

# STATES OF JERSEY



## LAW OFFICERS' DEPARTMENT AND MEMBERS OF THE LAW SOCIETY OF JERSEY: REVISED DISCIPLINARY PROCESS

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Lodged au Greffe on 13th November 2013  
by Deputy R.G. Le Hérisier of St. Saviour

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to request the Chief Minister to bring forward within 6 months proposals for revised procedures to deal with any complaints made against lawyers working in the Law Officers' Department (other than H.M. Attorney General and H.M. Solicitor General) to ensure that they conform with "best practice";
- (b) to request the Chief Minister to consult with the Law Society of Jersey and other interested parties to develop a revised Complaints and Disciplinary procedure for members of the Law Society that conforms with "best practice" and to present a report with recommendations to the States within 6 months;
- (c) to request the Chief Minister to consult with the Crown on the desirability and feasibility of establishing a revised Complaints and Disciplinary process for H.M. Attorney General and H.M. Solicitor General and to report to the States with recommendations within 6 months on the outcome of this consultation.

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

## **REPORT**

During Question Time on 2nd July 2013, Deputy M.R. Higgins of St. Helier drew attention to the fact that lawyers working in the Law Officers' Department are not subject to the same disciplinary procedures as their private sector counterparts, who are subject to the disciplinary processes of The Law Society of Jersey Law 2005.

They had been exempted from these provisions as a result of an amendment lodged in 2005 by the Chief Minister.

In answering the question of Deputy Higgins, H.M. Solicitor General asserted that the Law Society had not demurred in 2005, and also maintained that the lawyers working in the Law Officers' Department were subject to 2 Codes, one of which is a general Civil Service code and not tailored for lawyers. He also referred to a Code operating within the Law Officers' Department, now available to read on the relevant website. While this fully reflects the standards of conduct to which an LOD lawyer should adhere, it is not a substitute for a Complaints and Disciplinary process.

The Solicitor General also drew attention to the potential for malicious complaints, given the nature of the work of some lawyers in the Law Officers' Department. However, bodies like the police also operate in this environment, but no-one would seriously suggest that there not be a proper procedure for dealing with complaints against the police.

### **Proposal**

My proposition is mild in the circumstances. As a member of the then Legislation Committee who was involved in the promotion of the original Law, and as the member who moved an amendment seeking lay involvement in the disciplinary process, I think the whole process is due for review.

It became evident to me to me, as I dug deeper, that the Complaints and Disciplinary process for private sector lawyers was in need of review. Currently, it seems over-complex, involves several stages with different parties, and needs to be more transparent.

Rightly, much has been made of the lay element in the process. However, the role of the lay members is circumscribed, in the sense that the serious complaints are referred to the Attorney General, who can then refer them to the Royal Court. It is obvious that the reforms put in place, after a considerable delay and with a sense of relief, are still a "work in progress".

Whilst this proposition is directed at ensuring the improvement of complaint and disciplinary processes for public and private sector lawyers, the question remains of the accountability in this regard of the 2 Crown Officers in the Law Officers' Department: H.M. Attorney General and H.M. Solicitor General. Paragraph (c) requests the Chief Minister to liaise with the Crown on this matter and to report back to members. As indicated, I also believe that the role played by H.M. Attorney General currently in regard to disciplinary procedures will need to be the subject of a further review.

### **Financial and manpower implications**

This will involve a review of current practices, a review of practices in comparable jurisdictions, and should involve research by a project officer for approximately 4 months at most. I am satisfied that this can be undertaken within existing resources.

The actual system that will be established to investigate complaints may involve some additional cost if independent external involvement is required, but on the basis that there will hopefully be few complaints and that provision already exists, as explained by the Solicitor General on 2nd July 2013, for an external Q.C. to be engaged if required to deal with a serious complaint, I am satisfied that the new system can be accommodated within existing resources.