



The Law Society of Jersey

Mr Simon Spottiswoode
Scrutiny Office
Morier House
St Helier
Jersey
J1 1DD

14 September 2018

Dear Mr Spottiswoode

Draft Access to Justice (Jersey) Law 201- Review

I refer to the Legal Aid Review Panel's request, dated 31 August 2018, in relation to the Draft Access to Justice (Jersey) Law 201-, in respect of which we are pleased to provide the Law Society's comments and observations.

Having been actively involved in the Access to Justice initiative since its launch by the former Chief Minister in 2013, through membership of and active participation in the work of the Expert Panel, the Law Society is well placed to comment on the proposed legislative changes and the proposed changes to Legal Aid.

It will be helpful if I provide some background to Legal Aid.

Background

When the concept of what we now call Legal Aid was officially recognised in Jersey nearly 250 years ago, its original intention and, indeed, a key part of the lawyer's oath of 1771, was that lawyers would provide legal assistance to "*widows, the poor, orphans, and undefended persons*".

The provision of a 'safety net' of legal representation, by the local legal profession, to those who might otherwise be deprived of access to justice has remained largely unchanged over the passage of time, notwithstanding significant changes in the society in which we live and a substantial growth in the nature and scope of legal issues for which free or reduced cost legal representation is available.

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.

Jersey remains the only jurisdiction in the world where the cost of Legal Aid, estimated at between £7-9 million, is largely borne by the legal profession rather than the state, notwithstanding the human rights obligations of the States of Jersey to provide such, particularly in relation to the provision of legal assistance in criminal matters.

Turning to the Terms of Reference, we make the following comments:

1. Proposed Changes to Legal Aid

The review of Legal Aid concluded that, in order to maintain the safety net of legal representation, in key areas of personal law, for the most vulnerable members of the community who might otherwise be deprived of access to justice, certain changes were necessary and appropriate.

The key changes, which subject to public and targeted public consultation, were developed in conjunction with, and agreed by, the Access to Justice Expert Panel, and endorsed by the Access to Justice Advisory Panel, are as follows:

- A reduction in the scope of legal issues which are eligible for legal aid, so as to focus on the areas where help is most needed;
- Amendment of the financial eligibility criteria, so that focus is placed on meeting the legal needs of those who can least afford to pay the full costs of legal representation;
- The provision of public funding where legal assistance is required in 'public' law matters, such as in criminal matters before the courts and in relation to the welfare of children, in line with the Government's human rights obligations, as well as where it is in the public interest. The proposals are, however, largely cost neutral, with re-allocation of other courts and costs funding.
- Maintenance of private law/civil legal aid by the legal profession, with no public funding.
- The provision of choice of representation in public law matters (where funding is provided) such as criminal and children law cases.
- Centralising the administration of Legal Aid, so as to deliver greater transparency and clarity on eligibility for assistance, as well as more effective signposting of alternative means of resolving issues facing islanders.

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.

2. The Rationale for Change

The availability of Legal Aid is, in our view, critical to the smooth operation of Jersey's justice system, ensuring that who truly cannot afford the cost of legal advice and representation are not deprived of access to justice.

That does not mean that Legal Aid should be available for all matters in respect of which legal assistance is needed or that everyone should be entitled to free or reduced cost legal representation irrespective of their means.

Nor does it mean that the cost of Legal Aid should be borne only by the legal profession. While the legal profession is committed to the 'access to justice' principle that underpins legal aid, it feels that the burden of responsibility and costs associated with Legal Aid should more fairly be shared with the States of Jersey, in line with their human rights responsibilities, rather than continuing to be managed and funded by the legal profession.

Indeed, in other countries, such as the UK, the costs of Legal Aid are wholly met by the Government, although legal advice and representation is only available for a very small number of legal issues and is subject to strict financial eligibility criteria.

It is also worthy of note that no other profession – in Jersey or indeed in any other jurisdiction – provides professional services on a self-imposed obligatory basis to vulnerable members of the community on a pro bono basis.

However, while the profession is committed to preservation of the 'safety net' of legal representation for the most vulnerable members of the community who might otherwise have been deprived of access to justice, the current scheme is no longer sustainable and is in urgent need of reform.

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.

3. Impact on Service Users, the States of Jersey and the Legal Profession

Service users

- Legal aid will continue to be available for the most vulnerable members of the community, in key areas of personal law where there is the greatest need.
- There will be greater transparency and clarity in respect of who is eligible for legal aid and the areas of law that are covered by legal aid.
- Improved access to legal aid in criminal matters for individuals under the age of 18.
- There will be consistency of approach in the application of personal contributions (where payable), with capping of contributions in criminal matters.
- Users (in criminal matters) will have choice of representation from a specialist panel.
- Users will benefit from the centralisation of the Legal Aid Office, which will be more accessible to users and signpost unsuccessful applicants for Legal Aid to alternative legal and non-legal solutions to resolve issues.

States of Jersey

- The funding of public law matters (albeit largely on a cost-neutral basis) will serve to discharge the Government's human rights' obligations (which have hitherto been discharged by, and at the cost of, the legal profession).
- The creation of a statutory basis for legal aid provides certainty for the future, rather than reliance entirely on the goodwill of the legal profession.

Legal Profession

The current Legal Aid Scheme is unsustainable from the perspective of the legal profession. The proposed new scheme represents a more balanced approach, with responsibilities shared between the legal profession and the Government. Representation in public law (e.g. criminal) matters will be subject to opt-in by firms and individuals, providing a element of choice for practitioners (which will equally benefit users through access to specialists) and allow firms to focus on their areas of preferred expertise.

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.

4. Implementation of Desired Policy Objectives

We consider that the Draft Access to Justice (Jersey) Law 201-, as currently presented, effectively implements the desired policy objectives.

5. Other Areas of Concern

The Access to Justice legislation and the review of Legal Aid has been subject to extensive public and key stakeholder consultation, discussion and negotiation over the past five years.

We consider that the revised Legal Aid Scheme, as proposed, while not perfect (either for the legal profession or the Government), represents the best option for the people of Jersey. It provides, and maintains, the safety net of legal representation for the most vulnerable members of our community who might otherwise be deprived of access to justice.

Fundamentally, it meets the objective, set at the outset of the Access to Justice Review, of creating a sustainable Legal Aid model that is fit for the future, and ensures access to justice for those most in need and who cannot afford the full costs of legal representation.

Change is needed, and is needed soon. Significant compromises have been agreed by the legal profession in getting to the position as reflected in the proposed terms of the scheme.

Amending the legislation or proposed terms of the scheme (through the guidelines) would, in our view, serve little purpose other than to undermine the work that has been undertaken over the past five years and could, ultimately, result in the support of the legal profession, upon which this legislation and the provision of legal aid depend, being withheld, the impact of which for Jersey would be extremely serious. As such, we urge the Legal Aid Review Panel to support the legislation, and to permit the guidelines to be developed and implemented as currently proposed.

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.

If you require any further information or assistance, or the panel wish to meet again with representatives from the Law Society, we would be pleased to attend upon them.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Advocate John Kelleher

President

The Law Society of Jersey

P.O. Box 493 St. Helier JERSEY Channel Islands JE4 5SZ
Telephone +44 (0)1534 822320 (President) +44 (0)1534 734826 (CEO) +44 (0) 1534 613920 (Law Society Office)
Web: www.jerseylawsociety.je Email: president@jerseylawsociety.je

This communication may contain information which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior written consent of The Law Society of Jersey.