
STATES OF JERSEY



COMMISSIONER FOR STANDARDS: INVESTIGATION OF COMPLAINT OF BREACH OF THE CODE OF CONDUCT FOR ELECTED MEMBERS BY DEPUTY M. TADIER OF ST. BRELADE

**Presented to the States on 13th September 2019
by the Privileges and Procedures Committee**

STATES GREFFE

INTRODUCTION

The Commissioner for Standards submitted a report to the Privileges and Procedures Committee (“PPC”) on 16th May 2019, which concluded that Deputy Montfort Tadier of St. Brelade had breached the Code of Conduct for Elected Members in relation to e-mail exchanges in which he called for a Hospital consultant to be sacked. Deputy Tadier exercised his right, under Standing Orders, to discuss the Commissioner’s report with the Committee before PPC reached its own view on the matter: that meeting took place on 9th September.

The Committee accepts the Commissioner’s finding that Deputy Tadier breached the Code of Conduct. It notes that Deputy Tadier was suspended by the Chief Minister from his role as Assistant Minister for Economic Development, Tourism, Sport and Culture for a lengthy period in the Spring, and does not consider that there is a need for any further sanctions in relation to this matter.

PRIVILEGES AND PROCEDURES COMMITTEE

**REPORT OF THE COMMISSIONER FOR STANDARDS
ON INVESTIGATION OF SELF-REFERRAL BY DEPUTY TADIER**

Submitted on 16th May 2019

Introduction

1. On 1/4/19, I received an e-mail from the Chief Minister [dated 29/3/19]. He advised me that he had agreed with the Minister for Economic Development, Tourism, Sport and Culture [“EDTSC”] that the Assistant Minister, EDTSC, Deputy Tadier, would be suspended from his ministerial role. The Minister and Chief Minister had requested a retraction and unreserved apology from Deputy Tadier. On 2/4/19, I was advised by the Greffe that Deputy Montfort Tadier had requested that I investigate a ‘recent incident’, which had resulted in his suspension as an Assistant Minister. I subsequently received an e-mail from the Chief Minister’s Private Secretary on behalf of the Chief Minister. That e-mail contained a chain of e-mails, in particular one from Deputy Tadier, which I have set out below:

Hi Carolyn,

I think the way forward is to have [the Employee] removed from States Employment – perhaps you and Rowland would back a proposition to this effect, and have him replaced with someone who understands the science of medicinal cannabis, who has experience in prescribing it for pain relief, inter alia.

Kind regards,

Montfort.

The e-mail was dated 28/3/19 and was addressed to Deputy Carolyn Labey. Amongst the copy recipients were the Chief Minister and [the Employee].

Summary

2. The Chief Minister responded to Deputy Tadier’s e-mail on 29/3/19. His e-mail was sent to all the recipients of Deputy Tadier’s e-mail, except [the Employee].
3. The Chief Minister highlighted his view that Deputy Tadier’s e-mail had been unacceptable and suggested that he retract the comment via a new e-mail and apologise as soon as possible.
4. I wrote to Deputy Tadier on 3/4/19 advising him that I had accepted his ‘self-referral’ and would proceed on that basis. I specified those elements of the Code of Conduct for Elected Members for which I felt there was *prima facie* evidence to suggest that he may have breached, namely Sections 2 and 6. I required him to provide a full and accurate account of the matters in question.
5. On 11/4/19, I received a complaint from [the Employee], together with supporting documentation. I subsequently advised Deputy Tadier of [the Employee]’s complaint and confirmed that I would be proceeding on the basis of his self-referral.

I wrote to [the Employee] acknowledging his complaint and confirming that I was already investigating the matter on the basis of Deputy Tadier's self-referral.

The facts

6. The facts in this case are not in dispute, in that Deputy Tadier doesn't deny sending the e-mail in question, in which he suggested that the way forward was the termination of [the Employee]'s employment and soliciting the support of Deputy Carolyn Labey and Deputy Rowland Huelin to that end.

Deputy Tadier's response

7. The facts are not in dispute, but Deputy Tadier was very clear in his response dated 25/4/19, that he does not believe his actions breached the Code of Conduct. He argued that his only error was in copying his e-mail to [the Employee]. He highlighted the context which led to his sending the e-mail. I will not reproduce his response in full here. However, I will seek to summarise the context before analysing Deputy Tadier's initial actions, response and their compatibility with the Code of Conduct.
8. The States Assembly voted on 6/11/18 to support a proposition which would allow medical professionals to prescribe medicinal cannabis. [The Employee] was subsequently quoted in the 'Bailiwick Express' highlighting his view that professional guidelines would not allow him to so prescribe.
9. Deputy Tadier raised [the Employee]'s comments with the Minister for Health and Social Services by way of a question in the States Assembly.
10. Deputy Tadier also had an exchange with the Chief Minister on 26/3/19 which he quoted in his response. I have reproduced part of that exchange below, as I feel it gives an insight in to Deputy Tadier's perspective and viewpoint.

[Deputy Tadier] "The problem is that G.P.s [General Practitioner] and also clinicians, who work at the hospital, are not just doctors, they are also people who are subject to political whims and political opinions of their own. We have a situation where a product, which was prescribed routinely, such as Sativex, has perversely been withdrawn on the sole discretion the clinician and it is clear that this is political interference from the individual in question ..."

11. Deputy Tadier explained that his e-mail, which was the basis for his self-referral, was sent in response to one from Deputy Carolyn Labey. He then went on to highlight that he had not realised that [the Employee] was a copy recipient and that "**I would not have sent the e-mail had I known that [the Employee] was copied in**". [Deputy Tadier's use of bold text]
12. Deputy Tadier sent an e-mail to [the Employee] on 30/3/19 headed 'Apology and Retraction'.

Analysis and findings

13. I highlighted Section 2 of the Code of Conduct for Elected Members as the Chief Minister had raised the issue of constructive dismissal in his initial response to Deputy Tadier. However, I do not feel there is a need to pursue this point. I am satisfied that Deputy Tadier had no conscious intention to undermine any law and, indeed, felt he was acting in the best interests of Jersey as a whole.

14. Section 6 of the Code is headed ‘Public comments etc. regarding a States’ employee or officer’. It is not disputed that [the Employee] is an employee of the States by reason of his employment at the Hospital and is, therefore, covered by Section 6. I have set out below, for ease of reference, paragraph 1 of Section 6:

“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.”

15. In my judgement, Deputy Tadier clearly breached the Code of Conduct, in that he did not raise his concerns about [the Employee] in the prescribed manner.

16. I recognise that Deputy Tadier obviously has strong opinions on the provision of medicinal cannabis. However, he sought to have [the Employee]’s employment terminated because of a dispute over the issue. It appears from his response that Deputy Tadier feels his mistake was in copying in [the Employee] to the e-mail in which he sought support for his dismissal. If he hadn’t copied in [the Employee], but the same e-mail had subsequently come to light, it would not have been inaccurate to describe Deputy Tadier’s actions as promoting a conspiracy to lose [the Employee] his employment.

17. Deputy Tadier did apologise to [the Employee] in an e-mail dated 30/3/19. However, his apology focussed on his sending of a group e-mail to which [the Employee] was a copy recipient. He acknowledged that this was not the correct way in which to voice his ongoing concerns. He concluded his e-mail by stating, “I apologise unreservedly for this error and any distress this may have caused you. I would also like to retract the contents of that e-mail”.

18. Deputy Tadier, in his response, drew my attention to his remarks in the States Assembly and reiterated his view that [the Employee] was acting in a political way. I will only comment that the expression of a professional view is not in itself inherently political. I would suggest that the contribution of the Minister for Health and Social Services in his response to Deputy Tadier on 15/1/19, is a balanced and reasonable statement of clinical autonomy and professional independence. I note that the Minister commented:

“I trust that members will join me in condemning any suggestion that we should impose direction on our medical staff in the way they exercise professional judgements in the best interests of their patients. The decision on whether or not it is clinically appropriate to prescribe a cannabis-based product must rest with our medical professionals and not States Members. Medical professionals

should not feel their employment is at risk if they exercise their clinical judgment in a way that might not meet with the approval of certain States Members”.

19. I reiterate my view that the e-mail sent by Deputy Tadier was a clear breach of the Code of Conduct. In mitigation, I recognise that he feels very strongly about the prescribing of medicinal cannabis. However, I believe it would be inappropriate to overlook the actual words used by Deputy Tadier in his e-mail. He explicitly questioned [the Employee]’s professional competence when recommending that he be “replaced with someone who understands the science of medicinal cannabis ...”.
20. Article 9(6) of the Commissioner for Standards (Jersey) Law 2017 requires me to not only state my conclusions, but also to recommend what action, if any, should be taken. I do not feel it would be appropriate for me to do so in this case, as in addition to the facts of the incident, it also touches on wider issues of principle, not least the relationship between Members and States’ employees. Therefore, I recommend that the Privileges and Procedures Committee decide on the appropriate action in this case, recognising that a medical professional has had his professionalism called in to question without any justification.
21. I advised Deputy Tadier in an e-mail dated 1/5/19, that I was minded to find him in breach of the Code of Conduct and offering him an opportunity to discuss the case with me on a face-to-face basis. I did so as the PPC have indicated that Members should be offered this facility in appropriate cases. Deputy Tadier did not respond to my invitation.

Ministerial Code

22. I investigated this matter in relation to the Code of Conduct for Elected Members, but I am also conscious that I am mandated to investigate alleged breaches of the Code of Conduct and Practice for Ministers and Assistant Ministers. I have in the past expressed some concern in relation to the Ministerial Code, as much of it deals with what I would call the ‘political management’ of the Council of Ministers. I suggest that this case illustrates my concerns.
23. The Chief Minister immediately acted when he became aware of Deputy Tadier’s e-mail, requesting a retraction and unreserved apology. He also alerted the PPC to “ask whether they feel the Assistant Minister has broken the code of conduct for Members ...”. On the same date, the Chief Minister issued a public statement giving details of Deputy Tadier’s e-mail and advising that he had been suspended with immediate effect until the end of the States Sitting of the week beginning 20 May 2019. The Chief Minister’s actions pre-empted any investigation I might have made under the Ministerial Code. I do not criticise him for his actions, rather the reverse. He acted to uphold the Ministerial Code and exercised political judgment in doing so. I merely highlight this aspect of the case for the information of the PPC and, indeed, of the Chief Minister. I feel the Chief Minister’s actions were appropriate and may indicate that the current arrangements require revision in the light of experience.

Paul Kernaghan, C.B.E., Q.P.M.

Commissioner for Standards