
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

**Presented to the States on 23rd January 2019
by the Privileges and Procedures Committee**

STATES GREFFE

INTRODUCTION BY THE PRIVILEGES AND PROCEDURES COMMITTEE

Complaint by former Senator A.K.F. Green against Deputy M.R. Higgins of St. Helier

1. In July 2017, former Senator A.K.F. Green submitted a complaint to the Privileges and Procedures Committee (“PPC”) about the conduct of Deputy M.R. Higgins of St. Helier, which was subsequently transferred to the Commissioner for Standards to investigate upon the coming into force of the [Commissioner for Standards \(Jersey\) Law 2017](#).
2. The complaint concerned remarks made by Deputy Higgins during the in-committee debate on the report of the Independent Jersey Care Inquiry on 6th and 7th July 2017. Details about the complaint can be found in the report of the Commissioner for Standards, which is appended to this report.
3. One aspect of the complaint concerned whether Deputy Higgins had compromised the anonymity of a vulnerable family, whose case he raised during the debate. The Commissioner concluded that he “did not breach the requirements of the Code of Conduct (for Elected Members) in relation to releasing confidential information”.
4. The other aspect of the complaint concerned a reference to a States officer using an incorrect job title, and raising matters in connection with that officer which he knew to be the subject of an internal investigation, in contravention of Article 6 of the Code, which 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.

5. The Commissioner found that Deputy Higgins had made a mistake with the job title “and that there was no malicious intent underpinning his action”. However, in relation to whether Deputy Higgins knew that the officer was the subject of a complaint which was being investigated, the Commissioner said that –

“Deputy Higgins was invited to address this specific point and failed to do so, notwithstanding an extended period and indications that he would do so. Deputy Higgins did not fully co-operate with my investigation as required and I regret this failing on his behalf.”

The Commissioner consequently found that, on balance, Deputy Higgins had breached the Code of Conduct.

PPC’s conclusions

6. 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 chairman of the PPC in a statement.

7. PPC invited Deputy Higgins to give his response to the report, and he attended the Committee on 19th December 2018. Deputy Higgins said that his recollection was that he had answered all of the questions put to him by the Commissioner. PPC invited the Deputy to provide to the Committee the explanation sought by the Commissioner and which the Commissioner said he had not received. Deputy Higgins replied by e-mail as follows –

“I have been unable to locate a copy of the correspondence from the Commissioner seeking the additional information after my main submission to him or a reply to it. I am surprised at this fact as I was very diligent in responding to the Commissioner even if I had trouble meeting his timescales ... If it was sent and I did not reply I can only say that I must have missed it during the election period as I would not have intentionally responded as I felt that I had nothing to answer for and would have provided the information.”

8. PPC accepts the Commissioner’s finding that Deputy Higgins breached Article 6 of the Code of Conduct for Elected Members, and notes with regret the Commissioner’s finding that Deputy Higgins did not co-operate fully with his investigation. However, the Committee notes the explanation provided by Deputy Higgins and does not recommend that any further action is necessary in relation to this matter.
9. In view of the case, PPC wishes to emphasise that States Members must comply fully with investigations by the Commissioner for Standards. Not only is this a legal requirement, under the Commissioner for Standards (Jersey) Law 2017, it is an essential underpinning of the system for regulating Members’ conduct.

PRIVILEGES AND PROCEDURES COMMITTEE

**REPORT OF THE COMMISSIONER FOR STANDARDS TO THE
PRIVILEGES AND PROCEDURES COMMITTEE ON INVESTIGATION OF
COMPLAINT OF BREACH OF THE CODE OF CONDUCT FOR ELECTED
MEMBERS BY DEPUTY M.R. HIGGINS OF ST. HELIER**

Submitted on 23rd May 2018

Introduction

1. Senator Green (the complainant) submitted a complaint by means of a letter, dated 28 July 2017 to the Chairman of the Privileges and Procedures Committee. The complaint was transferred to me following my appointment. I acknowledged receipt of the complaint in a letter to Senator Green, dated 12 October 2017. I subsequently advised Deputy Higgins of the complaint against him in a letter, dated 15 November 2017 and invited Deputy Higgins to provide a full and accurate account of the matters in question. Deputy Higgins responded in a letter dated 4 December 2017 advising me that he required certain documentation and the outcome of a staff disciplinary matter before he would be able to provide the required account. He provided an update in a letter, dated 25 January 2018 (but received by me on 22 February 2018). I responded in a letter, dated 28 February 2018 highlighting the need for an urgent response. Deputy Higgins provided his account in a letter, dated 26 March 2018.

Summary

2. Senator Green's complaint was that Deputy Higgins had through his contributions to an in-committee debate of Thursday 6th and Friday 7th July 2017 breached the provisions of the Code of Conduct for Elected Members. The complaint specified two contributions which had breached the Code.
 - (a) In a speech on the Thursday, Deputy Higgins had referred to a letter he had received from the 'current head of the children's Service'. Senator Green stated that this was factually incorrect in that the letter was from the Managing Director of Community and Social Services (CSS). He then went on to question how appropriate it was for Deputy Higgins to raise this matter on the floor of the Assembly and that Deputy Higgins had gone on to accuse the officer of potentially 'manufacturing the evidence'. Deputy Higgins had also called for an investigation in to what he described as 'defamatory statements' in the letter. Senator Green highlighted that Deputy Higgins was aware that an investigation of a complaint by the person who was allegedly defamed in the letter was under way. He then mentioned that Article 6 of the Code of Conduct required members to observe the confidentiality of disciplinary procedures regarding States' employees. That provision also required Members who felt public disclosure was appropriate, to inform the parties to the procedure before doing so 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. Senator Green argued that Deputy Higgins should not have commented when he knew an investigation was under way and that he could in any case have lodged his own complaint against the Managing Director of CSS. Senator Green also highlighted that the wrong job title was used in the debate, so an uninvolved person might have been identified.

- (b) Senator Green's second point of complaint was based on Deputy Higgins referring to a family, which Senator Green described as 'clearly vulnerable'. He highlighted the provisions of Article 8 of the Code of Conduct which governs the use of confidential information received during Members' duties. He then argued that whilst Deputy Higgins had not named the family in question, he had talked about clearly confidential details such as allegations of sexual abuse and long-term engagement with Social Services. Deputy Higgins had claimed that he was being fobbed off because information was being withheld. Senator Green suggested that HSSD were in fact adhering to strict data protection protocols. Senator Green felt that Deputy Higgins had misrepresented the facts and that the Assembly was not the appropriate location for such discussions.

The facts

3. Senator Green provided an extract from the in-Committee debate on the Report of the Independent Jersey Care Inquiry with his letter of complaint. This extract contains Deputy Higgins' remarks which provided the basis for Senator Green's complaint.

Deputy Higgins' response

4. I wrote to Deputy Higgins on 15 November 2017 requesting that he supply me with a full and accurate account of those matters set out in Senator Green's complaint. Deputy Higgins responded by e-mail on 26 March 2018.
5. Deputy Higgins responded to both allegations against him and I will deal with each in line with the designation in paragraph 2 of this report.
- (a) Deputy Higgins acknowledged that he had incorrectly referred to the 'Head of Children's Services' in his debate contribution, whereas the individual concerned was the 'Managing Director of Community and Social Services'. He attributed his mistake to having read an article in the 'Jersey Evening Post' the previous day which had referred to the individual concerned by the wrong title. He highlighted that he had been prepared to make a personal statement to correct his mistake but did not do so, as he believed that the individual concerned effectively occupied both positions at the relevant time. Deputy Higgins refuted the allegation that he was aware that a disciplinary investigation was underway when he spoke in the debate. He then highlights what I will categorise as confusion in relation to the interplay between his actions and those of Mrs. P. He clearly states that he raised the issue as he felt it was in the public interest to do so. In relation to his statement re the possible 'manufacturing of evidence' he details a related police investigation. He emphasised that his debate contribution was designed to 'get the allegations out into the open and investigated'. He concluded his response to this aspect of Senator Green's complaint by indicating that he felt his actions were necessary. I sought further information from Senator Green and on receipt of that information, sought a response from Deputy Higgins. However, despite several reminders Deputy Higgins failed to provide an alternative account, although it is recognised that by the end of the process he was involved in the Island's 4-yearly general election, in which he was standing as a Deputy for St. Helier.

- (b) Deputy Higgins commenced his response by highlighting that he had not released information about named individuals. However, he felt he had had to provide some information to the Assembly in relation to problems he and the family were having. He did not feel he had compromised the family's identity as he believed they were somewhat reclusive and known only to professionals with whom they worked. Deputy Higgins then sought to justify his "fobbed off" comment by describing the 'strict data protection protocols' as being so strict that he had been unable to obtain the information he was seeking.

Analysis and findings

6. It is important in any democracy that elected Members can express their view openly and honestly and that on occasions that they may do so in a passionate and robust manner. Equally, I recognise and respect the role of the Presiding Officer of the States Assembly in regulating debates within the chamber. Deputy Higgins accepts that he incorrectly identified an officer by using the wrong job title and whilst such a mistake is to be regretted, I am satisfied that Deputy Higgins made a mistake and that there was no malicious intent underpinning his action. However, Senator Green claimed that Deputy Higgins disregarded the requirement on elected Members that they should observe the confidentiality of any disciplinary or capability procedure regarding a States' employee or officer. That requirement is caveated, in that a Member can do so if they believe it is in the wider public interest but only if they inform the parties to the procedure in advance. Deputy Higgins was invited to address this specific point and failed to do so, notwithstanding an extended period and indications that he would do so. Deputy Higgins did not fully co-operate with my investigation as required and I regret this failing on his behalf. It is in everyone's interest for Members who are facing complaints to respond fully and honestly to the allegations against them. In the absence of a response from Deputy Higgins in relation to the allegation that he did not respect the confidentiality of disciplinary procedures, I have no alternative but to find that he did breach Article 6 of the Code of Conduct for Elected Members. I am satisfied on the *balance of probabilities* that he did do so.
7. I have decided that on balance Deputy Higgins did not breach the requirements of the Code of Conduct in relation to releasing confidential information. I have no evidence that the information he used compromised the identity of the individuals concerned.
8. I am invited to make recommendations to the PPC in relation to what action, if any, should be taken arising from proven breaches of the Code of Conduct. I do not feel that it would be appropriate for me to do so in this case other than to make the following observations:
- * Elected Members enjoy a privileged position as they represent the electorate and must be free to fully represent their constituents. However, public servants also play a crucial part in the delivery of public services and are entitled to be respected by elected Members. Crucially, such employees and officers are subject to disciplinary codes and processes and that reality is specifically mentioned in the Code of Conduct for Elected Members. Deputy Higgins failed to observe the requirements of the Code of Conduct and thus potentially compromised both an individual employee's rights and the wider confidence

that such employees should feel in their rights and the legislature which they ultimately serve.

- * Deputy Higgins failed to fully co-operate with my investigation, notwithstanding the additional time extensions granted to him. This is the first time that a Member has failed to fully co-operate and the PPC may wish to consider how best to reinforce the need for Members to actively co-operate with my investigations, in the light of his behaviour.

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

Commissioner for Standards