
STATES OF JERSEY



CODE OF CONDUCT FOR ELECTED MEMBERS: COMPLAINT AGAINST SENATOR B.E. SHENTON

Presented to the States on 15th October 2010
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

The Privileges and Procedures Committee received complaints against Senator B.E. Shenton following a report which appeared in the Jersey Evening Post in March 2010 regarding the alleged recording and subsequent disclosure of a telephone conversation with Senator F.E. Cohen, Minister for Planning and Environment.

Two complaints were received from members of the public, both of which contended that the Senator's actions had been in breach of paragraph 5 of the Code of Conduct for Elected Members, which deals with maintaining the integrity of the States. A further request for an investigation into the matter was received from a States member. The Committee accepted the complaints in accordance with Standing Order 156 of the Standing Orders of the States of Jersey and has now concluded its investigation, which was carried out in accordance with Standing Orders 156 to 158.

Because of the nature of the matter raised in the complaints the Committee had to seek appropriate advice on matters such as any possible data protection issues and the operation of the Regulation of Investigatory Powers (Jersey) Law 2005 before proceeding and this delayed the Committee's ability to undertake its investigation for some time.

As part of its investigation the Committee conducted an interview with Senator Shenton on 5th October 2010 having required him to attend in accordance with the provisions of paragraph 9 of the Code of Conduct for Elected members. The Committee discussed with Senator Shenton the sequence of events which had led to the disclosure to the Committee of Inquiry into Reg's Skips Limited – Planning Applications, of a recording of a telephone conversation between Senator Shenton and Senator Cohen on 9th January 2008.

It was noted that all telephone calls to and from Senator Shenton's place of work were recorded as a matter of course, and that the data was then held securely in accordance with company policy. Senator Shenton provided the relevant data to the Committee of Inquiry in response to a request from that Committee and on the understanding that he had a duty to provide the information. Senator Shenton was of the view that, as the Committee of Inquiry was a statutory body that had made a call for evidence, everything should be disclosed, including the content of the telephone conversation. The Senator did not inform Senator Cohen that the recording had been released for the purposes of the inquiry, as he considered that this was a matter for the Committee of Inquiry.

The Committee accepts that when Senator Shenton used his mobile phone to call Senator Cohen and left a message for him phone back on a recorded telephone line on 9th January 2008, he could not have been aware that there would be a request for disclosure of its content 2 years later. The Senator was, however, aware that all telephone calls to his workplace were recorded and PPC considers that he should have advised Senator Cohen that this was the case. The committee discussed whether there had been a leading motive in Senator Shenton having asked Senator Cohen to call him back on a number which was subject to being recorded. The Committee heard Senator Shenton's explanation for his action and having ascertained from Senator Shenton that all outgoing calls to his firm were recorded as well as incoming calls could find no reason to suppose that this had been a deliberate ploy to record the conversation as the

result could have been more easily obtained by Senator Shenton having simply made the call from his office phone in the first instance instead of his mobile phone.

The Committee heard that it was standard practice with brokers to record all telephone calls in case of future disputes and that Senator Shenton's work colleagues were all aware of this and so accepted that any private calls they made would also be recorded. The Committee was concerned that any third parties calling the firm would not be aware of the recording and that it would be appropriate to alert them to this.

In conclusion, the Privileges and Procedures Committee found that Senator Shenton was at least discourteous in failing to inform Senator Cohen that the conversation of 9th January 2008 was being recorded. Senator Shenton's actions were in breach of paragraph 5 of the Code of Conduct for Elected Members, which states that members should, at all times, treat other members of the States with respect and courtesy. In failing to notify Senator Cohen of the recording, Senator Shenton subsequently risked bringing the States into disrepute when its existence came to light. The Committee has therefore decided to report this breach to the States.

N.B. The Committee wishes to point out that its rôle is to investigate alleged breaches of the Code of Conduct for Elected Members. It has no remit in respect of matters arising under the Data Protection (Jersey) Law 2005. The Chairman did nevertheless contact the Data Protection Commissioner about the incident and the Commissioner has made the following statement for inclusion in this report –

“The Office of the Data Protection Commissioner concluded that the incident raised compliance issues in respect of the first data protection principle, especially with regard to whether the fair processing requirements had been properly met. It was considered that these had not been given adequate weight and that it would be appropriate, on this occasion, to secure a formal undertaking from the data controller (TEAM Ltd).

An undertaking commits an organisation to particular course of action in order to improve its compliance, and has been used to good effect by the ODPC on previous occasions.”