

HUMAN RIGHTS (JERSEY) LAW 2000 - JUDICIAL GREFFE COMPLIANCE

I have been requested by the Judicial Greffier to carry out a review of the Judicial Greffe and its functions prior to the coming into force of the Human Rights (Jersey) Law, 2000 (“the HRL”). This gives domestic recognition in Jersey to the European Convention on Human Rights (“the Convention”). The purpose of the review is to consider all areas for which the Judicial Greffier is responsible and to comment on existing procedures and, where necessary, make recommendations for any improvements or changes which may be required. In other words, the review relates to procedures which exist or which should be introduced or improved for the various activities carried out by the department through its sections to ensure compliance with the HRL.

In order to carry out this review I have considered applicable statutes and subordinate legislation where necessary. I have not, however, carried out any “audit” or detailed analysis of any legislation to ensure its compliance with the HRL. Such an exercise is not within the scope of the instructions given to me. In any event, it is a function more appropriately carried out independently from my review.

I set out below my comments and observations in relation to the various functions for each section. The list of functions reviewed was agreed with the Judicial Greffier as part of the initial instructions given to me.

SAMEDI DIVISION

1. Case Management for Civil Actions

The formal framework for the management of civil litigation is the Royal Court Rules 1992 which sets out detailed procedures which are required to be followed. In addition to the Rules there are various decisions of the Royal Court and the Court of Appeal on various interlocutory procedural issues and detailed Practice Directions. Interlocutory functions are provided almost exclusively by the Master of the Royal Court with support as required from time to time from the Judicial Greffier. The Master is an Advocate of the Royal Court and has received appropriate training in relation to Human Rights. No further action is required in order to ensure compliance with the HRL.

2. **Taxation of Costs**

Detailed provisions relating to the taxation of costs are now included in the Royal Court Rules 1992 and Practice Directions. In practice, taxation falls within the ambit of responsibilities of Mr. M. Haines, Assistant Judicial Greffier. His decisions on taxation are, for the purposes of the Royal Court Rules, decisions of the Judicial Greffier and are therefore subject to the normal rights of appeal to the Royal Court. In any event, the Royal Court exercises a supervisory jurisdiction and has itself given various decisions on costs. Although not required to ensure compliance with the HRL there are two issues which merit further consideration. Firstly, the Judicial Greffier should consider whether it would be appropriate to allow bills of costs to be taxed by agreement between the parties even when there is no Order of the Court requiring such taxation. This seems an eminently sensible approach especially as very often now parties resolve various matters with the issue of costs "to be taxed if not agreed". The second matter is to review procedures where there is a question of retrospective impact on an assessment of costs. The crucial matter is to ensure that the correct rates are applicable at all times.

3. **Legal Aid Expenses**

At the present time, applications from firms of lawyers for the payment of expenses from the Legal Aid Vote are dealt with on an ad hoc basis. Each individual application is considered on its own and there is no established procedure laid down to be followed for each application. This has been an area of concern and the Judicial Greffier and the Master have had discussions with Advocate R. J. Renouf on behalf of the Law Society with a view to agreeing some new procedures. In particular, it is highly desirable (if not essential) to introduce an agreed procedure for such applications. This would cover such matters as applications being in writing, statements of the means of the client being included, reasons for the application and appropriate undertakings to be provided for the reimbursement of costs which are recovered by the applicant. Advocate Renouf was asked some considerable time ago to put forward proposals on behalf of the Law Society covering these matters but unfortunately no such proposals have yet been forthcoming. I recommend that this matter be addressed as matter of such urgency. If Advocate Renouf does not come forward with proposals early in the New Year then I think the Judicial Greffier should put forward his own proposals and send them to the Law Society via Advocate Renouf. Once the procedure

has been agreed with the Law Society then it will be necessary also to introduce internal procedures to be followed by the Judicial Greffe. This will ensure that all applications are treated in the same way and should achieve a consistency of approach which has not always been present in the past.

4. **Appeals from Magistrate's Court**

Difficulties have arisen which require resolution between the Magistrate's Court Greffe, Judicial Greffe and Law Officers' Department. The first concern is to ensure that the time taken for Appeals to be heard is as short as possible to avoid any criticism from the Royal Court. Secondly, it is necessary to ensure that there is in place a satisfactory system so that all relevant papers for an appeal are before the Royal Court in good time. These matters have been the subject of discussion for some considerable time but should be brought to a satisfactory conclusion as quickly as possible to ensure that the whole Appeals procedure does not present any problems under the HRL.

5. **Registration of Medical Practitioners and Others**

The role of the Judicial Greffe in the registration of Medical Practitioners and other professions is only administrative and does not give rise to any matters of compliance with the HRL. It should be noted that a proposal is being put forward that the Health & Social Services Department should assume responsibility for the registration of Medical Practitioners and other professionals in the medical field. This will require a new statute which will need to comply with the HRL.

6. **Deeds Poll**

Recent decisions of the Royal Court have shown a progressive approach to deed poll applications which seems to be totally in accord with the provisions of the HRL. Non-controversial decisions continue to be dealt by the Judicial Greffe in what is really an administrative act. It is necessary, however, to agree a procedure where the Greffier does not feel it appropriate to register a deed poll without the consent or approval of the Royal Court. It is necessary if that line is to be taken that consultation should involve the Judicial Greffier, his Deputy or the Master who will assist in deciding whether there should be a

formal refusal or merely a reference of the matter to the Royal Court. If a refusal is to be given by the Judicial Greffier then detailed written reasons will need to be given. I would suggest that a formal written procedure is implemented to ensure that what I propose is followed. I consider that the better approach to be adopted generally if the Greffier is concerned about the registration of a deed poll is to ensure that the matter is referred to the Royal Court for adjudication.

7. **Reciprocal Registration of Judgments**

Registration is principally governed by the Judgments (Reciprocal Enforcement) (Jersey) Law, 1960 and related legislation and rules. I do not think there is any reason to consider that such legislation is anything other than compliant with the HRL. This is an important area bearing in mind Jersey's position as an offshore finance centre and I think it essential that the Judicial Greffe should prepare detailed internal procedures to ensure registration can be easily effected. Such procedures should include reference to appropriate time scales within which registration should take place (having regard to any statutory provisions applicable) as these are important in the light of Jersey's particular status. Such procedures should also ensure that there is no breach of applicable provisions of the Convention (e.g. Articles 5 & 6 and Article 1 of the First Protocol).

8. **Foreign Maintenance Orders**

In future, such orders will fall to be dealt with under the Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000. Advocate S. C. K. Pallot of the Law Officers' Department has prepared draft Rules under this Law and these are with the Registrar of the Family Division for approval. Once that approval has been given the new Law can be brought into force. I would not envisage any particular HRL issues will arise in this regard.

9. **Dégrévements**

Effectively, the role of the Judicial Greffe is limited to administrative and registration functions. It may be that the law relating to dégrévements in general does pose problems from a human rights angle. In particular, the absence of an obligation for any equity of redemption to be returned to a debtor may well be in breach of Article 1 (protection of

property) of the First Protocol to the Convention. The detailed procedures for dégrèvement are laid down by statute but the abolition of the whole process is under active consideration by the Jersey Law Commission. As a matter of practice it may well be that the continued use of the alternative process of bankruptcy by way of a désastre under The Bankruptcy (Désastre) (Jersey) Law 1990 will be the procedure usually adopted instead of dégrèvement proceedings.

10. **Electoral College**

The Electoral College only convenes for the election of Jurats. There is no direct role to be performed by the Judicial Greffe although it does maintain an up-to-date register of members of the College. No Human Rights issues seem to arise.

11. **Postal Voting**

Overall legislation relating to the conduct of elections in Jersey is currently the subject of detailed review. Both the Judicial Greffier and the Master have been involved in that review and have provided detailed comments on proposed new draft legislation including particular comments in regard to postal voting systems. With particular reference to postal voting it may be possible to gain some benefit or advantage from recent experiences in the United Kingdom.

The role of the Judicial Greffier in relation to postal voting is an important one. The right to vote is a fundamental right and the right to free elections is expressly referred to in Article 3 of the First Protocol to the Convention. Procedures laid down for postal voting must ensure the facilitation of that right. I recommend, therefore, that clear procedures be laid down internally and closely followed to ensure that this objective is achieved.

12. **Greffier Arbitre**

This role, usually in the context of accessing damages or the value of an estate, is in practice performed only by the Judicial Greffier or Master. It is a judicial function and both the Greffier and the Master have received appropriate judicial Human Rights training.

13. **Rules of Court**

The power for creating Rules of Court is laid down by the Royal Court (Jersey) Law, 1948. The initiation of Rule changes rests with the Master and the 1948 Law requires that any Rules must be approved by the Superior Number of the Royal Court and there is also the check or balance of the Rules Committee whose approval must also be sought. No particular Human Rights issues arise.

14. **Payments into Court**

Payments into Court are governed by Rule 6/26 of the Royal Court Rules 1992. The Judicial Greffe has practices and procedures in place which meet all requirements and are very well administered. Payments into Court form part of the litigation process and are to be distinguished from such matters as the enforcement of judgments. By their very nature, payments into Court must, in my view, remain exclusively within the domain of the Judicial Greffe. The existing system has shown its efficiency and no changes are required for HRL purposes.

15. **Licensing Assembly and Liquor Licences Generally**

The Licensing (Jersey) Law 1974 and its administration have established a system which is probably unique to Jersey. It raises all sorts of considerations which are beyond the scope of the review which I am carrying out on behalf of the Judicial Greffier. I would think, however, that it would be appropriate for the States Committee responsible for the administration of that Law to ensure that a detailed audit is carried out to ensure that it complies with the provisions of the HRL and the Convention. Such an audit would, I am sure, necessitate the involvement of the Law Officers' Department which also plays a very active role on this whole subject.

The role of the Judicial Greffe is largely administrative in providing services to the Licensing Assembly. In addition, the Judicial Greffe provides assistance to the Licensing Delegation of Jurats established for dealing with more non-contentious licensing matters. In terms of communication with the public the role of the Judicial Greffe should be to ensure that there is an appropriate dissemination of information of decisions made by the Licensing

Assembly or the Delegation. That role should, however, be limited to providing a means of communication and it is not the role of the Judicial Greffe to give advice or answer questions of interpretation on the Licensing (Jersey) 1974 Law. The whole area of administration of the Licensing Law is one which could and should properly be addressed by the provision of written procedures so that all involved in the Judicial Greffe are fully aware of what needs to be done and how it is to be effected. I recommend that such written procedures, if not already in existence, should be introduced as soon as possible.

16. **Gambling Licensing Authority**

The legislation relating to gambling (the Gambling (Jersey) Law, 1964 and a plethora of subordinate legislation) is in itself inordinately complicated and the structure for its administration is equally so. There is in place a Gambling Licensing Authority (which comprises Jurats) and in addition the Gambling Control Committee also has various responsibilities. Again, I would recommend (although it is outside the ambit of my instructions) that the responsible Committee should ensure a full audit of the legislation in consultation with the Law Officers' Department to ensure compliance with the HLR and the Convention.

The Judicial Greffe has an important role to fulfil as it is responsible for liaising with the Jurats who comprise the Authority and ensuring that all necessary notices are placed in the Jersey Gazette in relation to sittings of the Authority. It is essential that full detailed written procedures are in existence so that the Judicial Greffe can carry out all of its obligations. In addition, a note should be kept of all policy statements etc. which may be issued by the Authority from time to time (covering such items as the issue of Betting Offices Licences etc.).

17. **Petitions to Her Majesty the Queen**

There are no specific Human Rights issues which impact upon the Judicial Greffe in relation to this subject.

18. **Human Rights Training**

Extensive Human Rights training has been given to members of the Judicial Greffe with arrangements being made in this regard by the Human Resources Manager. In addition, as part of the Judicial Training Programme appropriate arrangements have been made through the Judicial Studies Board in the United Kingdom for appropriate judicial training to be given.

It would seem, therefore, that all initial training requirements have been met. I would recommend, however, that consideration is given to appropriate levels of continuation training on the same basis. This would be particularly helpful bearing in mind that the Human Rights Act 1998 in the United Kingdom has now been operative for some time. There may well be, therefore, appropriate opportunities to take advantage of the UK experience.

19. **Information Leaflets**

There are already in existence a number of information leaflets dealing with various aspects of the activities carried out by the Judicial Greffe. These provide a very useful guide to members of the public on various matters. I recommend that active consideration be given to whether translations of the leaflets should be produced in Portuguese to serve the large Portuguese community in Jersey. The viability of such a proposal should, at least, be carefully considered.

20. **Taking of Evidence on behalf of Foreign Courts**

There are various statutory provisions in force in Jersey which provide for the Royal Court to give assistance in the taking of evidence for foreign courts and/or under various criminal investigation provisions. The taking of evidence itself is very much a judicial function which should be performed by the Judicial Greffe, Master or Deputy Viscount. The only recommendation I would make is that steps are taken to ensure that all applications for the taking of evidence are seen by the Judicial Greffier or Master so that they may satisfy themselves as to the request made and how the evidence is actually to be given. There are already in place suitable arrangements to meet the logistical requirements for the actual taking of the evidence.

THE PUBLIC REGISTRY

21. **Maintenance of the Public Registry**

This is very much an administrative function and no particular Human Rights aspects arise.

22. **Provision of Extracts from the Public Registry**

The Public Registry is by definition a public record of transactions which have taken place before the Royal Court. One question of policy which might be considered is whether some restriction should be placed on the use which may be made of such information. This does raise some difficult questions but such an approach has been adopted in relation to company law - see e.g. Articles 45 and 46 and Article 71(3) of the Companies (Jersey) Law 1991. In my view, it is probably not necessary to seek to place a restriction on the use of information obtained from the Public Registry and there does not ever seem to have been a question of difficulty which has arisen. Nevertheless, it would be appropriate to address this issue of policy so that a formal decision may be taken on the subject. Consideration should also be given as to whether any formal copyright claim should be made (if it does not already exist) in relation to the Registry itself.

23. **Registration of Wills of Reality**

No specific Human Rights issues arise. There are already established procedures for the right of recourse to the Royal Court in the event of a dispute arising in respect of such a will.

24. **Registration of Judicial Hypothecs**

No particular Human Rights aspects arise although the same issues as relate to the Public Registry generally which are mentioned above might also be considered in this context.

25. **Registration of Powers of Attorney**

No particular Human Rights issues arise in relation to this function.

PROBATE

26. **Grants of Probate and Administration**

All the functions of the Probate Registrar and his Department are statutory being laid down in the Probate (Jersey) Law 1998 and the Rules made thereunder. The 1998 Law itself contains express provisions for the reference by the Registrar to the Royal Court of questions of difficulty which may arise.

27. **Curatorships**

The functions of the Probate Division in relation to Curatorships are largely administrative. The Registrar is involved to a certain extent in the appointment process although this is largely orchestrated by the Law Officers' Department. Curators are obliged to file annual accounts with the Royal Court but there are no other direct obligations imposed on the Registrar. Curatorships are, by definition, subject to the control of the Royal Court itself and there is, therefore, a judicial process involved.

In my view, existing procedures are perfectly acceptable and no additional Human Rights considerations necessitate any change to those procedures.

FAMILY DIVISION

28. **Divorce Petitions etc**

Detailed statutory provisions (principally the Matrimonial Causes (Jersey) Law, 1949 and the Rules made pursuant to it) govern the whole divorce procedure and related matters. These cover everything from the issue of petitions to the adjudication of all ancillary matters. This is all part of a judicial process and no additional issues arise from the Human Rights point of view. Responsibility rests with the Registrar of the Family Division who is an Advocate with considerable experience in this area and has received all necessary human rights training.

29. **Summonses for Ancillary Relief and other Interlocutory Summonses**

All such summonses are dealt with by the Registrar of the Family Division acting in a judicial capacity.

30. **Pensions Alimentaires**

The assessment of such maintenance falls within the responsibilities of the Registrar of the Family Division. In addition, there is a right of appeal to the Royal Court from any decision which he makes.

31. **Adoption and Legitimacy**

These are both subjects which are exclusively governed by detailed statutory provisions being the Adoption (Jersey) Law, 1961 and the Legitimacy (Jersey) Law, 1963 and applicable subordinate legislation. In essence, the responsibility for such matters rests with the Royal Court itself with the role of the Judicial Greffe largely being limited to administrative or procedural matters. From this point of view no particular human rights issues would seem to arise.

INTERLOCUTORY SERVICES

32. **Hearing of Interlocutory Summons**

Detailed Rules, judicial decisions and Practice Directions govern these matters. In particular, the Royal Court Rules 1992 and Practice Directions address the majority of areas of this subject. Summonses are heard almost exclusively by the Master of the Royal Court who is an Advocate of the Royal Court and has received appropriate judicial Human Rights training.

33. **Service of Process Out of the Jurisdiction**

These matters are governed by the Service of Process and Taking of Evidence (Jersey) Law 1960 as amended together with Rules made thereunder and relevant Practice Directions. Applications are dealt with by the Master of the Royal Court.

APPELLATE SECTION

34. **Appeals from the Royal Court**

Detailed procedures are laid down in accordance with the terms of the Court of Appeal (Jersey) Law 1961 and Rules regarding both Civil and Criminal Appeals made pursuant to that Law. By its very nature and constitution the Court of Appeal and its functions are fully compliant with the requirements of the HRL.

35. **The Recording and Indexing of Appeals**

No particular Human Rights issues arise.

36. **Transcription of Judgments**

No particular Human Rights issues arise.

37. **Recording and Transcription of Evidence**

No particular Human Rights issues arise.

38. **Maintenance of Unreported Judgments**

No particular Human Rights aspects arise.

39. **Judgments for Jersey Law Reports**

No particular Human Rights aspects arise.

40. **Register and Index of Orders in Council**

No particular Human Rights aspects arise.

41. **Prison Board of Visitors**

Mr. F. B. H. Sergeant acts as secretary to the Prison Board of Visitors and provides a full service in relation thereto. Mr. Sergeant is full trained in Human Rights aspects of this function and no additional requirements are necessary.

MISCELLANEOUS

42. **Taking of Evidence in Chambers**

When this function is required pursuant to the Royal Court Rules 1992 or any other statutory provisions the role of taking evidence is carried out by the Judicial Greffier or the Master. Both are fully Human Rights trained.

43. **Human Resource Functions**

Services are provided by the Human Resources Manager who has received Human Rights training. Human Resources functions must accord with general States requirements which I assume comply with the HRL.

44. **Health and Safety Functions**

The States of Jersey has laid down central guidelines and there is an in-house responsibility to meet those guidelines. Overall responsibility for this function rests with the Human Resources Manager. Again, I assume the central guidelines comply with the HRL and therefore no other issues arise

45. **Disclosure of Pleadings to the Public and the Media**

The Master is in the process of producing written guidelines relating to the disclosure of pleadings to third parties, members of the public and the media. Those guidelines will set out standard procedures to be followed by the Department when any request for pleadings is received.

46. **Information Systems**

Existing information systems already address questions of the storing of information and access to necessary parties. There is little doubt that in the future considerable development will take place in the Judicial Greffe involving the use of information systems for many aspects of its work. Those systems will continue to need to have full regard to all aspects of the HRL, data protection and related subjects. This will involve clearly identifying what information should be made available, to whom and on what basis. These are continuing matters which must remain constantly under consideration with full regard being paid to the provisions of the HRL and the Convention.

There are set out above my conclusions and recommendations following my view of the functions performed by the Judicial Greffe. I will carry out a separate review in respect of the Data Protection Registry which will include full consultation with the Data Protection Registrar. My written findings will be provided separately.