

## Bâtonnier

PO Box 75  
26 New Street  
St Helier  
Jersey JE4 8PP  
Channel Islands

T +44 (0) 1534 814832  
F +44 (0) 1534 814815

E: batonnier@bedellcristin.com

13 September 2018

Mr Simon Spottiswoode  
Scrutiny Office  
Morier House  
St Helier  
Jersey  
JE1 1DD

Dear Mr Spottiswoode

### **Draft Access to Justice (Jersey) Law 201- Review**

I write further to your request for my comments on the above draft law (the "Draft Law").

I am, in my capacity as Bâtonnier, a member of the Access to Justice Expert Working Group, initiated by the former Chief Minister in 2013, to investigate the issue of Legal Aid Reform and Access to Justice.

On 22 May 2014, I responded in writing to an Invitation for Comment, published on behalf of the Chief Minister, to address in my capacity as Bâtonnier, two specific areas of review at that time, namely:

- Access to Justice; and
- Resolution of disputes and issues regarding legal services.

Since the formation of the Expert Working Group, it (and I) have spent a significant number of hours in meetings, in addition to the many hours of work with members of the Law Society and others, considering and taking forward issues relating to the Legal Aid Reform and Access to Justice. It has been far from plain-sailing and all involved have had to make compromises.

In my view, the Draft Law and the associated draft Guidelines, are the culmination of the work of the Expert Panel and strike a fair balance between the interests of those impacted.

Insofar as the specific items three and five of the Panel's Terms of Reference be concerned:

3. *Will the changes improve the legal aid system for:*
  - a. *Service users*
  - b. *The States*
  - c. *The legal profession*

In my view, those accessing the Legal Aid system will benefit immediately from being able to exercise a choice for the first time in relation to their legal representative; they will have specialist, accredited advisors; there will be consistency of approach in terms of charging fees through the central Legal Aid office; and clarity as to what is and is not covered by the scheme.

Insofar as the States is concerned, it will have a scheme which meets its human rights' obligations and over which it can exercise a degree of control; it will have clear visibility over the costs of the scheme; it be in a position to balance the interests of those paying for the scheme against those using it and/or providing the services under it.

The current Legal Aid Scheme is unsustainable from the perspective of the legal profession; it is also wholly wrong for the States to abdicate its responsibilities such that the profession meets those obligations *pro bono*. The new scheme provides a sustainable basis for the provision of Legal Aid and places the obligation properly with the States. It also provides an element of choice for practitioners and will allow law firms to focus on their areas of preferred expertise.

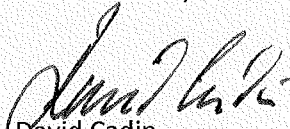
5. *Are there any other areas of concern or issues that need to be considered in relation to the draft Access to Justice Law?*

Having participated at length in the process, I broadly accept the point that has been reached.

Inevitably, there will be aspects of the Draft Law and/or the associated Guidelines with which individuals might disagree and/ or might wish to amend. However, I would urge significant caution before so doing. To amend the Draft Law and/or the Guidelines at this stage, outside the confines of the Access to Justice process and panel, without regard for the compromises that have been made, or the discussions that have taken place, over the course of the last five years risks undermining the very delicate balance that has been achieved by all stakeholders.

I trust that is assists, but should you have any further questions, please do not hesitate to contact me.

Yours sincerely

  
David Cadin  
Bâtonnier