

STATES OF JERSEY

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DRAFT THE LAW SOCIETY OF JERSEY LAW 200- (P.162/2004): AMENDMENTS

**Lodged au Greffe on 28th September 2004
by Deputy R.G. Le Hérissier of St. Saviour**

STATES GREFFE

PAGE 23, ARTICLE 18 –

For Article 18 substitute the following Article –

“18 The disciplinary panel of the Law Society

- (1) There shall be a disciplinary panel consisting of –
 - (a) 7 fit and proper persons, as lay members of the panel; and
 - (b) 4 ordinary members of the Law Society.
- (2) The lay members of the disciplinary panel shall be appointed by the States on the recommendation of the Jersey Appointments Commission established with the approval of the Act of the States dated 28th May 2002, after consultation by that Commission with the Law Society.
- (3) A person shall be eligible for appointment to the disciplinary panel as a lay member if, but only if, he or she–
 - (a) is not an advocate or solicitor; and
 - (b) is not admitted in any other jurisdiction as a legal practitioner.
- (4) The members of the disciplinary panel who are ordinary members of the Law Society shall be appointed by the Society in general meeting.
- (5) An ordinary member of the Society shall be eligible for appointment to the disciplinary panel if, but only if, he or she–
 - (a) is in private practice; and
 - (b) is a practitioner of at least 10 years’ standing.
- (6) However, Committee members, the Bâtonnier and the President of the Chambre des Ecrivains shall not be eligible for appointment to the disciplinary panel.”.

PAGE 25, ARTICLE 21(1)(b) –

For the words “2 persons who are ordinary members of the Society and one person who is a lay member of the panel” substitute the words “2 persons who are lay members of the disciplinary panel and one person who is an ordinary member of the Society”.

PAGE 25, ARTICLE 21(1)(c) –

For the word “ordinary” substitute the word “lay”.

PAGE 26, ARTICLE 22 –

For paragraph (3) substitute the following paragraphs –

- “(3) The disciplinary committee shall sit in public unless –
- (a) on the application of the complainant or the practitioner; and
 - (b) for reasons that the disciplinary committee shall state in writing,

the disciplinary committee decides to sit privately.

- (4) There shall be a right of appeal, in accordance with Article 24, against a decision of the disciplinary committee on an application to which paragraph (3) refers.”.

Renumber the existing paragraphs (4), (5) and (6) as (5), (6) and (7) accordingly.

PAGE 26, ARTICLE 23(1)(b) –

For the words “either by way of a public reprimand or a private rebuke, by so reprimanding or rebuking” substitute the words “by way of a public reprimand, by so reprimanding”.

PAGE 26, ARTICLE 23 –

For paragraph (2) substitute the following paragraphs –

- “(2) If the disciplinary committee has sat in public to hear the complaint, it shall deliver its decision in public.
- (3) The disciplinary committee shall provide written copies of its decision and of its reasons for the decision to –
- (a) the complainant, the practitioner, the Attorney General and the Secretary; and
 - (b) the Bâtonnier, or the President of the Chambre des Ecrivains, if he or she has been heard on the matter.”.

Renumber the existing paragraph (3) as paragraph (4) accordingly.

PAGE 27, ARTICLE 24(1)(a) –

For the words “either to” substitute the words “to grant or refuse an application to sit privately to hear his or her complaint or to”.

For the words “either by publicly reprimanding or privately rebuking” substitute the words “by publicly reprimanding”.

PAGE 27, ARTICLE 24(1)(c) –

For the word “to” substitute the words “to grant or refuse an application to sit privately to hear the complaint or to”.

Omit the words “or privately rebuke”.

PAGE 27, ARTICLE 24 –

For paragraph (2) substitute the following paragraph –

- “(2) The appeal shall be lodged within one month after the decision to which it relates is given, or within such further time as the Royal Court may allow.”.

PAGE 27, ARTICLE 24(4)(b) –

Omit the words “a private rebuke or”.

PAGE 27, ARTICLE 24(5)(b) –

For the words “neither a private rebuke nor a public reprimand is” substitute the words “a public reprimand is not”.

PAGE 28, ARTICLE 26(8) –

Omit sub-paragraph (a) and renumber the remaining sub-paragraphs as sub-paragraphs (a), (b), (c) and (d) accordingly.

PAGE 31, ARTICLE 37(2) –

For the words “the members of the disciplinary panel to whom sub-paragraph (a) of Article 18(1) refers” substitute the words “members of the disciplinary panel under Article 18(4)”.

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

REPORT

This Law has been a long time in coming. During its gestation there have been shifts in society's attitude concerning the issues it aims to address.

One of its key aims is to put in place a framework for the discipline of registered practitioners in the Jersey legal profession. Hitherto the Bâtonnier has been faced with administering discipline without the proper statutory framework. This has, at times, led to considerable difficulties and a perception that the Law Society is toothless or that it is a body protecting its own. Contrary to public perceptions, this matter has been of considerable concern to many members of the profession who want to see robust and credible disciplinary procedures in place.

As a former member and President of the Legislation Committee I have reflected upon our approach to this key issue and have concluded that the actual process needs to be strengthened if it is to enjoy public confidence.

Recommendations

While there is a debate to be had on the role of the Royal Court as the major tribunal for disciplinary matters, this proposition focuses on the Disciplinary Panel/Committee (Part 3, Articles 1823).

In the proposer's view, the lay element on the Panel and Committees should be considerably strengthened. There is a public demand for more accountability from professionals who are given, as in this instance, certain privileges by the State. In some cases, such as the Police, the determination of complaints has been completely placed in the hands of an independent body both here and in the U.K.

The lay element should exceed the professional element. Furthermore, the appointment process for the lay element must be seen to be transparent. This model has worked with success in bodies like the General Medical Council. It emphasises the importance of outside participation and thereby adds considerable credibility to the process.

ARTICLE 18

The proposed amendment will alter the composition and mode of appointment of the disciplinary panel from which disciplinary committees are appointed to hear individual complaints.

The draft Law at present provides that the panel is to consist of 7 ordinary members of the Law Society and 4 lay persons.

The amendment provides that it is instead to consist of 7 lay persons and 4 ordinary members of the Law Society.

ARTICLE 21(1)(b)

The draft Law at present provides that of the 3 members of the disciplinary panel who constitute a disciplinary committee, 2 must be lawyer members and the third a lay member.

The proposed amendment would provide instead that 2 must be lay members and the third a lawyer member.

ARTICLE 21(1)(c)

The draft Law at present provides that one of the 2 lawyer members of a disciplinary committee is to be appointed as its chairman.

The amendment would provide instead that one of the lay members is to be the chairman.

ARTICLE 22, NEW PARAGRAPHS (3) AND (4)

This amendment would provide that a disciplinary committee must ordinarily sit in public, unless on the

application of the complainant or the practitioner concerned the committee decides to sit privately.

If it does decide to sit privately, the disciplinary committee must state its reasons in writing, and there will be a right of appeal to the Royal Court against its decision.

ARTICLE 23(1)

The effect of this amendment is to remove a private rebuke as one of the sanctions available to a disciplinary committee. The amendment is necessary to avoid the anomalous situation that would otherwise arise where the disciplinary committee has already sat publicly to hear the case. It is related to the amendments proposed to Articles 24(1), (4) and (5) and 26(8).

ARTICLE 23, NEW PARAGRAPH (2)

This amendment would provide that where a disciplinary committee sits in public to hear a complaint, it must also give its decision in public.

ARTICLE 24(1)(a)

This amendment, which is consequential, would confer on a complainant a right of appeal to the Royal Court against a decision by a disciplinary committee to grant or refuse an application to sit privately to hear a complaint.

It would also consequentially remove reference to a private rebuke.

ARTICLE 24(1)(c)

This amendment, which is also consequential, would confer on a practitioner that same right of appeal.

It would also consequentially remove reference to a private rebuke.

ARTICLE 24, NEW PARAGRAPH (2)

This amendment, which is also consequential, has the effect of stipulating a time limit for bringing any such appeal.

ARTICLE 24(4)(b)

This amendment would consequentially remove reference to a private rebuke.

ARTICLE 24(5)(b)

This amendment would consequentially remove reference to a private rebuke.

ARTICLE 26(8)

This amendment would omit a private rebuke as a sanction available to the Royal Court .

ARTICLE 37(2)

This amendment is consequential on the replacement of Article 18.

There are no financial or manpower implications for the States arising from these draft amendments.