

STATES OF JERSEY



MEMBERS' CONDUCT: PROPOSED DISCIPLINARY PROCEDURES

**Presented to the States on 6th September 2005
by the Privileges and Procedures Committee**

STATES GREFFE

Members' Conduct: proposed disciplinary procedures

This report serves to inform members of the Committee's proposals for the management of complaints against members under the Code of Conduct, which will hopefully be incorporated within the new Standing Orders of the States of Jersey shortly, and to set out how the Committee will be proposing in the new Standing Orders that issues relating to members' conduct should be dealt with in the Assembly itself if Article 51 of the States of Jersey Law 2005 is repealed.

BACKGROUND

On 13th September 2005 the States Assembly is due to debate Projet No. P.98/2005 entitled, 'Draft States of Jersey (Amendment No. 2) Law 200'. If adopted, P.98/2005 will cause the repeal of Article 51 of the States of Jersey Law 2005. Members will recall that Article 51 was proposed by Senator S. Syvret as a way of safeguarding members' rights during the course of any disciplinary proceedings. Senator Syvret has quite understandably requested that the Assembly be provided with full details of the Committee's proposals for managing disciplinary proceedings against members if Article 51 is repealed prior to commencement of the debate on P.98/2005, in order that members might be satisfied that the proposals comply fully with the principles of natural justice.

The Committee is anxious to strike an appropriate balance between the preservation of the right of the Assembly to regulate its own affairs without outside interference (particularly from the courts) and the safeguarding of the rights of individual members who may be the subject of a disciplinary action, either as a result of a complaint under the Code of Conduct or as a result of proceedings in the Assembly itself. The Committee is confident that the draft procedures set out below meet these objectives.

COMPLAINTS UNDER THE CODE OF CONDUCT

A series of complaints made during the course of 2005 have allowed the Committee to evaluate the effectiveness of the existing draft Code of Conduct (P.32/2003 refers) and to consider refinements. The current system, involving a Sub-Committee on Standards (usually consisting of 3 members) that reports to the Committee, which in turn reports, if necessary, to the States, has been found to be an efficient, effective and, in the view of the Committee, fair way of progressing complaints. Nevertheless, 2 issues in particular have concentrated minds of the Committee.

1. External involvement

It has become clear that a number of members favour some degree of external involvement in, or scrutiny of, the complaints process. The Committee has given this matter careful consideration in the context of the clear advice it has received that external involvement in the final adjudication process is incompatible with the principles of parliamentary sovereignty. That is why it elected to follow the advice given by H.M. Attorney General (set out in full in P.98/2005) and decided to seek the repeal of Article 51. Nevertheless, it proposes that future Sub-Committees on Standards could consist of one member of the Committee, another member of the Assembly and one lay member. Such a constitution would provide an element of external scrutiny of minor complaints or a degree of independent oversight of more serious complaints at the investigation stage, although the actual decisions made in connexion with particular complaints would remain entirely in the hands of the Committee and, ultimately, the States Assembly. It is envisaged that the future Committee would seek expressions of interest from members of the public who wished to serve on a complaints panel, perhaps consisting of 5 to 7 members, in an honorary capacity. The Committee could then call on one member of that panel to serve on a particular Sub-Committee in rotation.

2. Complaints procedure

The complaints procedure as outlined in the existing draft Code of Conduct has been found to lack detail on a number of important issues, including –

- (a) clarification of the categories of complaints that fell within the Committee's areas of

responsibility;

- (b) initial action to be taken on receipt of a complaint;
- (c) whether the member complained of was entitled to receive a copy of the full statement of complaint;
- (d) in what circumstances a full investigation would be deemed necessary;
- (e) how interviews with independent witnesses should be conducted;
- (f) the standard of proof against which evidence was to be assessed;
- (g) whether evidence supplied by a member or witness should be made public;
- (h) steps that should be taken to resolve significant contested issues of fact; and,
- (i) the respective roles of the Committee and the Sub-Committee on Standards.

In order to bring clarity to proceedings, the Committee, in conjunction with successive Sub-Committees on Standards, has developed a pilot procedure, based on that which is operated by the United Kingdom Parliamentary Commissioner for Standards. A copy of the pilot procedure is enclosed as an appendix to this report.

DISCIPLINARY MATTERS ARISING IN THE STATES

1. Introduction

The need for the States as a whole to consider matters relating to members' conduct can arise in 2 separate ways.

Firstly, a member's conduct during the proceedings may be such that there is a need for the presiding officer to take immediate action to deal with inappropriate or disorderly conduct, and this action might then be followed by a move for further disciplinary action (possibly linked to a proposal to suspend the member concerned) depending on the nature of the conduct.

The second way in which the Assembly might be asked to deal with a disciplinary issue is if a proposition to suspend or otherwise censure a member is brought to the States. It is possible, for example, that the outcome of the Privileges and Procedures Committee's deliberations on a complaint under the code of conduct might be that a proposition to censure or suspend the member concerned should be lodged as a sanction for the conduct involved. In addition it is possible that a proposition to suspend or censure a member could be lodged in circumstances unrelated to a code of conduct investigation.

2. Matters arising during States' proceedings

Although incidents of disorderly or inappropriate conduct are thankfully rare in Jersey there clearly need to be appropriate procedures to deal with any incidents that might arise. Such conduct could, for example, include acting in a disorderly or disruptive way, using insulting or offensive language and refusing to withdraw the words, or deliberately and persistently disregarding the authority of the presiding officer.

It is a well-established principle in parliaments around the world that the presiding officer needs to be given adequate powers to ensure that order is restored rapidly if necessary, and that the authority of the Chair is not compromised by the actions of a disorderly or disruptive member. The Privileges and Procedures Committee is sure that all members would accept the need to ensure that the presiding officer has this power and it is of note that this matter was recognised in the amendment of Senator Syvret to insert Article 51 in the States of Jersey Law 2005 as paragraph (2) of that Article reads—

“Paragraph (1)(the right to a fair trial or hearing as defined in Article 6 of the European Convention on Human Rights) shall not prevent the person presiding at a meeting of the States from exercising such authority as may be prescribed and necessary for the immediate restoration of good order during the meeting”.

Following further consideration and the receipt of comments from the Bailiff, the Committee intends to propose revisions to the way in which disorderly incidents in the Assembly are dealt with. This will involve some minor amendments to the draft Standing Orders already lodged (principally Standing Order 111) and will involve a revision of the further provisions that were circulated for consultation in July but not included in the Standing Orders as lodged because of the uncertainty about Article 51.

The Committee will be proposing that the presiding officer is given the ability to ‘require’ a member to withdraw for the remainder of the day, or for a lesser period, in case of disorderly conduct (in this context the words ‘disorderly conduct’ include the type of behaviour referred to above). This would mirror the present provisions (see present Standing Order 30(3)) and would be similar to provisions in most, if not all, other parliaments, including the House of Commons at Westminster. The principal purpose of the provision is obviously to ensure that the authority of the presiding officer is respected and to ensure that order is restored in the Chamber. The exclusion of a member for the remainder of the day (or a lesser period if appropriate) acts as a ‘cooling-down’ period, as well as being a sanction for the conduct involved. The Viscount would, at as present, be empowered to take the necessary steps to ensure that the member concerned complied with the ruling from the Chair.

The Committee has considered the current rules for any subsequent action against a member who has acted in a disorderly way during proceedings and believes that some changes are appropriate.

The current provisions provide that the presiding officer may propose that a member be suspended if the presiding officer considers that the requirement for the member to withdraw for the remainder of the meeting is an inadequate response to the conduct concerned. The States must then vote on any such a proposition immediately without debate or amendment. The member concerned is not therefore able to put his or her point of view and other members are precluded from commenting on the issue before the vote.

In cases of severe disorderly conduct it is clearly important for the Assembly as a whole, and for the member concerned, that the matter is dealt with as soon as possible. The Committee will therefore be proposing that, if the requirement to withdraw for the remainder of the day (or a lesser period) is considered an inadequate response to the disorderly conduct concerned, any member should be able to propose on the next day that the States meet that the member concerned be suspended. (The ‘next’ day that the States meet could be the day after the incident occurred if there are scheduled continuation days or could, of course, be 2 or more weeks later.)

The proposition on suspension would be debated on the day it was proposed unless the States resolved to defer the debate until a later meeting. At present, Standing Order 30(4) states that the presiding officer should make any such proposal, but the Committee believes it is more appropriate to allow any member of the States to make a proposal of this nature.

The suspension of a member is a very serious issue and the Committee therefore considers that the new Standing Orders should state that any proposition on the suspension of a member would be subject to debate in the usual way. Importantly the member concerned would be given the opportunity to speak and put his or her point of view which is not the case at present. In addition the Committee is proposing that new Standing Order 104(2)(e) (which allows a member who is the subject of a vote of no confidence or censure to speak again just before the summing-up) should be extended to give the same facility to a member who is the subject of a suspension proposition. Standing Orders will nevertheless need to contain a proviso that a debate on the suspension of a member can go ahead in the absence of the member concerned if he or she refuses to participate or continues to be so disorderly that he or she must be removed again from the Chamber.

The Committee believes it is important that any period of suspension is determined according to fixed rules rather than being an open-ended period. Although it is only right that the Assembly can exercise authority to discipline its members in this way, that right must be balanced against the fact that the member concerned has been elected by the public to serve in the Assembly and any long period of suspension effectively disenfranchises the electors

concerned. The Committee is therefore proposing that the periods of suspension should be fixed as follows –

- (a) in the case of a 1st suspension during the member's term of office, 2 days;
- (b) in the case of a 2nd suspension during the member's term of office, 4 days;
- (c) in the case of a 3rd or subsequent suspension during the member's term of office, 6 days.

(The days counted for the purposes of determining when a period of suspension ends are meeting days and continuation days and the day the suspension occurs would be counted as the first day.)

3. Disciplinary matters in the States in other circumstances

As stated earlier, not every disciplinary issue in the Assembly will arise as a result of an unexpected incident during proceedings. For example, it is possible that a proposition for the suspension of a member will be brought as a result of a code of conduct enquiry where this sanction is considered necessary by the PPC.

The basic procedures set out above will obviously apply to the debate on any such proposition with, once again, a full debate on this issue and the opportunity for the member concerned to put his or her point of view. The only difference of procedure compared to incidents that arise at short notice is that the relevant proposition would need to be lodged in the normal way for a period of 2 weeks before the debate could take place.

THE WAY FORWARD

The Committee's proposals for the operation of the Code of Conduct and the management of disciplinary matters within the States Assembly are due to be added to the draft Standing Orders of the States of Jersey (Projet No. P.162/2005) by way of an amendment. The Privileges and Procedures Committee considers that the complaints procedure as drafted complements, and is fully compatible with, the draft Standing Orders. In the event that P.162/2005 is adopted by the Assembly, the Committee will in turn invite its successor to adopt the complaints procedure as the preferred method of progressing Code of Conduct related complaints against a member.

With regard to the matter of lay member involvement in the Sub-Committee on Standards, the Committee acknowledges that the formal introduction of such an arrangement will also be a matter for its successor to progress. Nevertheless, the Committee has ensured that the new draft Standing Orders, as amended, will allow for a future Privileges and Procedures Committee to appoint a lay member to a Sub-Committee on Standards.

Draft Complaints Investigation Process

Complaints, whether from a States Member or a member of the public, alleging that a Member has breached the draft Code of Conduct, should be addressed in writing to the President of the Privileges and Procedures Committee (the Committee).

If the complainant is a States Member, the Member will be expected to copy their letter to the Member about whose conduct they are complaining as a courtesy. This should be done before anyone else is told of the complaint. However, the Committee may, in exceptional circumstances, agree that the letter of complaint should not be so copied.

Initial consideration

An initial assessment of the complaint will be carried out by the Committee in order to ensure that the complaint is not anonymous, that credible evidence has been made available in support of the complaint and that the complaint is not trivial, vexatious or merely a repetition of allegations, unsupported by new and credible evidence, which have already been the subject of an inquiry. It will also ensure that the complaint falls within its areas of responsibility. The Committee does **not** consider that its remit includes such matters as the following –

- policy matters or a Member's views or opinions,
- reasonable decisions taken by a member on how to handle a constituent's case, and
- what Members do in their purely private and personal lives unless there is a direct impact on their role as a Member or on the reputation of the States as a whole.

If it appears to the Committee that a complaint may involve an allegation of criminal misconduct and may more appropriately be investigated by the police or another investigatory agency, it will ordinarily advise the complainant to approach that agency.

In the event the Committee is satisfied that the initial criteria have been met, it will forward the complaint to the Sub-Committee on Standards. The Sub-Committee will be tasked with carrying out a preliminary inquiry followed, if necessary, by a full investigation.

In all cases in which the Committee does not believe it appropriate for it to enquire into a matter, the Committee will advise the complainant and the member complained of accordingly and provide a summary of the reasons for its decision.

Preliminary inquiry

Where it appears that an allegation has sufficient substance to warrant at least a preliminary inquiry, the Sub-Committee will inform the Member concerned of the nature of the allegation and the evidence offered in support of it, and seek a response. It will ordinarily inform the Member at the earliest possible stage of the particular provisions of the draft Code of Conduct which it is alleged have been breached. The Member is not asked to prove his or her innocence. What is asked of the Member is a full and truthful account of the matters in question.

The information provided in response by the Member (either in writing or in person to the Sub-Committee) may be sufficient to enable the Sub-Committee to consider the allegation and report to the Committee directly. In some cases, it may be necessary for the Sub-Committee to seek further information or documentary evidence, either from the Member or others, before it can conclude its assessment of a complaint.

Alternatively, if the balance of the evidence assembled during the preliminary inquiry is unclear or the nature of the allegations particularly serious, the Sub-Committee may conclude that a full investigation is required in order

that it may report fully to the Committee on the complaint.

In all cases, the Sub-Committee will report to the Committee on the outcome of the preliminary inquiry.

Full investigation

In the course of a full investigation it may be necessary for the Sub-Committee to interview the Member who is the subject of the complaint, the complainant and other persons, and/or to seek relevant documentary or other evidence from other public or private bodies or from private individuals. Members will be required to cooperate fully and frankly with an investigation.

When approaching witnesses, the Sub-Committee will write informing them of the nature of the investigation and setting out the particular questions or matters where it seeks assistance. It is always helpful if they respond in writing but the Sub-Committee will also offer the opportunity of an interview in person. If a witness is interviewed, the Committee Clerk will take a note of the interview. Proceedings may also be recorded and transcribed if the Sub-Committee considers that to be appropriate. The witness will subsequently be asked to confirm the accuracy of the record of the interview.

The Sub-Committee will keep the Member concerned informed in general terms from time to time of the progress of its enquiries.

Legal advice

Complainants, Members complained against or witnesses may, if they so wish and at their own expense, take legal advice on any matter and be accompanied by a legal adviser (or other 'friend') at any meeting with the Sub-Committee.

Assessing the evidence

When the Sub-Committee believes it has obtained as complete a picture of the circumstances surrounding the complaint as possible, it assesses the evidence. In assessing the evidence and reaching a conclusion, the Sub-Committee requires at least that the allegation is proved on the balance of probabilities. In cases where the alleged offence is more serious, a higher standard of proof is appropriate.

If the Sub-Committee has uncovered any material evidence which is at variance with the Member's version of events, it will put this to the Member. This allows the Member to challenge the evidence. Before reaching its conclusions, the Sub-Committee will share with the Member the draft of those parts of its report dealing with issues of fact so that the Member has an opportunity to comment on them.

The Sub-Committee will encourage a Member always to respond in writing so that it can submit the Member's views precisely to the Committee when making its report.

As with witnesses, any evidence a Member supplies could become public, although the Sub-Committee will be sympathetic to requests for the deletion of confidential and personal information where it can protect privacy without jeopardising the public interest in knowing the facts on which the Sub-Committee has based its conclusions.

Investigatory Panel

In any case in which, despite the Sub-Committee's attempts to resolve them with the Member, there remain significant contested issues of fact, the Sub-Committee may (and if requested by the Committee, must) set up an Investigatory Panel consisting of the Chairman or another member of the Sub-Committee and a legally qualified person.

The Panel will meet in private and its procedures are determined by the Sub-Committee. The Member who is the subject of the complaint shall, if he or she so requests, be heard by the Panel; may call witnesses; and may

examine other witnesses. The Panel, or a legal adviser on its behalf, may also question witnesses.

When the Panel has completed its proceedings, it will prepare a report (or further reports) to the Sub-Committee setting out the facts of the case as now established and expressing an opinion on whether the Code has been breached. The legal assessor to the Panel is required to give the Committee his opinion as to the extent to which its proceedings have been consistent with the principles of natural justice and the Chairman may report to the Committee his or her opinion as to the extent to which its proceedings have had regard to the customs and practice of the Assembly.

Reporting to the Committee

The Sub-Committee will inform the Member when it has completed its report, and it will submit the report to the Committee. The report will include, as an appendix, information supplied by the Member and others, along with supporting documents, etc. where these are relevant, together with Minutes of all formal meetings held. The Committee Clerk will ensure that the Member concerned receives a copy no less than 2 clear days before the Committee first meets to consider the report. The Member thus has opportunity, if he or she so wishes, to let the Committee have any written comments on the full report. The Committee expects that any such comments will focus on the Sub-Committee's conclusions only, as any dispute about facts should have been addressed in earlier exchanges between the Member and the Sub-Committee or through the mechanism of an Investigatory Panel.

The role of the Sub-Committee as an investigatory body is to report the facts as it has found them. Its report normally comprises a description of the complaint and of the relevant aspects of the Code or other procedures etc.; an account of the evidence; findings and a conclusion. It may also make recommendations concerning the amendment of procedures so as to help the Assembly, the Committee and individual Members avoid pitfalls in future. The Committee, having assessed the facts as reported, determines whether the Code or any relevant decisions of the Assembly have been breached.

The Committee decision

The Committee will review the report of the Sub-Committee and decide what action, if any, should be taken. It is not bound to accept the findings and recommendations of the Sub-Committee.

If the Committee dismisses the complaint, it will inform both the complainant and the Member concerned of its decision, and give reasons.

If it believes that the complaint, though justified, is minor or, for example, the result of a genuine oversight which the Member concerned readily acknowledges, the Committee will seek to agree remedial action with the Member. In the case of a Member who has, for example, failed to register a relevant interest, the remedial action may take the form of a written invitation inviting the Member to update his or her entry in the Register of Members' Interests within a specified period. That action being taken, the Committee will inform the complainant of the outcome.

In the event that the Committee considers the complaint to be of a more serious nature, it will inform the Assembly of its conclusions at the first available opportunity. It may elect to do so by way of a written report, a Committee Statement or, if necessary, by lodging 'au Greffe' a relevant proposition calling for the censure, or even suspension in serious cases, of the Member. The procedure for a debate on a proposition seeking the suspension of a member, and the consequences of the adoption of any such proposition, are set out in Standing Orders.