

JERSEY LAW COMMISSION



**Annual Report
2022**

ANNUAL REPORT OF THE JERSEY LAW COMMISSION

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the Assembly of the States of Jersey on 30 July 1996. It was established to carry out research and conduct consultations with a view to:

- identifying:
 - anomalies in Jersey legislation; and
 - obsolete or redundant legislation; and
- making recommendations to simplify and modernise the law of Jersey.

A more detailed statement of the purposes for which the Jersey Law Commission was established is set out in Appendix A to this Report.

2022 is the 26th year during which the Jersey Law Commission has been carrying out its functions.

The Commissioners during 2022 were:

Advocate Barbara Corbett

Professor Claire de Than (Chair)

Advocate Mark Dunlop

Advocate Emma German

Mr Timothy Hart, Solicitor

Advocate Steven Pallot

Dr Elina Steinerte

Professor Andrew Le Sueur

Advocate Matthew Swan (until March 2022)

A brief biography of each Commissioner may be found on the [Who We Are](#) page of the [Jersey Law Commission's website](#)

The Secretary is: Cairistiona Annan

The address of the Jersey Law Commission is:

c/o Corbett Le Quesne,
1a West's Centre,
St Helier, Jersey JE2 4ST

CONTENTS OF THIS REPORT

Foreword by the Chair

PART I OVERVIEW 2022

PART II ACTIVITIES

Topic Reports and other issues considered by and projects undertaken by the Jersey Law Commission during 2022

PART III COST

The cost of the Jersey Law Commission

PART IV IMPACT

Responses to the work of the Jersey Law Commission

APPENDIX A ROLE

The role of the Jersey Law Commission

APPENDIX B METHOD

The working method of the Jersey Law Commission

APPENDIX C PUBLICATIONS

Topic Reports and other reports and publications by the Jersey Law Commission

The Jersey Law Commission

Annual Report 2022

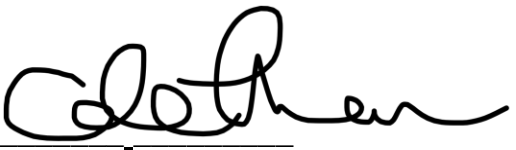
Foreword

To the Chief Minister of the Government of Jersey

I have the honour to present to you, on behalf of the Jersey Law Commission, pursuant to the Proposition to establish the Jersey Law Commission approved by the States of Jersey on 30 July 1996, our Annual Report covering the activities of the Jersey Law Commission in the calendar year 2022.

Signed for on behalf of the Jersey Law Commission

Signed: _____

A handwritten signature in black ink, appearing to read 'C. de Than', written over a horizontal line.

Professor Claire de Than, Chair

PART I – 2022 OVERVIEW

2022 was another challenging year for everyone due to the pandemic restrictions and then the ensuing backlog, but the Jersey Law Commission still managed to make considerable progress with its existing projects and to embark upon new research. More detail on this is provided in Part II – ACTIVITIES.

During 2022 there was some progress in improving the relationship of the Jersey Law Commission with the Government of Jersey, but the Memorandum of Understanding has still not been signed by Government. In times when resources are constrained and with a reformed government machine, it is important that clear lines of communication are established. This is particularly so in connection with procedures for approving topics for the Jersey Law Commission to review and projects that it undertakes, approving the costs involved in undertaking those reviews and producing reports, and clarity on whether the Government accepts or rejects the Commission's recommendations. Clearer and more regular contact between the Jersey Law Commission and the Government should also avoid any duplication of work and, where the work of the Jersey Law Commission complements government initiatives, to ensure that timetables are coordinated. In this context we continue to press for a written memorandum of understanding providing a practical way forward, whilst ensuring the independence of the Jersey Law Commission.

In the States Assembly, the Legislation Advisory Panel (LAP) has responsibility to review "reports received from the Jersey Law Commission ... on aspects of Jersey law which the Commission considers should be examined with a view to reform". There was again a pause in LAP's schedule of meetings due to the General Election and a new Government, but the Commission continued work on its new and existing law reform projects, which are discussed later in this annual report.

During 2022, the Jersey Law Commission continued to raise its profile and that of Jersey's legal system, not only through social media, but also by involving ourselves in international initiatives, such as those relevant to smaller jurisdictions and participation in international conferences. In 2022 the Jersey Law Commission was again the host of the annual meeting (held online) of the four neighbouring law commissions of England & Wales, Scotland, Ireland and Jersey, plus the soon-to-be-reinstated law reform body for Northern Ireland. Since the meeting rotates between the Commissions, Jersey has had a particular honour in hosting three years in a row.

As with so many aspects of the lives of all of us, the Jersey Law Commission continued to be affected in 2022 by the Covid-19 pandemic, although we were able to reinstate in-person meetings later in the year. As the impact of the pandemic continues to subside, however, it will be important for working relationships to be strengthened and refocused to enable the Commission to continue its work in reforming Jersey law.

Commissioners

Matthew Swan left in March 2022 to commence his role as Viscount.

Premises

Meetings in 2022 recommenced in person, using the Santander Work Café.

Support

Ms Cairistiona Annan is Secretary to the Jersey Law Commission.

Communications and Media

The website for the Jersey Law Commission sets out information about all of the Jersey Law Commission's current and past projects and publications. The Commission also makes use of social media (Twitter: [@JsyLawComm](https://twitter.com/JsyLawComm)) to publicise its activities including consultations and progress on projects and to comment on matters relevant to its activities. Tweets have covered the publication by the Jersey Law Commission of documents relating to its work and a range of subjects in which the Jersey Law Commission is interested. These have included:

- legislative responses to the pandemic as it affected Jersey and elsewhere;
- administrative justice in Jersey and elsewhere and responses by the Government in Jersey to challenges in this field;
- human rights implications of questions relating to access to justice;
- many aspects of family law and the rights of children;
- criminal law reform;
- the law relating to surrogacy and parenthood;
- reform of the law of contract in Jersey;
- the review of Legal Aid provision in Jersey;
- environmental law

and much more.

Consultations, Topic Reports and Projects

The issues considered by the Jersey Law Commission during 2021 and projects undertaken by it are described in PART II - ACTIVITIES.

PART II – ACTIVITIES

Topic Reports and other issues considered by and projects undertaken by the Jersey Law Commission during 2022

A list of publications by the Jersey Law Commission from the date of its establishment in 1996 until and including the year of this Annual Report is set out in Appendix C.

Completed Projects with ongoing involvement of the Jersey Law Commission

A Public Services Ombudsperson for Jersey

A strand of the Commission's work relating to administrative redress concerns the creation of a Public Services Ombudsperson. The project, led by Professor Andrew Le Sueur, developed a detailed blueprint for an ombudsperson scheme suitable for a small jurisdiction.

Work on this topic dates back to 2017, when the Jersey Law Commission's Topic Report, *Improving Administrative Redress in Jersey*, reviewed the effectiveness of the States of Jersey Complaints Panel. The overarching finding was that, despite previous attempts at reforms, several serious problems persisted with the remit of the Panel, the framework within which it operates, the procedures it uses, and the high proportion of cases where Ministers rejected its findings and recommendations (para 5.29). The Jersey Law Commission made clear that the criticisms were not (and are not) directed at the individuals (past and present) who contribute their time without remuneration to service on the Panel.

The Jersey Law Commission therefore recommended in 2017 that the Complaints Panel should be replaced by a Public Services Ombudsperson. Alternatively, a range of detailed proposals to improve the operation of the Complaints Panel were set out in the 2017 Topic Report if the Government of Jersey and the States Assembly decided to keep the Panel.

In March 2018, shortly before the general election, the States Assembly voted in favour of a Proposition (P.32/2018) brought by Senator Philip Ozouf, agreeing in principle to establish an Ombudsperson scheme, subject to further research. The Jersey Law Commission were commissioned by the Government of Jersey.

The Jersey Law Commission published a 238-page Topic Report *Designing a Public Services Ombudsman for Jersey* in November 2018, which provided comprehensive analysis and policy options for the Government of Jersey and the States Assembly. The report was prepared by Commissioner Professor Andrew Le Sueur, working with colleagues Varda Bondy and Margaret Doyle of Essex Law School and the UK Administrative Justice Institute (UKAJI) also based at the University of Essex. The research was part-funded by a grant to the research team from the Economic and Social Research Council Impact Acceleration Account.

Following the general election 2022, the new Government of Jersey announced that legislation will be introduced to create an ombudsperson in Jersey as part of the Council of Minister's 100 Day Actions.

In October 2022, the Chief Minister published law drafting instructions ([link](#)) requesting the Legislative Drafting Office to prepare a new Law to establish a Public Services Ombudsperson for Jersey (JPSO). The instructions acknowledge the importance of the Jersey Law Commission's work in shaping the policy to create the JPSO and its proposed design. The Commission welcomes this progress in implementing its 2017 proposals.

Current Projects

Parentage, Donor Conception and Surrogacy

During 2019 a substantial piece of work was completed on behalf of the Law Commission by Marisa Allman, barrister at 36 Family Chambers in London. Initially the remit had been to consider the law relating to surrogacy in Jersey, or rather the complete lack of any such law. It became clear, however, that the issues that needed addressing were much wider than simply the law relating to surrogacy.

The law in Jersey relating to parentage generally is significantly behind that of many other nations in the world. This is of particular concern because the Government of Jersey has been keen to promote civil partnerships and more recently same sex marriage and has legislated accordingly. Despite such legislation confirming the right of same sex couples to marry and found a family, the law has not, in fact, achieved the equality it appeared to set out to do. There is, for example, no provision in Jersey to register the parents of a child as being anything other than one female mother and one male father. Further, although heterosexual couples both gain parental responsibility for a child born to them, same sex couples do not. This, together with the significant progress that has been made in respect of assisted reproduction generally, which the law has not kept pace with, has resulted in significant anomalies.

The report deals with all these matters and suggests possible considerations for reform using international comparisons and drawing on the positive and negative experiences of different jurisdictions.

The Law Commission report was picked up by policy officers but unfortunately, due to COVID during 2020, no work was undertaken in respect of preparing instructions to the law drafters, civil servants' time being fully occupied with dealing with the COVID legislation. This report has had more consideration during 2021 and 2022.

Criminal Appeals

The Jersey Law Commission, led by Professor Claire de Than, reviewed the law relating to appeals against criminal convictions in Jersey with a view to making

recommendations as to whether and how the grounds for appeals against criminal convictions should be reformed. For the purposes of the review the Jersey Law Commission published a Consultation Scoping Paper, Criminal Appeals Against Conviction (Consultation Paper No.2/2016/CP), in July 2016 that asked a series of 'scoping' questions.

Reflecting the responses received by it to its paper, Criminal Appeals Against Conviction, the Jersey Law Commission submitted reform proposals to the Department for Community and Constitutional Affairs as part of that department's Review Of Draft Legislation On New Criminal Procedure to enable the reform proposals to be considered by the States Assembly.

None of the responses received to the consultation carried out by the Jersey Law Commission favoured preserving the existing law in relation to appeals against criminal convictions. Respondents to the consultation identified two factors in particular that created risks of miscarriages of justice:

- (i) the wording of Article 26(1) of the Court of Appeal (Jersey) Law 1961, specifically the *proviso* that even if an appellant may succeed on a point raised in the appeal, the appeal may be dismissed if the court considers that there has been no substantial miscarriage of justice; and
- (ii) judicial reluctance to overturn jury verdicts notwithstanding scientific and academic research on jury fallibility for reasons that equally apply to the decisions of jurors.

Reflecting these concerns, the Jersey Law Commission has proposed replacing existing grounds of appeal with a single ground allowing the Court of Appeal to quash a conviction when it "*has a serious doubt about the verdict*". In conjunction with this reform, guidance should be issued to explain that the legislative intention is to give a broad ground for allowing an appeal (even where there is no fresh evidence or fresh legal argument) and that there are many factors which can lead to a serious doubt about a conviction. The power to order a retrial should remain.

In its summary of the responses to the consultation it had carried out, Response to the Criminal Procedure Consultation, the Department for Community and Constitutional Affairs noted the reform proposals made by the Jersey Law Commission. After no response from government, it is hoped that the proposed reforms will be taken forward in 2023, particularly since fresh cases have demonstrated further potential issues concerning criminal appeals and retrials. Jersey's criminal appeals legislation continues

to risk miscarriages of justice due to its anachronistic nature, with the English law on which it was based having long been consigned to history.

Criminal Code

Work began in 2017 on the Criminal Code project, with the first publication completed in 2021. The first stage of the project comprises two brief and accessible documents stating:

- (i) the customary and common law offences under Jersey's criminal law, their scope and elements, and
- (ii) applicable defences under Jersey's criminal law.

These are to be made available on the website of the [Jersey Legal Information Board](#). Each document contains worked examples so that members of the public will have, for the first time, a clear explanation of each of these offences. In this way concerns about legal certainty and the principle of legality will be addressed. Short papers proposing amendments to some customary offences have been produced. Significant progress has been made towards a full draft Criminal Code. A great deal of interest has been shown in this project by researchers and reform bodies in other jurisdictions.

Open Justice

A short project assessing the current approach to open justice, reporting restrictions and contempt of court in Jersey is underway. This builds on issues and opportunities previously highlighted in [response](#) by Professor de Than to the [Consultation](#) on the then Draft Criminal Procedure Law. Rapid changes in online justice in 2021 and 2022 drew attention to previously unnoticed access, equality and reporting issues, as well as those which are well-known in all comparable jurisdictions.

Human Rights (Jersey) Law 2000

During 2022, work started on a project to review the effectiveness of the Human Rights (Jersey) Law 2000, led by Professor Andrew Le Sueur. The Law came into force in 2006. Writing an introduction to a widely circulated leaflet at the time, the then Bailiff (Sir Philip Bailhache) said that "soon there is going to be a major change in our laws and approach to the freedoms and duties we know as Human Rights", adding "the changes are positive and welcome". Similar legislation was enacted in Guernsey and the Isle of Man, all based closely on the UK's Human Rights Act 1998. The Law was designed to "bring rights home" by incorporating into Jersey law internationally recognised rights and fundamental freedoms contained in the European Convention on Human Rights. This is an international treaty signed by the UK and applied to Jersey since the 1953.

Convention rights include: right to life (Art 2); freedom from torture and inhuman or degrading treatment (Art 3); freedom from forced slavery and forced labour (Art 4); right to liberty and security (Art 5); right to a fair trial (Art 6); no punishment without law (Art 7); respect for private and family life, home and correspondence (Art 8); freedom of

through, belief and religion (Art 9); freedom of expression (Art 10); freedom of assembly and association (Art 11); right to marry and start a family (Art 12); protection from discrimination in respect of these rights and freedoms (Art 14); right to peaceful enjoyment of property (Protocol 1, Art 1); right to education (Protocol 1, Art 2); right to participate in free elections (Protocol 1, Art 3); and abolition of the death penalty (Protocol 13, Art 1).

The project is not considering the Convention rights themselves or the operation of the European Court of Human Rights – these are part of the UK's international law obligations for Jersey and are not open to amendment by the States Assembly. Rather, the project is examining whether the Human Rights (Jersey) Law has fulfilled its stated aims. P.197/1999, lodged au Greffe by the Legislation Committee, said the proposed Law would be “a real and important step forward securing human rights and freedoms in Jersey”, in particular:

- It will enable cases concerning the rights given under the Convention to be brought in courts in Jersey.
- It will help to create a society in which rights and responsibilities are properly balanced.
- An awareness of the Convention rights [will] permeate the governmental and legal systems at all levels.

The project is addressing four main questions.

- Does the Human Rights (Jersey) Law work effectively?
- What are the strengths and weaknesses of the Human Rights (Jersey) Law?
- Is the Human Rights (Jersey) Law operating in the way that it was intended to?
- What would be the implications for Jersey if the UK Parliament repealed or made significant amendments to the UK Human Rights Act 1998?

The first phase of the project has collected and analysed evidence of how the Human Rights (Jersey) Law 2000 has operated in the island's courts and tribunals, and in the States Assembly. The Commission is grateful to four Masters students who carried out this work (at no cost to the Commission) under the auspices of the University of Essex Human Rights Clinic as part of their LLM International Human Rights course. They are: Megan Lynch, Akansha Mehrotra, Rawan Solimon, and Eve Thomas. The findings will be included in a Jersey Law Commission consultation paper expected to be published by late 2023.

In March 2022, the Jersey Law Commission submitted a written response to the UK Ministry of Justice for its consultation on proposals to reform the Human Rights Act 1998. Subsequently, in June 2022, the Ministry of Justice published a proposal for a “Modern Bill of Rights”, which would replace the Human Rights Act 1998. This is politically contentious. It is not in the Jersey Law Commission's remit to enter this controversy but rather to consider whether there are law reform implications for this island. These could lie in two areas.

First, if the UK Parliament enacts a Bill of Rights with new features in how the Convention rights are incorporated into the laws of the UK jurisdictions (England and Wales, Scotland, Northern Ireland) and adjudicated on by the domestic courts there may be changes that the States Assembly considers ought to be made to the Human Rights (Jersey) Law because they make sense for the island.

Second, the adoption of a new Bill of Rights in the UK could have an impact on the approach of the UK Government when it reviews legislation passed by the States Assembly before it is presented to the Privy Council for an assenting order. The House of Commons Justice Select Committee noted in 2010, “The Justice Secretary can recommend that Assent be withheld, although the grounds for doing this are not entirely clear and it is a rare occurrence. It would certainly be legitimate to withhold Assent if the legislation would put the relevant Island in breach of an international obligation which applies to the Island and for which the UK is responsible. Island legislation must comply with international human rights obligations, for example...” (*Crown Dependencies*, Eighth Report of Session 2009-10, HC 56-I, para 51). The report noted that “It is clear that the UK has, on occasion, leaned heavily on Island governments to modify legislation at stages prior to submission for Royal Assent” (para 51) and that the scrutiny process has sometimes led to significant delay (para 54).

Until now, the case law of the European Court of Human Rights has been central to the analysis of whether proposed Jersey legislation conforms to Convention rights. A new UK Bill of Rights giving greater emphasis to interpretations of Convention rights by the UK Supreme Court should not, in our opinion, alter this approach. The UK Supreme Court is not a court in Jersey’s legal system. This approach should also apply if a decision of the Justice Secretary to recommend assent or recommend withholding assent is challenged by judicial review in the English courts, as happened in *R (Barclay and others) v The Lord Chancellor and Secretary of State for Justice and others* [2009] UKSC 9 in which the UK Supreme Court held in relation to Sark that the unelected position of the Seigneur and the Seneschal, and restrictions on ‘aliens’ from standing for election, were incompatible with ECHR First Protocol article 3 (right to fair elections) and ECHR article 14 (non-discrimination). In any future cases, the English courts should be wary of applying the UK Bill of Rights to Jersey and the other Crown Dependencies by the back door, giving greater emphasis to interpretations of Convention rights by UK Supreme Court than to the case law of the European Court of Human Rights. This would in our view not be constitutional legitimate. The primary test should be whether island legislation violates the ECHR.

These issues will be discussed further in the Jersey Law Commission’s forthcoming consultation report.

Maintenance and Champerty

Work began in 2021 on a report on maintenance and champerty. These are medieval legal concepts designed to prevent, on grounds of public policy, a trade in legal claims. The effect of them, however, could call into question the increasingly popular arrangements for contingent fees and certain types of arrangements entered into by litigation funding investment companies. Some Anglo-Saxon jurisdictions have abolished the concept, so as to make a trade in litigious claims lawful, whereas others have retained it. The report will consider the current position and options for reform.

Parish Assemblies

Work began in 2021 on a Consultation Paper concerning the legal framework governing parish assemblies in Jersey. The current legal framework is a mosaic of custom and

centuries old statute, often in French. Whilst this is a cherished part of Jersey's legal heritage, it is obscure to many and often lacks clarity on questions of procedure, such as the ability to attend and participate by electronic means in an assembly. This tends to discourage large scale attendance at parish assemblies. The Jersey Law Commission Paper will explore possible reforms to encourage wider attendance and voting, and thus to keep parish assemblies at the heart of community life in Jersey.

The proposal will be to put in place a legislative structure to enable reforms to be enacted more easily, in the English language, but without having to resort to a wholesale repeal and replacement of existing laws and customs. This would entail not only a wide enabling provision for the States to make Regulations amending primary legislation, but further powers, possibly, to enable the Comité des Connétables to make Orders in relation to certain matters of procedure at parish assemblies generally and each parish assembly to make by-laws where appropriate to suit the individual needs of the parish concerned.

It is hoped that the Consultation Paper can be published by the end of 2023.

Digital Assets reform: Smart Contracts

This project concerns the impact of the digital age on various Jersey laws and the ability for Jersey to maintain relevance as a key offshore financial centre. It will begin with a focus upon smart contracts. Key issues include whether smart contracts are capable of being recognised and enforceable in Jersey as valid legal contracts so called "smart legal contracts"; and if so, whether this should be subject to any specific conditions or rules in particular in relation to contracts concerning consumers. Related to the core topic of smart contracts are whether Jersey should follow Guernsey and other jurisdictions in recognising the concept of an "electronic agent" who may enter into smart contracts on behalf of its principal even where the principal has not read the terms of such contract. As smart contracts are enabled by blockchain, the project will also cover whether Jersey should introduce a new form of decentralised structure, a Jersey law governed decentralised autonomous organisation ("**DAO**") as these organisations are used increasingly to govern blockchain protocols.

Future Projects

The Jersey Law Commission has a varied and wide-ranging set of projects under consideration for future review.

Légitime

The Jersey Law Commission has sought feedback from the Legislation Advisory Panel as to whether there is governmental appetite for reform in respect of the field of *légitime*, the subject of a recent report by the Law Officers' Department (see [Légitime Reform: Lessons From Different Systems Of Protection From Disinheritance](#)

and Légitime Reform: Where To Go?), a two-part article by Dennis Dixon in the Jersey and Guernsey Law Review). In carrying out any such work, the Jersey Law Commission would aim to complement any work being undertaken by government in this field of law reform.

Electronic Signatures

With the greater use of technology, more contracts are being concluded without the use of traditional "wet-ink" signatures and are being signed electronically. Indeed, the use of electronic signatures has been particularly helpful for signatories when faced with the travel and social distancing requirements of COVID-19. It is therefore an area of immediate and topical concern. The aim of the work would be to consider the current legal position concerning the validity of electronic signatures under Jersey law and whether there are any recommendations to be made for reform.

Prescription and Limitation

A proposal was prepared during the course of 2019 for a review of the law in Jersey relating to prescription and limitation and submitted for budgetary approval to enable it to proceed. Prescription and limitation are distinct but linked areas of the law relating to how legal rights may be acquired and may expire. These are issues that affect individuals and corporations alike in fundamental ways but the law in Jersey has developed in a piecemeal fashion. It has been influenced by a variety of sources with the result that the law is unclear and afflicted by anomalies and inconsistencies. The courts have in various ways attempted to clarify the law in these areas but it remains difficult to determine and to apply. This causes problems in courts both locally and overseas and reform is required. No response to the request for budgetary approval to enable the project to proceed had, however, been received by the end of 2020 and the wait for budgetary approval continued during 2021 and 2022.

PART III – COST

The cost of the Jersey Law Commission

The Government of Jersey makes resources available to the Jersey Law Commission through Strategic Policy, Performance and Population (SPPP) in the Cabinet Office. No fixed budget is available from or agreed with the government, but expenses likely to be incurred are agreed in advance with officials and, once incurred, payment is made directly by the Department to the person owed. The Jersey Law Commission does not itself receive or hold any funds. As outlined above in PART I – 2022 OVERVIEW, it is hoped that discussions will resume with officials in SPPP to formalise these arrangements in a memorandum of understanding.

The principal costs relating to the Jersey Law Commission are incurred in respect of consultations it carries out and Topic Reports it issues. During the year covered by this Annual Report the total costs of running the Jersey Law Commission have amounted to approximately £15,000.

Under previous arrangements with the Department for Community and Constitutional Affairs, the Secretary to the Jersey Law Commission from time to time is remunerated on an agreed hourly rate basis. The total annual cost of the Secretary's services was c. £4,500 in 2022.

PART IV – IMPACT

During the period covered by this Annual Report (2022), legislation has been enacted or proposed on the following matters on which the Jersey Law Commission has issued Topic Reports and made recommendations. We also note where no response has been made to the Commission's work.

Improving Administrative Redress in Jersey

In October 2017, the Commission published a detailed and wide-ranging review of how islanders aggrieved by the actions, inactions and decisions of public bodies in Jersey can seek redress (*Improving Administrative Redress in Jersey*, [Topic Report No. 1/2017/TR](#)). This covered complaint handling by public bodies, modernising the tribunal system, ending appeals and reviews to Ministers, the States of Jersey Complaints Panel, a proposal for a Jersey Public Services Ombudsperson, administrative appeals to the Royal Court, and use of Alternative Dispute Resolution (ADR).

The proposal for a Jersey Public Services Ombudsperson (see above) has been accepted by the Government and is being implemented.

In relation to the other aspects of the review, however, five years on from publication of the 2017 report during 2022 the Commission has not received any formal response from Government as to whether the proposals are accepted or rejected since the Chief Minister presented an interim response to the States Assembly on 2 January 2018 (*Jersey Law Commission Topic Report 'Improving Administrative Redress in Jersey: Initial Response*, [R.1/2018](#)).

Parentage, Donor Conception and Surrogacy

Advocate Barbara Corbett has spoken on issues relating to parentage, donor conception and surrogacy in the media and arranged for Ms Allman to speak on the issues at the Jersey International Family Law Conference in October 2019. The challenge now is to encourage the Government of Jersey to include law reform in respect of assisted reproduction and parentage in all its forms in the near future.

The report on parentage, donor conception and surrogacy has been submitted to the Government of Jersey but no progress was made during 2022. It is hoped that in 2023 the Jersey Law Commission and the Government of Jersey will be able to work together to achieve progress in this area.

Divorce Reform

It is very disappointing that although it is now several years since the Law Commission report on divorce reform was produced, there has still been no reform of the law. During 2018 a consultation was undertaken which concluded in February 2019. Unfortunately, no action was taken during the year and no date has been fixed for any progress to be made in this important area

Criminal Law

During 2019, work began on a number of joint research projects with other bodies conducting research about law reform. This includes a project with two UK universities on Defences in Criminal Law, funded by the British Academy. A conference originally due to take place in 2021 will be rescheduled once restrictions allow, and three articles have already been published as a result of the project.

Environmental Law

In 2019 the Jersey Law Commission partnered with The Common Good Foundation and The Resolution Centre to run a successful conference on Environmental Crimes. An open access academic journal has been created and is hosted on the Commission's website. Each edition comprises articles from academic and practitioner authors from many different jurisdictions, with themes relevant to Jersey. Jersey Law Commissioners act as a Review Board for submissions to the journal. Articles published in the Journal have been submitted to the REF research evaluation framework in the UK on the basis that they are of internationally-excellent or world-leading quality. Further conferences took place in 2020, 2021 and 2022.

Small Jurisdictions

The Jersey Law Commission has had further international impact through work on a Small Jurisdictions Project led by Professor de Than, which has gained substantial support from a wide range of stakeholders, and through work with bodies in the Isle of Man who seek to learn from the experiences of Jersey and other small jurisdictions. These links and projects continued in 2022 and beyond.

APPENDIX A: THE ROLE OF THE JERSEY LAW COMMISSION

The Jersey Law Commission is a body established by the States of Jersey. It works in consultation with the Legislation Advisory Panel and the Department for Community and Constitutional Affairs but the Jersey Law Commission is an independent body whose reports will be made available, in the form determined by the Jersey Law Commission, to the public.

The role of the Jersey Law Commission is defined in its terms of reference, which are set out as follows in the Proposition of the States of Jersey by which the Jersey Law Commission was established:

It shall be the duty of the Commission to identify aspects of Jersey law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and to those ends:

- (a) to receive and consider any proposals for the reform of the law which may be made or referred to them;*
- (b) to prepare and submit to the Legislation Advisory Panel from time to time programmes for the examination of different branches of the law with a view to reform; and*
- (c) to undertake, pursuant to any such recommendations approved by the Legislation Advisory Panel, the examination of particular branches of the law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.*

APPENDIX B: THE WORKING METHOD OF THE JERSEY LAW COMMISSION

Upon accepting a topic for review the Jersey Law Commission appoints one of its members to act as the Topic Commissioner to conduct and co-ordinate all of the Jersey Law Commission's work on that topic. On his or her recommendation the Jersey Law Commission seeks expert support from lawyers practising in the field or academics learned in the subject as Topic Practitioner to assist him or her generally and to ensure that the work of the Jersey Law Commission remains relevant to the issues actually arising in relation to the topic. The Topic Commissioner is not paid in respect of the work undertaken for the Jersey Law Commission unless also acting as Topic Practitioner. The Jersey Law Commission typically agree a fee with the Topic Practitioner who then recovers that fee direct from the States of Jersey. Requisite legal research may be carried out by others: either by professional researchers under contract or by experts willing to give their time as a public service.

The procedure for the review of each topic will commonly fall into the following steps:

- 1 finding out whether there is a problem, and if there is, defining exactly what it is;
- 2 researching and summarising the existing law relevant to the topic;
- 3 suggesting how the relevant law might be changed to solve the problem;
- 4 preparing and publishing a consultation document based on items 1, 2 and 3;
- 5 receiving and discussing representations made in response to the consultation document;
- 6 preparing and publishing a final report.

APPENDIX C: TOPIC REPORTS AND OTHER ISSUES REPORTED ON BY THE JERSEY LAW COMMISSION

From its establishment in 1996 until the end of 2020 (the year covered by this Annual Report) the Commission has issued the following reports. All papers published by the Jersey Law Commission can be found on the Jersey Law Commission's website under [Publications](#)

Consultation papers (seeking input into the reform process)

2016 Consultation (Phase 1) on Criminal Appeals Against Conviction

2016 Improving Administrative Redress In Jersey

2015 Divorce Reform

2010 Voisinage

2010 Bankruptcy (Désastre) (Jersey) Law 1990 "Social Désastre"

2009 Topic report on Corroboration Of Evidence In Criminal Trials

2008 Prescription And Limitation

2008 The Jersey Law Of Partnership

2006 The Prohibition On Trusts Applying Directly To Jersey Immovable Property

2006 Security On Immoveable Property

2006 The Jersey Law Of Charities (revised)

2004 The Jersey Law Of Charities

2002 The Jersey Law Of Real Property

2002 The Jersey Law Of Contract

2002 The Law Of Tutelles

1999 Best Evidence Rule In Civil Proceedings

1998 Dégrèvement

1998 The Rights Of Beneficiaries To Information Regarding A Trust

Final topic reports (containing recommendations)

2020 Topic Report on The Law Relating to Parentage, Donor Conception and Surrogacy: Considerations for Reform

2018 Topic Report on Designing A Public Services Ombudsman For Jersey

2017 Topic Report on Improving Administrative Redress in Jersey

2015 Topic report on Divorce Reform

2011 Topic report on Voisinage

2011 Topic report on Bankruptcy (Désastre) (Jersey) Law 1990 “Social Désastre”

2010 Topic report on The Jersey Law Of Partnership

2009 Topic report on Corroboration Of Evidence In Criminal Trials

2009 Topic report on The Jersey Law Of Charities

2008 Topic report on Security On Immoveable Property

2004 Topic report on The Law of Contract

2002 Topic report on The Best Evidence Rule In Civil Proceedings

2002 Topic report on The Law Of Tutelles

1999 Topic report on Dégrèvement

1998 Topic report on The Rights Of Beneficiaries To Information Regarding A Trust

Other publications by the Jersey Law Commission

2022 The Resolution Journal Volume 3

2021 The Resolution Journal Volume 2

2020 The Proceedings of the Joint Annual Conference of the Four Neighbouring Law Commissions

2020 The Resolution Journal: Environmental Crimes 2019

2019 Comments on the Draft Access to Justice (Jersey) Law 201- (Proposition 23-2019)

2019 Proposal for a review of the law in Jersey relating to prescription and limitation

2019 Response to a consultation by the Government of Jersey on establishing a Jersey Public Services Ombudsman

2019 The Appointment and Removal of the Head of Government of the Kiribati Republic, a report by the Jersey Law Commission and others for Daphne Caine MHK

2019 Comments on proposals for reform of the Jersey law of contract

2019 Comments on proposals for reform of the Jersey law of contract

Publications and activities of Commissioners in 2022

During 2021-22, Professor de Than advised the Justice Committee of the House of Commons on private prosecutions. She also made regular media appearances as an expert, and contributions to a range of documentaries. She writes a monthly newspaper column on legal issues, and is a regular conference speaker. She made many Keynote speeches in 2022, some online and then in person as restrictions lifted.