procedure in dealing with a complaint or conduct and the Attorney General's duties in law.
- 9) A note of the outcome of any complaint should be placed on the lawyer's file, subject to the GoJ Disciplinary Policy.

Application

- 10) This procedure shall apply where:
 - a) the Attorney General receives a complaint in writing about a lawyer working in the Department; or
 - b) the Attorney General becomes aware of conduct by a lawyer working in the Department which may constitute a breach of the Code.

Threshold determinations

- 11) The Attorney General shall dismiss a complaint received under Paragraph 10(a) if:
 - a) it does not adequately particularise the matter complained of or is not in writing;
 - b) the Attorney General considers it to be vexatious, malicious, frivolous or trivial;
 - c) it does not even, if true, amount to a breach of the Code;
 - d) it is without substance;
 - e) it is untrue, mistaken or misconceived;
 - f) it raises a matter already dealt with and does not raise any material new consideration that would change the manner in which the matter had been disposed of; or
 - g) for any other reason, it does not relate to misconduct by the lawyer.
- 12) A complaint shall not be dismissed under 11(a) unless the complainant has been afforded an opportunity to provide adequate details of the complaint or an opportunity to put the complaint in writing. A complainant must provide further details as requested or put the complaint in writing within 21 calendar days of any such request by the Attorney General.
- 13) The Attorney General may dismiss a complaint if received more than six months after the last of the events giving rise to the complaint, and should do so unless the Attorney General is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.
- 14) If the Attorney General dismisses a complaint under Paragraphs 11 or 13, the Attorney General, or a delegated person, shall inform the complainant in writing, and specify which aspect(s) of paragraph 11 and/or 13 are engaged. Where paragraph 11 b) and/or 11 e) apply, the Attorney General may take such further action as may be necessary in the

circumstances. If the lawyer is aware of the complaint, the lawyer shall also be informed of the dismissal and reasons.

Informal resolution of minor complaints

- 15) If the Attorney General does not dismiss a complaint that has been made under Paragraph 10(a) or conduct has come to the Attorney General's attention under Paragraph 10(b), the Attorney General shall refer the matter to the Director of the Division in which the lawyer is employed. That Director may then determine how to proceed.
- 16) The Director may decide to resolve the complaint or deal with the misconduct informally if the complaint or misconduct is minor. If the matter is not minor the Director shall cause an investigation in accordance with Paragraphs 19 - 22.
- 17) Informal resolution may include, but is not limited to, the following:
 - a) inviting the lawyer to apologise in writing to a complainant;
 - b) holding an informal meeting to resolve the issues, and/or
 - c) establishing an agreed course of action with the lawyer including setting objectives, identifying timescales for improvement and the provision of additional training.
- 18) If the Director is considering dealing with a complaint or potential misconduct informally, the Director shall:
 - a) seek the views of the complainant and the lawyer concerned about the matter;
 - b) give the lawyer concerned the opportunity to respond to the complaint, orally or in writing; and
 - c) take such other steps as may appear to the Director to be appropriate.

Investigation

- 19) If the Attorney General does not dismiss a complaint, or a complaint or potential misconduct has not been dealt with informally by the Director, the Director shall cause a thorough investigation into the matter.
- 20) An investigation shall take into account at least a statement from the lawyer and any information from a complainant. The lawyer may be interviewed and shall have the right to be accompanied at such interview by a legal representative, a workplace colleague or a trade union representative.
- 21) A written complaint shall be taken as the statement of any complainant for the purposes of the investigation and if necessary the complainant may be invited to a separate interview.
- 22) The investigation will normally commence within seven calendar days of the Attorney General deciding not to dismiss a complaint or the Director deciding that informal resolution is not possible or appropriate, as the case may be. The investigation will normally be completed within 21 calendar days of the decision not to dismiss a complaint or the decision that informal resolution is not possible or appropriate.
- 23) Following the completion of the investigation, the Director may:
 - a) refer the matter back to the Attorney General with a recommendation that the matter be dismissed under Paragraph 11;

- b) seek an informal resolution in accordance with Paragraphs 16 to 17; or
- c) cause a disciplinary hearing to be held if the Director considers, based on an investigation report or otherwise, that there is a *prima facie* case against the lawyer of a breach of the Code which cannot be dealt with informally.

Disciplinary hearing

- 24) A disciplinary hearing shall be chaired by a Director (hereinafter “the Chair”).
- 25) The Chair shall not be the Director to whom the complaint was referred by the Attorney General under Paragraph 15. The Chair may appoint any other persons as the Chair considers necessary to assist in conducting the disciplinary hearing.
- 26) If the Attorney General considers a Director unable to present the case against the lawyer or chair the disciplinary panel, as the case may be, the Attorney General shall appoint a suitably qualified person to otherwise fulfil either rôle.
- 27) The lawyer shall be notified of the hearing by the Chair in accordance with the GoJ Disciplinary Policy. If there is a complaint, the complainant shall, unless inappropriate, be called as a witness and notified of the date, time venue and hearing and the identity of the Chair of the disciplinary hearing.
- 28) The lawyer has the right to attend the disciplinary hearing and be accompanied at the disciplinary hearing by a legal representative, workplace colleague or trade union representative
- 29) Unless otherwise agreed, notice shall be affected by ordinary service in accordance with Rule 5/6 of the Royal Court Rules 2004.
- 30) In addition to the investigation report, the Chair may also request any further documents which appear to be relevant or make any further inquiries the Chair considers appropriate to fulfil their functions.
- 31) The Director who to whom the matter was referred by the Attorney General under Paragraph 15 shall present the case against the lawyer first. The lawyer or their representative and the Chair shall have the opportunity to ask questions relating to the case against the lawyer as presented.
- 32) The lawyer or their representative shall present the case for the lawyer. The Director, and the Chair, shall have the opportunity to ask questions relating to the lawyer’s case as presented.
- 33) The Chair may otherwise make whatever arrangements are necessary or appropriate for hearing the complainant or other witnesses or obtaining other evidence.
- 34) The Chair may regulate and determine the procedure of a disciplinary hearing as they sees fit subject to this procedure and the GoJ Disciplinary Policy.

Director decision

- 35) Once the case has been presented, the Chair shall determine the facts of the matter. Such a decision shall be made on the civil standard of proof. The Chair shall then determine if the facts amount to a breach of the Code or otherwise amount to a breach of the lawyer's terms and conditions of employment.
- 36) If the Chair is not satisfied that there has been a breach of the Code or of the lawyer's terms and conditions of employment, the Chair shall dismiss the matter.
- 37) If the Chair is satisfied that there has been a breach of the Code, the Chair may decide either that no further action is necessary or the Chair may do one or more of the following things:
 - a) require the lawyer to issue a written apology to the complainant;
 - b) give advice to the lawyer as to future conduct;
 - c) require the lawyer to undertake certain training;
 - d) recommend that the Attorney General privately reprimand the lawyer;
 - e) determine to:
 - i) issue a verbal warning to the lawyer;
 - ii) issue a written warning to the lawyer;
 - iii) issue a final written warning to the lawyer;
 - iv) recommend that the Attorney General dismiss the lawyer; and/or
 - f) recommend that the Attorney General refer the matter to the Royal Court if the lawyer is an Advocate or a Solicitor.
- 38) In considering an action or recommendation under Paragraph 37(e)(i)-(iii) or a recommendation under Paragraph 37(e)(iv), the Director shall take into account the GoJ Disciplinary Policy.
- 39) A recommendation under Paragraph 37(e)(iv) may not be made in the case of a first breach of the Code unless it amounts to gross misconduct.
- 40) A recommendation under Paragraph 37(f) shall only be made if the breach is considered by the Director to be a serious breach of the Code.
- 41) The lawyer and the Director who presented the case shall be notified in writing of the Chair's decision within five calendar days of the hearing and the action, if any, which the Chair has decided to take. If there was a complaint, the complainant shall be notified by the Director who presented the case of the outcome of the disciplinary hearing and that disciplinary action has or will be taken.

Appeal

- 42) A complainant shall have no right of appeal regarding any of the Chair's decisions.
- 43) If the lawyer is aggrieved by:
 - a) the Chair's decision determining that the facts amount to a breach of the Code; and/or
 - b) the action(s) taken or the recommendation(s) made by the Chair;

the lawyer may appeal to the Attorney General .

- 44) An appeal must be lodged with the Attorney General within five calendar days of the lawyer being notified of the Chair's decision(s). The Attorney General may however extend this period. An appeal shall normally be held within 21 calendar days of the appeal being lodged.
- 45) The appeal shall be heard by either the Attorney General or Solicitor General and will generally not be heard by the same person who made a threshold determination under Paragraph 11. The lawyer may request that a member of Human Resources attend the appeal. The Attorney General shall retain discretion to appoint suitably qualified persons to assist him in hearing the appeal.
- 46) The appeal shall proceed, in the same manner as a disciplinary hearing and the lawyer retains the right to attend the appeal hearing and have representation as described in Paragraph 28. The appeal shall otherwise proceed in such manner as the Attorney General shall determine.
- 47) The Attorney General may:
 - a) allow the appeal;
 - b) dismiss the appeal; or
 - c) subject to Paragraph 48, substitute some other penalty or sanction.
- 48) The Attorney General may not substitute some other penalty or sanction unless it was available to the Chair under Paragraph 37 and it is less severe than that imposed by the Chair, save that in all cases the Attorney General reserves the right to refer a matter, in the case of an Advocate or Solicitor, to the Royal Court.
- 49) The Attorney General, having reached a decision under Paragraph 47, shall notify the lawyer of the decision in writing within five calendar days.
- 50) The decision of the Attorney General shall be final and no further appeal shall be available under this procedure. This Paragraph shall not affect any further appeal available to a lawyer under the GoJ Disciplinary Policy.

Reference to the Royal Court

- 51) In deciding whether to refer a breach of the Code to the Royal Court, the Attorney General may, other than in clear cut cases and without prejudice to the generality of Paragraph 8, seek independent advice from outside the Department on whether the breach is a serious breach of the Code, sufficient to justify reference to the Royal Court.
- 52) If the Attorney General concludes that a reference to the Royal Court is necessary, the Attorney General will generally appoint a Crown Advocate, who is not an employee of the States Employment Board, to bring the matter to the Court's attention in the Attorney General's name.