

## **COMMISSIONER FOR STANDARDS' STATEMENT**

### *Commissioner for Standards, States of Jersey*

1. The States of Jersey, Commissioner for Standards may investigate alleged breaches of the Code of Conduct for Elected Members [see Appendix 1]. A complaint made by a third party is the usual basis for the Commissioner to start an investigation. However, he may initiate an investigation if he believes that, at a relevant time, a breach of the Code may have occurred. A member can also request that their own behaviour is investigated by the Commissioner to establish if a breach of the Code has taken place.

### *Making a complaint*

2. If the complainant is a member of the States, the complaint normally should be raised in the first instance with the member complained against. Non-members wishing to make a complaint should normally first make their dissatisfaction known to the member concerned and give the member an opportunity to respond. However, if someone wishes to make a complaint or raise a concern directly they may do so.
3. Any complaint alleging that a member of the States has breached the Code of Conduct, whether made by another member of the States or by someone outside the States, should be sent in writing to:

**The Commissioner for Standards, States of Jersey,  
c/o States Greffe,  
Morier House,  
Halkett Place,  
St. Helier,  
JERSEY JE1 1DD**

**E-mail: [commissionerforstandards@gov.je](mailto:commissionerforstandards@gov.je)**

4. Complaints submitted by telephone will not be considered. A complaint submitted by email or letter should give a postal address, telephone number and if desired an email address for subsequent communication. The complainant must make clear in what respect the member may have breached the Code of Conduct and must supply as much evidence as the complainant can in support of the complaint.
5. In the interests of fairness, the specific allegation should be made to the Commissioner in private and not publicised until the complaint has been finally determined.

### *Preliminary assessment*

6. The Commissioner conducts a preliminary assessment of all complaints. The Commissioner will not without good reason consider either anonymous complaints or ones where the complainant

is not prepared to have his name and complaint disclosed to the member whose conduct is criticised. The Complainant's details will be included in the report submitted to the Privileges and Procedures Committee. The Commissioner screens out complaints which fall outside the scope of the Code. He may choose not to consider complaints which are clearly frivolous or vexatious, or which substantially repeat allegations which have already been the subject of inquiry (unless there is fresh evidence in their support). In making his preliminary assessment, the Commissioner considers the criteria set out in the following two paragraphs.

7. Matters falling within the Commissioner's remit include:
  - Failure to register relevant interests; [see Appendix 2: "Register of Interests of Elected Members"]
  - Failure to declare relevant interests in the course of parliamentary business including committee and scrutiny panel proceedings;
8. Matters not falling within the Commissioner's remit include:
  - Policy matters or a member's views or opinions;
  - Alleged breaches of the separate code\* governing the conduct of ministers and assistant ministers acting in their official capacities; [\* Code of Conduct and Practice for Ministers and Assistant Ministers] [The Commissioner will publish a separate statement in relation to the Code of Conduct and Practice for Ministers and Assistant Ministers].
  - A complaint from a person who is not a member of the States regarding words spoken by, or actions of, an elected member during a meeting of the States.
9. The Commissioner may not investigate a complaint about a former member of the States. If a member is under investigation when the member leaves the States the investigation terminates at that point.
10. The complaint must refer to an alleged breach of the Code which occurred on or after 24<sup>th</sup> July 2016 in accordance with Section 9(2) of the Commissioner for Standards (Jersey) Law 2017.
11. The complaint must also be supported by evidence sufficient to establish a *prima facie* case that the Code has been breached.
12. The police and other agencies investigate allegations of criminal misconduct and the Commissioner will not investigate any related allegation of a breach of the Code while the agency is conducting its own investigation. The same suspension of investigation applies while related proceedings (for instance, an action for defamation) are before a court of law.
13. Following his preliminary assessment, the Commissioner informs both the complainant and the member concerned whether or not he will investigate the complaint. If he has decided that the complaint does not merit investigation, he provides the complainant and the member concerned with a brief explanation of his reason for dismissing the complaint. The Commissioner publishes a webpage setting out basic information about complaints received by his office.

*The investigation: procedural safeguards*

14. The Code of Conduct states that “In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner and the Privileges and Procedures Committee (PPC) shall act in accordance with the principles of natural justice and fairness”.
15. Proceedings are not adversarial, but inquisitorial in character. The Commissioner is an independent and impartial investigator, appointed by the States, whose task is to establish the facts of a case. He reports these, along with his conclusions as to whether or not there has been a breach of the Code, to the PPC.
16. The member has a right of appeal from the Commissioner and the PPC to the States. The complainant has no right of appeal.
17. Members are expected to co-operate with any investigation into their conduct. They should supply written evidence as requested, and in their own name. Letters sent on their behalf by legal advisers or others will be disregarded. They may be accompanied to any meeting by a colleague, friend or legal adviser, but every effort is made to keep proceedings informal, and there is no expectation that they should be so accompanied. If they choose to bring a colleague, friend or adviser they are free to consult him or her off the record, but will be expected to answer for themselves (and not through the friend or adviser) any question put to them.
18. The complainant has no formal *locus* once an investigation is under way: he has no right to be called as a witness, though he is expected to co-operate with any investigation and to supply all the evidence in his possession when asked to do so. Nor do members accused of misconduct have any entitlement to cross-examine complainants, though they are given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied by complainants or others.
19. The civil standard of proof is adopted at all stages in the enforcement process, not only by the Commissioner, but by the PPC. Thus, in order to find against a member, the Commissioner will require at least that the allegation is proved on the balance of probabilities.

*Parliamentary privilege*

20. The Commissioner is an officer of the States and parliamentary privilege extends to his carrying out his duties. It also extends to witnesses and parties to his investigations. A complaint is however not regarded as covered by parliamentary privilege unless and until the Commissioner has decided to undertake an investigation.
21. From the point that the Commissioner decides to undertake an investigation all evidence and correspondence relating directly to the inquiry is covered by parliamentary privilege. It must remain confidential unless and until it is published by the PPC.

### *The investigation: process*

22. The Commissioner first informs the member concerned of the nature of the complaint and provides copies of the evidence offered in support of it. He sets out the particular provisions of the Code that appear, either on the basis of the complaint, or his preliminary assessment of the facts, to have been breached, at the same time inviting the member to respond in writing with a full and accurate account of the matters in question.
23. After considering the member's written submission, the Commissioner may decide either to dismiss the complaint or to agree remedial action with the member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. Remedial action involves "putting the record straight", for instance by making an amendment to the Register of Interests of Elected Members; the member will also normally be expected to make a formal apology, either in writing or by means of a formal statement to the States. If the Commissioner and member agree remedial action, the Commissioner reports the circumstances and remedial action direct to the PPC. The Commissioner informs the complainant of the action taken in response to the complaint.
24. If the member's written response is not sufficient to enable the Commissioner either to dismiss the complaint or agree remedial action, the Commissioner may pursue the investigation by seeking further information, either from the member concerned or others, including the original complainant, third parties, or public or private bodies. Such information is usually in writing in the first instance, though in some circumstances the Commissioner may decide to interview witnesses either informally or by means of formal oral evidence. The Commissioner holds his meetings with witnesses in private. In the case of informal interviews, a note is made of the meeting and all parties are subsequently asked to confirm its accuracy. In the case of formal oral evidence, a full transcript is taken. The PPC decides to what extent evidence is published.
25. The Commissioner has the power as per Section 13 of the Commissioner for Standards (Jersey) Law 2017 to summons people to appear and to provide records.
26. Sections 14, 15, and 16 of the Commissioner for Standards (Jersey) Law 2017 set out the criminal offences and related penalties arising from any failure to assist the Commissioner in the discharge of his functions. Section 17 sets out the relevant personal and professional privilege protections which apply.

### *Assessing the evidence*

27. If the Commissioner's investigation has uncovered material evidence that is at variance with the member's version of events, he will put this to the member, who will have the chance to challenge it. Before finalising his report, the Commissioner will also share with the member a draft of those parts of his report dealing with issues of fact, so that the member has an opportunity to comment on it.

28. If, having considered the member's comments, the Commissioner considers that there remain significant contested issues of fact, he will prepare his own account of the facts of the case, while drawing the attention of the PPC to those points which are contested.

29. The Commissioner usually reports his findings in the following form:

- summary of the initial complaint and of the relevant elements of the Code of Conduct;
- brief account of the key facts in the case, with references to evidence as appropriate and with any contested points of fact highlighted;
- his findings with reasons as to whether or not the Code has been breached; and any evidence, written and oral.
- A recommendation as to what action, if any, should be taken.

*20th June 2019*

**SCHEDULE 3<sup>91</sup>**

(Standing Order 155)

**CODE OF CONDUCT FOR ELECTED MEMBERS****1 Purpose of the code**

The purpose of the code of conduct is to assist elected members in the discharge of their obligations to the States, their constituents and the public of Jersey. All elected members are required, in accordance with standing orders, to comply with this code.

**2 Public duty**

The primary duty of elected members is to act in the interests of the people of Jersey and of the States. In doing so, members have a duty to uphold the law in accordance with their oath of office and to act on all occasions in accordance with the public trust placed in them.

Elected members have a general duty to act in what they believe to be the best interests of Jersey as a whole, and a special duty to be accessible to the people of the constituency for which they have been elected to serve and to represent their interests conscientiously.

Elected members must give due priority to attendance at meetings of the States in accordance with the terms of their oath of office and should be present in the Chamber when the States are meeting unless they have very compelling reasons not to do so.

**3 Personal conduct**

Elected members should observe the following general principles of conduct for holders of public office –

**Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family and friends, their business colleagues or any voluntary or charitable organization they are involved with.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

**Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest, or rules on freedom of information, data protection or confidentiality clearly demand.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

Holders of public office should promote and support these principles by leadership and example to maintain and strengthen the public's trust and confidence in the integrity of the States and its members in conducting public business.

*The principles in practice*

**4 Conflict between public and private interest**

Elected members should base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the 2, at once, and in favour of the public interest.

**5 Maintaining the integrity of the States**

Elected members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey and shall endeavour, in the course of their public and private conduct, not to act in a manner which would bring the States, or its Members generally, into disrepute.

Elected members should at all times treat other members of the States, officers, and members of the public with respect and courtesy and without malice, notwithstanding the disagreements on issues and policy which are a normal part of the political process.

**6 Public comments etc. regarding a States' employee or officer**

Elected members who have a complaint about the conduct, or concerns about the capability, of a States' employee or officer should raise the matter, without undue delay, with the employee's or officer's line manager (or, if he or she has none, the person who has the power to suspend the employee or officer), in order that the disciplinary or capability procedures applicable to the employee or officer are commenced, rather than raising the matter in public.

Elected members should observe the confidentiality of any disciplinary or capability procedure regarding a States' employee or officer and its outcome. If an elected member is nevertheless of the opinion that it is in the wider public interest that he or she makes a public disclosure of or comment upon the outcome of any such procedure, he or she should inform the parties to the procedure before so doing and, when so doing, refer to the individual by the title of his or her employment or office rather than by his or her name.

In this paragraph, "States' employee or officer" means a States' employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005, a member of the States of Jersey Police Force and any officer mentioned in the Schedule to that Law who is not a member of the States.

**7 Gifts and hospitality**

Elected members should not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver. In receiving any gift or hospitality, members should consider whether they would be prepared to justify acceptance to the public.

**8 Access to confidential information**

Elected members must bear in mind that confidential information which they receive in the course of their duties should only be used in connection with those duties, and that such information must never be used for the purpose of financial gain nor should it be used in their own personal interest or that of their families or friends. In addition, members should not disclose publicly, or to any third party, personal information about named individuals which they receive in the course of their duties unless it is clearly in the wider public interest to do so. Elected members must at all times have regard to all relevant data protection, human rights and privacy legislation when dealing with confidential information and be aware of the consequences of breaching confidentiality. Elected members must not disclose publicly, or to any third party, things said, or information produced, in a meeting of the States that is conducted in camera, unless the States have permitted such disclosure.

**9 Co-operation with committees and panels**

Elected members shall co-operate when requested to appear and give evidence before or produce documents to –

- (a) a scrutiny panel, for the purpose of the review, consideration or scrutiny of a matter by the panel pursuant to its terms of reference and the topics

assigned to it, or to a sub-panel or any person appointed by the scrutiny panel to review, consider, scrutinize or liaise upon any particular matter;

- (b) the PAC, for the purpose of the preparation of a report upon or assessment of any matter pursuant to the PAC's terms of reference;
- (c) a committee of inquiry, for the purpose of the inquiry which the committee is appointed to conduct; and
- (d) the PPC, for the purpose of an investigation of a suspected breach of this code, or to any person appointed by the PPC to investigate a suspected breach.

**SCHEDULE 2<sup>190</sup>**

(Standing Order 152)

**REGISTER OF INTERESTS OF ELECTED MEMBERS**

**1 Employment, offices, directorships and partnerships**

- (1) An elected member must register the name and address of any person, company, trust, professional association, union, political party or other organization from whom he or she receives any remuneration or benefit by virtue of being –
  - (a) employed;
  - (b) the holder of any office;
  - (c) a director of any company; or
  - (d) a partner in a partnership or firm.
- (2) If the elected member is a director of a company by which he or she is not remunerated, but receives remuneration through another company in the same group, the directorship must be registered.
- (3) When registering the name and address of a person, the elected member must also provide a brief description of the person's business or work.
- (4) An elected member is not required to register –
  - (a) remuneration he or she receives out of the consolidated fund, by virtue of being an elected member; or
  - (b) remuneration he or she receives out of the funds of a parish, by virtue of being its Connétable.

**2 Self-employment, etc.**

- (1) An elected member must register any consultancy, trade, profession, vocation or other work for which he or she receives any payment or benefit and which does not fall within paragraph 1.
- (2) An elected member must register the name and address of a person from whom he or she receives any payment or benefit in return for the work if the payment or benefit received from that person forms a significant portion of the member's total income or a significant portion of the member's total income from that work.
- (3) When registering the name and address of a person the elected member must also provide a description of the person's business or work.

**3 Shareholdings**

- (1) An elected member must register the name and address of any company in which he or she, or his or her spouse or civil partner or cohabitee, or both of them, whether jointly or separately, own shares exceeding –
  - (a) 1% or more of the issued share capital of the company; or
  - (b) £25,000 in value.
- (2) When registering the name and address of the company, the elected member must also provide a brief description of the business or purpose of the company.
- (3) For the purposes of this paragraph, a person owns shares if he or she owns them in his or her own name or if the shares are held, on his or her behalf, or for his or her benefit, by any other person.

**4 Sponsorship**

- (1) An elected member must register the name and address of any person who provides him or her with sponsorship for the purpose of enabling the member to carry out his or her duties as an elected member.
- (2) Sponsorship may take the form of the donation of money or of any benefit.
- (3) When registering the name and address of the sponsor, the elected member must provide a brief description of the sponsorship.

**5 Gifts, hospitality and other benefits**

- (1) An elected member must register the name and address of any person who gives the elected member, or his or her spouse or civil partner or cohabitee, any gift, hospitality or other benefit which has a monetary value greater than 1% of the current remuneration figure for elected members (disregarding any expense allowances) if the giving of the gift, hospitality or benefit is, in any way, related to membership of the States.
- (2) When registering the name and address the elected member must also provide a brief description of the gift, hospitality or other benefit given.
- (3) An elected member is not required to register any gift, hospitality or other benefit which is given or made available to all elected members or to all spouses or civil partners or cohabitees of elected members.

**6 Overseas visits**

An elected member must register the name and address of any person (apart from the States or any administration of the States) who pays all or part of the costs of a visit made outside Jersey by the elected member or his or her spouse or civil partner or cohabitee if the visit is, in any way, related to his or her membership of the States.

**7 Land**

- (1) An elected member must register a description of any land sufficient to identify it, which is wholly owned, or jointly owned with another person –
  - (a) by or on behalf of the elected member or his or her spouse or civil partner or cohabitee; or
  - (b) by or on behalf of the elected member and his or her spouse or civil partner or cohabitee jointly.
- (2) No declaration is required in respect of land so owned which is the principal place of residence of the elected member or of his or her spouse or civil partner or cohabitee.
- (3) An elected member must register a brief description of any land from which the elected member or his or her spouse or civil partner or cohabitee derives an income.

**8 Miscellaneous**

An elected member must register details of any other interest or benefit which the elected member or his or her spouse or civil partner or cohabitee receives which, although not required to be registered under the foregoing paragraphs of this Schedule, the elected member believes might reasonably be thought by other persons to influence his or her actions as an elected member.

