

### **3. Oral Questions**

#### **3.1 Deputy M.R. Higgins of St. Helier of the Attorney General regarding the professional standards and disciplinary procedures applied to the Law Officers and Jersey qualified lawyers within the Law Officers Department:**

Will Her Majesty's Attorney General - in this case the Solicitor General - explain whether the Law Officers and the Jersey qualified lawyers within his department are subject to the same professional standards and disciplinary procedures of the Law Society of Jersey, which are applied to Jersey advocates or solicitors in private practice, and if not, why not?

#### **Mr. H. Sharp Q.C., H.M. Solicitor General (Rapporteur):**

The Law Society of Jersey Law 2005 does not require any advocate or solicitor of the Royal Court to be a member of the Law Society of Jersey in order to practice as an advocate or solicitor during the course of his or her employment in the Law Officers' Department. Anyone who is not a member of the Law Society of Jersey is neither subject to that society's Code of Conduct nor to its disciplinary procedures.

##### **3.1.1 Deputy M.R. Higgins:**

It is my understanding... in fact I think the current Chair as Attorney General was responsible for taking that provision out of the 2005 law or recommending it be taken out of the 2005 law. In all other jurisdictions in the United Kingdom, the Law Officers are subject to the disciplinary panels of their respective law societies, so the Isle of Man, Guernsey and the United Kingdom; can the Solicitor General tell us why he believes that they should not be subject to the same disciplinary powers? Who is accountable, if they are not accountable to them?

#### **The Solicitor General:**

The history of the Law Society Law 2005 is that there was a dialogue between the Law Society and the Law Officers in early 2006 and as a result of that dialogue the Law Society supported an amendment to the law, which removed Law Officers' Department lawyers from the ambit of the Law Society's disciplinary procedures. That matter was debated by the States Assembly and the States Assembly agreed to amend the law with the support of the Law Society. At the time of that debate, which took place on 19th September 2006, the Solicitor General, at that time, Stephanie Nicolle Q.C., advised States Members that the Law Officers' Department, if they pass the amendment, would be taken outside the ambit of the Law Society. So the first answer to the Deputy's many questions is that this was a decision taken by States Members at the time with the support, at that time, of the Law Society. As to what other systems might prevail elsewhere, I have not done an extensive review but, as I understand it, in the Isle of Man the Law Society does not discipline anyone. There is an external body that looks at disciplinary matters. I understand in Guernsey it is the Law Officers in the first instance who look at complaints about the lawyer in the Law Officers' Department. Finally, may I say this, when the Solicitor General, back in 2006, was advising the States Assembly as to the consequences of the amendment, she highlighted a number of points of public policy, which are there for all to see in Hansard, as to why the change was desired. One point I wish to emphasise today is that there is concern that employees of the Law Officers' Department are particularly vulnerable and susceptible to malicious complaints by, in particular, defendants who wish to use the complaint to gain some sort of advantage in criminal proceedings. That concern remains today, and advocates remain at risk of malicious complaint.

##### **3.1.2 Deputy R.G. Le Hérissier of St. Saviour:**

Notwithstanding what the Solicitor General has said, could the Solicitor General tell us how the aims of the legislation is applied to non-Crown Officers in the legal profession, how those aims are dealt with within the Crown Officers' Department? In other words, how are the professional

standards upheld? How are complaints dealt with so that people feel internally justice has been done?

**The Solicitor General:**

The Law Officers' Department have codes of conduct which apply to all lawyers within their department, whether or not they are Jersey-qualified. So for example, if an English-qualified lawyer is in the department they are still subject to those codes. There are 2 codes. The first code is the Civil Service Code, which applies to all public sector employees. The second code is a Code of Conduct of lawyers at the Law Officer's Department. That was a code that I started work on over a year ago, and is now in force and applies to all lawyers. Thirdly, if one looks at the Law Society of Jersey Law, in respect of Law Society members, it is the Attorney General who decides in those cases whether or not to refer an advocate or solicitor to the Royal Court for disciplinary action in serious cases. Of course the Attorney General retains that power in respect of his own employees. Furthermore, the Law Officers' Department has a procedure in place whereby if there is a complaint that is not vexatious and is sufficiently serious we will appoint an independent Q.C. to investigate the matter so as to bring an independent mind to bear on those things.

**3.1.3 Deputy R.G. Le Hérissier:**

Just for clarification: would the Solicitor General not acknowledge that the great innovation in dealing with non-Crown Officer lawyers was that there is now a lay element at an important part of the proceedings? It is not lawyers judging lawyers.

**The Solicitor General:**

I believe the Deputy is referring to the fact that in the Law Society procedure a President of the Law Society can refer a complaint to a disciplinary committee of the Law Society, which consists, I entirely accept, of some lay members. However, as I have said, in serious cases it is still the Attorney General who has the power to refer disciplinary matters to the Royal Court. It is the Attorney General who can overrule the President of the Law Society if he chooses not to take any action. So in terms of the serious cases, it is still the Attorney General in all cases that deals with these matters.

**3.1.4 Deputy T.M. Pitman of St. Helier:**

I have to say... and certainly a few of us still are under the impression that these officers are not under any external responsibility or accountable to anyone. But my question is, the Solicitor General referred to a dialogue between the Law Society; is it not a fact that that was more of a confrontation and there was the threat of legal action if those amendments were not agreed?

**The Solicitor General:**

In 2006 there was a letter from the Attorney General to the President of the Law Society, I may have the date wrong, but it was something like 11th January, inviting a conversation about this proposed amendment in the law. There was a meeting. I have seen some record of the meeting between the Law Officers and the Law Society. It was a perfectly amicable meeting, there was a perfectly amicable response from the Law Society, there were no threats of any kind by anyone to anyone.

**3.1.5 Senator S.C. Ferguson:**

Have there been any disciplinary procedures since you became Solicitor General?

**The Solicitor General:**

At the Law Officers' Department or generally?

**Senator S.C. Ferguson:**

In the Law Officers' Department.

**The Solicitor General:**

No.

**3.1.6 Deputy M.R. Higgins:**

I was interested to hear what the Solicitor General was saying about the amicable relationship with the Law Society, which is different to my understanding because I believe there is a current dispute between the Law Society and the Law Officers over the Law Society wanting to discipline or bring a case to the Royal Court regarding a Crown Advocate and the Attorney General has refused. Would the Solicitor General care to elaborate on this dispute that is going on, which is obviously straining relations between the 2 bodies?

**The Solicitor General:**

I entirely accept that the employees of the Law Officers' Department have to be held to high standards, and they accept that and they understand it.

[10:00]

However, they like everybody else are entitled to be treated with some fairness and they are and should not be subjected to any disciplinary procedure that is unlawful. If the Law Society do not now, notwithstanding their support for it in 2006, accept the current state of the law then that is of course entirely within their right and they can have any discussions they wish. But in my view it is not appropriate to commence any sort of disciplinary procedure, which just is not in the law. That cannot be right.

**3.1.7 Deputy M.R. Higgins:**

Supplementary, Sir, because the Solicitor General has not fully answered the question. There is currently a dispute between the Law Society and the Law Officers' Department. It is my understanding that the Law Society would like to bring an action against a Crown Advocate and that the Attorney General has refused and is contentious. Will you confirm that there is a disagreement going on at the present time over whether one of your officers should be disciplined?

**The Solicitor General:**

No, that is simply not right. The President of the Law Society or rather the Law Society Committee have reached the view that they have a power to discipline or start disciplinary proceeding in respect of an advocate of the Law Officers' Department. I do not share that view. My view is they do not have any such power. That is the dispute. Nobody has stopped the Law Society from doing anything they wanted to, they have chosen not to take action.