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# STATES OF JERSEY



## **COMMISSIONER FOR STANDARDS: INVESTIGATION OF COMPLAINT OF BREACH OF THE CODE OF CONDUCT FOR ELECTED MEMBERS BY DEPUTY M.R. HIGGINS OF ST. HELIER**

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Presented to the States on 5th January 2022  
by the Privileges and Procedures Committee

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STATES GREFFE

## REPORT

### Introduction

1. In September 2021, Mr. Mark Capern (Principal Youth Officer) submitted a complaint to the Commissioner for Standards which concerned two specific aspects. The first related to Deputy Higgins' behaviour at a public meeting of the First Tower Community Association, held on 29th September 2021. Specifically, the complaint was that, during the meeting, Deputy Higgins publicly announced that he had submitted a complaint against Mr. Capern, without having advised him in advance that he intended to do so.
2. The second aspect of the complaint was in relation to Deputy Higgins' distribution of a complaint email. Deputy Higgins had submitted a complaint by email against Mr. Capern to the Chief Minister and had copied that complaint email to additional addressees, including the Interim Chief Executive of the States of Jersey, but had sent the message to another Mr. Paul Martin, who is also a Government employee.

### Commissioner's conclusions

3. The Commissioner concluded that Deputy Higgins breached the requirements of Article 8 of the Code when he forwarded his complaint against Mr Capern to an individual who had no possible legitimate interest in receiving the information. Article 8 of the Code is set out below:

#### **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.

4. In concluding the breach of Article 8, the Commissioner did not recommend any disciplinary action. He did, however, suggest a personal letter of apology from Deputy Higgins to Mr. Capern which would be consistent with the standard and behaviours expected of Elected Members.
5. The Commissioner also concluded that Deputy Higgins breached the requirements of Article 6 of the Code when he disclosed the existence of his complaint in a public forum. The Commissioner concluded that such disclosure,

even using job titles, requires the Member to ‘inform the parties to the procedure before doing so’. Article 6 of the Code is set out below:

**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.

6. The Commissioner did not make a recommendation as to what action was appropriate in respect of this breach of the Code. The Commissioner did, however, highlight that the employment arrangements presided over by the States must afford employees adequate protections and deliver an environment which treats them with respect and courtesy.

**PPC’s conclusions**

7. Standing Order 158 prescribes what PPC shall do on receipt of a report from the Commissioner for Standards.

**158 Outcome of investigation by the Commissioner for Standards**

- (1) When the Commissioner for Standards has reported the outcome of an investigation to the PPC under Article 9(1)(c) of the Commissioner for Standards (Jersey) Law 2017 in relation to the code of conduct for elected members of the States set out in Schedule 3, the PPC –
- (a) shall review the Commissioner’s report;
  - (b) shall give the elected member whose act has been investigated the right to address the PPC, accompanied, if the elected member wishes, by a person of his or her choice;
  - (c) shall form an opinion, on the basis of the information before it, as to whether or not the elected member has breached the code of conduct and what action, if any, should be taken;
  - (d) shall inform the elected member of its opinion with reasons and what action, if any, it thinks should be taken; and (e) may report its opinion

and reasons, and any action it thinks should be taken, or which has been taken, to the States.

(2) When the Commissioner for Standards has reported the outcome of an investigation to the States under Article 9(1)(c) of the Commissioner for Standards (Jersey) Law 2017 in relation to the code of conduct and code of practice for Ministers and Assistant Ministers referred to in Article 18(3A) of the Law, the PPC shall –

- (a) follow the procedure set out in sub-paragraphs (a) to (e) of paragraph (1) in relation to that report; or
- (b) make the report of the Commissioner for Standards available to the States.

(3) The report by the PPC referred to in paragraph (1)(e) may be presented to the States in writing or made orally by the chair of the PPC in a statement.

8. PPC invited Deputy Higgins to give his response to the report, and he attended upon the Committee on 20th December 2021. Deputy Higgins acknowledged that he had copied his letter of complaint to a Mr Paul Martin who was not the Interim Chief Executive Officer and apologised for the error. In relation to naming Mr. Capern during the meeting, Deputy Higgins maintained that he only used the titles of officers concerned during the meeting.
9. PPC accepts the Commissioner's finding that Deputy Higgins breached Article 8 of the Code which specifically enjoins Members to have regard to all relevant data protection legislation when dealing with confidential information. The Committee notes, however, that Deputy Higgins does not dispute the error and has apologised for it. The Committee believes this is a timely opportunity to remind Members to be vigilant when emailing any recipient and to ensure only those who have a legitimate reason to receive correspondence do so.
10. PPC also accepts the Commissioner's finding that Deputy Higgins breached Article 6 of the Code which is explicit that a complaint against a States' employee is a confidential matter. Any planned public disclosure of the matter should be advised in advance to the parties concerned. The Committee notes the explanation provided by Deputy Higgins that he only used job titles during the meeting, however, by doing so, he was still in breach of the Code. The Committee concurs with the Commissioner's suggestion that Deputy Higgins should write a personal letter of apology to Mr. Capern and has formally requested the Deputy to do so. Aside from the letter of apology, the Committee does not recommend any further action is necessary in relation to this matter.

**COMMISSIONER FOR STANDARDS:  
INVESTIGATION OF COMPLAINT OF BREACH OF THE CODE OF  
CONDUCT FOR ELECTED MEMBERS BY DEPUTY MIKE HIGGINS**

**Introduction**

Mr. Mark Capern [Principal Youth Officer] submitted a letter of complaint, dated 4 October 2021. I acknowledged receipt of the complaint on 5 October 2021.

**Summary**

Mr. Capern's complaint was that Deputy Higgins had breached the provisions of the Code of Conduct for Elected Members by reason of his behaviour at a public meeting of the First Tower Community Association held on Tuesday, 29 September 2021 and his distribution of a complaint email. Specifically, Deputy Higgins had submitted a complaint by email against Mr Capern to the Chief Minister and had copied that complaint email to additional addressees, including a Mr. Paul Martin who is connected with the Customs Department. In the course of the First Tower Community Association meeting, Deputy Higgins stated that he had submitted a complaint against Mr. Capern.

Mr. Capern was of the view that the distribution of an email by Deputy Higgins to a person outside the complaint procedure was a breach of data protection policy and that in publicising the complaint against him, Deputy Higgins had failed to respect the confidentiality requirements associated with complaints against States' employees.

I advised Mr. Capern that I would accept his complaint for investigation and accordingly advised Deputy Higgins of my decision to formally investigate the complaint against him in a letter, dated 5 October 2021. I highlighted the provisions of Articles 5 and 6 of the Code of Conduct for Elected Members.

**The facts**

The fact that Deputy Higgins distributed his complaint email to an individual who had no standing in the complaints' procedure is not disputed. However, the issue of whether Deputy Higgins named Mr. Capern as subject to a complaint during the First Tower Community Association meeting is the matter of some dispute.

**Deputy Higgins' response**

Deputy Higgins responded to my request for a full and accurate account of the matters in question in a letter, dated 23 October 2021.

In relation to the allegation that he had distributed his letter of complaint against Mr. Capern to a Mr. Paul Martin, Deputy Higgins accepted that he had done so. He explained that he had copied his complaint to individuals he felt had a legitimate interest in the matter, namely politicians with relevant political/ministerial interests. However, it had been his intention to copy the letter to Mr. Paul Martin, the then 'Chief Executive Officer

of the States of Jersey'. Whereas he in fact sent the email to another Paul Martin and not the Chief Executive with the same name. Deputy Higgins apologised for that error. In relation to the allegation that he had explicitly stated that he had submitted a complaint against Mr. Capern during the First Tower Community Association meeting, he said that he had advised the meeting that he had submitted a complaint against 'three youth workers.' Deputy Higgins had a distinct recollection that he had not named Mr. Capern but rather said that the complaint was made against the 'Principal Youth Worker, the Deputy Principal Youth Worker and the First Tower Youth Worker'.

Deputy Higgins concluded his response by acknowledging that he had been guilty of an inadvertent breach of data protection policy related to the email but did not believe he had breached the Code of Conduct for Elected Members.

### **Analysis and findings**

Deputy Higgins does not dispute that he copied his complaint email to an individual who had no part to play in the complaints' procedure. He explained the duplication of names which led to his error and apologised for it. The Code of Conduct requires Members to treat officers with respect and courtesy and to act in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey. Article 8 specifically enjoins Members to have regard to all relevant data protection legislation when dealing with confidential information.

I am satisfied that Deputy Higgins breached the requirements of the Code of Conduct when he forwarded his complaint against Mr. Capern to an individual who had no possible legitimate interest in receiving that information. To do so contravened the respect and courtesy to which Mr. Capern had a right. However, Deputy Higgins' error is understandable and should reinforce to all the need to ensure email addresses are correct. I do not recommend any disciplinary action in relation to this specific breach but a personal letter of apology from Deputy Higgins to Mr. Capern would be consistent with the standards and behaviours expected of Elected Members. I did not seek to address this point by way of agreed remedial action owing to the other alleged breach of the Code of Conduct for Elected Members.

The Code of Conduct for Elected Members is explicit that a complaint against a States' employee is a confidential matter. Any planned public disclosure of the matter should be advised in advance to the parties concerned.

Mr. Capern is quite clear that Deputy Higgins stated in the First Tower Community Association meeting, "I have made a complaint against Mark Capern and the First Tower Youth Worker". Mr. Capern confirms that Deputy Higgins did not advise him that he intended to share his complaint with the meeting or that he would name him. Mr. Capern named Deputy Steve Ahier and Deputy Inna Gardiner as having been present at the meeting and I sought accounts from them as to what transpired. Deputy Higgins mentioned the Chairman of the meeting as being a Mr. Vibert and I also sought an account from him.

Deputy Ahier states that Deputy Higgins advised the meeting that he had made a complaint against three CYPES officers in a letter to the Chief Minister. Deputy Ahier went on to say that the Chairman requested that Deputy Higgins not discuss such matters

since one of the CYPES officers he might have named in his complaint was present at the meeting.

Deputy Gardiner was unable to recall the exact wording used by Deputy Higgins but was aware that he advised those present that he had submitted a complaint to the Chief Minister and it was her understanding 'from his words and actions that he was referring to Mr. Capern who was present at the meeting'.

Mr Vibert who chaired the meeting responded in an email dated 27 October 2021. Mr. Vibert was clear that Deputy Higgins had named Mr. Capern. Mr. Vibert invited Mr. Capern to respond to Deputy Higgins' contribution but he confined himself to stating that he disagreed with a lot that Deputy Higgins had said but as a complaint had been submitted, he would prefer to leave things there.

Deputy Ahier mentioned in his statement that a former Deputy [Ms. Jackie Hilton] was present at the meeting and I sought an account from her. Ms. Hilton stated that she was uncomfortable with the language used by Deputy Higgins and that 'to all intents and purposes, Deputy Higgins was accusing him [Mr Capern] and other civil servants of corruption and underhand behaviour. I believe he named two or three possibly other civil servants'.

I have deliberately not discussed the funding bids which apparently gave rise to Deputy Higgins' complaint and contributed to an obviously heated atmosphere at the Tower Community Association meeting. They are irrelevant to my investigation.

On 12 November 2021, I wrote to Deputy Higgins advising him that the accounts I had received of the First Tower Community Association were not all consistent with his account and invited him to address the apparent disparities. Deputy Higgins responded in a letter dated 18 November 2021. He stood by his initial account but rejected any suggestion that he used the term 'corruption' during the meeting in question. He reiterated his view that he at no stage named Mr. Capern but only used job titles when mentioning his complaint submission. Deputy Higgins also requested the names of the people who had provided information to me. I replied to him in a letter dated 23 November 2021.

The accounts of the meeting I have obtained are mutually inconsistent, in that Deputy Higgins denies naming Mr. Capern whilst some cannot recall the exact words used and others recall that he did name Mr. Capern. I am not satisfied that even on the balance of probabilities that he did explicitly name Mr. Capern. However, I am satisfied beyond any doubt that no one in the meeting was unaware that a complaint had been lodged against Mr. Capern and that that knowledge partly arose from Deputy Higgins' contribution to the discussion. Deputy Higgins has claimed that he used job titles and Mr. Capern was present at the meeting and known to be the Principal Youth Worker. Deputy Higgins may well feel that he was justified in disclosing the existence of his complaint in that public forum. However, such a disclosure, even using job titles, requires the Member to 'inform the parties to the procedure before doing so'. Deputy Higgins did not do so and I am clear that he breached Article 6 of the Code of Conduct. Mr. Capern as a long-standing States' employee deserved more consideration from an Elected Member.

I make no recommendation as to what action is appropriate in respect of this breach of the Code of Conduct and feel that the PPC is better placed to determine what sanction is merited. I would simply highlight that the employment arrangements presided over by the States must afford employees adequate protections and deliver an environment which treats them with respect and courtesy. Mr. Capern was not afforded such an environment.

**Paul Kernaghan CBE QPM**  
**Commissioner for Standards**