
STATES OF JERSEY



COMMISSIONER FOR STANDARDS - STATEMENT

**Presented to the States on 4th April 2023
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

In accordance with the provisions of the [Commissioner for Standards \(Jersey\) Law 2017](#), the Privileges and Procedures Committee is required to present the Commissioner for Standards' statement to the States Assembly. The statement sets out the manner in which the Commissioner proposes to discharge her functions under the Law. The statement can be found in appendix 1.

Commissioner for Standards Statement

Commissioner for Standards, States of Jersey

1. The Commissioner for Standards investigates complaints of alleged breaches of the Code of Conduct for Elected Members ("the Code") (Appendix 1). The Commissioner considers complaints made by third parties and can also initiate her own investigation if she believes that, at a relevant time, a breach of the Code may have occurred. A member can also request that their own behaviour is investigated by the Commissioner to establish whether there has been a breach of the Code of Conduct.

Complaints

2. Whether the complainant is a member of the public or a member of the States, they may wish to consider whether it may be useful, in the first instance, to try to resolve their complaint informally where appropriate.
3. Any complaint alleging that a member of the States has breached the Code must be made in writing to the Commissioner via one of the following means:

Email: commissionerforstandards@gov.je

Website: TBC

Postal Address:

Pan-Island Commissioner for Standards, Channel Islands
c/o States Greffe
Morier House
Halkett Place
St Helier Jersey JE1 1DD

4. In order for a complaint to be considered it should:
 - a. be made in writing;
 - b. state the name of the complainant;
 - c. state the email, telephone and postal address of the complainant (unless the complainant is a current member);
 - d. name the person who is the subject of the complaint;
 - e. state the acts or omissions of the member complained of which are alleged to have breached the Code;

- f. state the provision or provisions of the Code which each act or omission is alleged to have breached;
 - g. in relation to each act or omission complained of, be substantiated by sufficient evidence to satisfy the Commissioner that there is a *prima facie* case that a breach of Code has occurred and that the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process;
 - h. refer to an alleged breach of the Code which occurred on or after 24 July 2016 in accordance with Section 9(2) of the Commissioner for Standards (Jersey) Law 2017; and
 - i. relate to alleged conduct which falls within the scope of the Code
5. The Commissioner has the discretion to consider a complaint even where one or more of the above haven't been met.

Preliminary Assessment

6. The Commissioner will conduct a preliminary assessment of all complaints. The Commissioner cannot consider complaints that fall outside the scope of the Code of Conduct or complaints which she deems frivolous or vexatious. She will not consider complaints that substantially repeat allegations which have already been the subject of consideration (unless there is fresh evidence in their support).
7. The Commissioner will not, without good reason, consider either anonymous complaints or complaints where the complainant is not prepared to have his or her name and complaint disclosed to the member complained about. The complainant's details will be included in all correspondence including any report submitted to the Privileges and Procedures Committee ("the PPC") with the exception of complaints that relate to unacceptable behaviours (see para 10).
8. Matters falling within the Commissioner's remit include:
- a. failure to adhere to the requirements of the Code;
 - b. failure to register relevant interests (see Appendix 2);
 - c. failure to declare relevant interests in the course of parliamentary business including committee and scrutiny panel proceedings; and
 - d. unacceptable behaviour including bullying, harassment, sexual harassment and victimisation (paragraph 5 of the Code)
9. Matters not falling within the Commissioner's remit include:
- a. policy matters or a member's political views or opinions;
 - b. service or performance standards or outcomes received;
 - c. alleged breaches of the separate code governing the conduct of ministers and assistant ministers acting in their official capacities (the Commissioner will publish a separate statement in relation to the Code of Conduct and Practice for Ministers and Assistant Ministers);
 - d. a complaint from a person who is not a member of the States regarding words spoken by, or actions of, an elected member during a meeting of the States;
 - e. a complaint about a former member of the States.

Complaints Relating to Unacceptable Behaviour

10. The Commissioner will consider complaints relating to unacceptable behaviour including bullying, harassment, sexual harassment, intimidation and victimisation. Complaints relating to unacceptable behaviour fall within the scope of paragraph 5 of the Code of Conduct. (Appendix 1)
11. Unacceptable behaviour can be defined as “*Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all circumstances and in particular the complainant’s perception, it should reasonably be considered as having that effect.*”
12. Complaints relating to bullying, harassment, sexual harassment, intimidation and victimisation are intended to address such behaviour or conduct whether it occurs in person or remotely, for example by email, phone, text or through social media. Such behaviour or conduct may occur in a single and isolated serious incident or in multiple incidents occurring over a period of time.
13. Members have a right to freedom of expression and this includes disagreements on issues and policy which are a normal part of the political process.
14. Due to the sensitive nature of complaints relating to unacceptable behaviour, the Commissioner will not normally disclose the complainant’s name and details in the final report relating to any such investigation.
15. The Commissioner encourages anyone who feels they are being or have been subject to unacceptable behaviour to consider the use of the informal approach to resolve their complaint in the first instance. However, this is not a requirement prior to submitting a formal complaint.

Discontinuation of a Complaint

16. The Commissioner may discontinue consideration of a complaint if at any time she is satisfied that a complaint:
 - a. is frivolous or vexatious or otherwise an abuse of the complaints process;
 - b. the complainant has, without reasonable excuse, failed to co-operate with the Commissioner;
 - c. the alleged conduct is not sufficiently serious to justify further consideration;
 - d. the complainant no longer insists upon the complaint;
 - e. the complaint would more appropriately be investigated by the police or other public body;
 - f. it is not in the public interest to proceed with the consideration of the complaint; or
 - g. if a member is under investigation when the member leaves the States, the investigation terminates at that point.

Investigation: Procedural Safeguards

17. The Commissioner will make arrangements to facilitate any complainant who is not able to submit their complaint in writing, for example due to disability or language difficulties.
18. Confidentiality is vital for all of those involved in a complaints process. In addition to the person raising a complaint, this is equally important for the person against whom an allegation of any sort has been made. Elected Members, as public figures, are likely to be concerned that an allegation might be repeated in public and attributed to them, when the matter remains under investigation and has not been upheld. Therefore, in the interests of fairness for all involved, any complaint submitted to the Commissioner must remain private and confidential from the point of submission until the complaint has been finally determined, unless disclosure is authorised (for example if a member is the complainant and needs to declare an interest such as the fact of a complaint submitted to the Commissioner).
19. Information collated in relation to complaints will be held and managed in accordance with the Data Protection Act 2018 and Data Protection principles.
20. The police and other agencies investigate allegations of criminal misconduct and the Commissioner will not investigate any related allegation of a breach of the code while the agency is conducting its own investigation. The same suspension of investigation applies while related proceedings (for instance and action for defamation) are before a court of law.
21. Where during an investigation the Commissioner decides that the conduct of a member of the States should be investigated by the police or other public body, the Commissioner may liaise with the police or such other public body as they deem appropriate.
22. In investigating and adjudicating allegations of non-compliance with the Code, the Commissioner and the Privileges and Procedures Committee (PPC) shall act in accordance with the principles of natural justice and fairness.
23. Proceedings are not adversarial, but inquisitorial in nature. The Commissioner is an independent and impartial investigator appointed by the States, whose task is to establish the facts of a case. She reports these, along with her conclusions as to whether or not there has been a breach of the Code, to the PPC.
24. The member has a right of appeal from the Commissioner and the PPC to the States. The complainant has no right of appeal.
25. Members are expected to co-operate with any investigation into their conduct. Requested written evidence from members must be in their own name; letters sent on their behalf by legal advisers or others will be disregarded. Members may be accompanied to any meeting or interview by a colleague, friend or legal adviser. However, every effort is made to keep proceedings informal and there is no expectation that they should be so accompanied. If members choose to bring a colleague, friend or adviser, they are free to consult him or her off the record but

will be expected to answer for themselves (and not through the friend or adviser) any questions put to them.

26. The complainant has no formal *locus* once an investigation is under way and has no right to be called as a witness. The complainant is expected to co-operate with any investigation and to supply all evidence in his or her possession when asked to do so.
27. Members accused of misconduct have no entitlement to cross-examine complainants, though they are given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied by complainants or others.
28. The civil standard of proof is adopted at all stages in the investigation process by both the Commissioner and the PPC. Therefore, in order to find against a member, the Commissioner needs to be satisfied that the allegation is proven on the balance of probabilities.

Confidentiality

29. From the point that the Commissioner receives a complaint, all evidence and correspondence relating directly to the inquiry must remain confidential unless and until it is published by the PPC.

Investigations: General Procedure

30. On receipt of a complaint, the Commissioner will write to the complainant at the earliest opportunity to acknowledge receipt of their complaint. The Commissioner will inform the member concerned of the complaint and provide a copy of the complaint and any evidence offered in support of it. She will set out the particular provisions of the Code of Conduct that appear, either on the basis of the complaint or her preliminary assessment of the facts, to have been breached, and at the same time will invite the member to respond in writing with a full and accurate account of the matters in question.
31. Following her preliminary assessment, the Commissioner will inform both the complainant and the member concerned whether or not she will investigate the complaint. If she has decided that the complaint does not merit investigation, she will provide the complainant and the member concerned with a brief explanation of her reason for dismissing the complaint.
32. Alternatively, the Commissioner may decide to agree remedial action with the member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. Remedial action involves “putting the record straight”, for instance by making an amendment to the Register of Interests of Elected Members. The member will normally be expected to make a formal apology, either in writing or by means of a formal statement to the States. If the Commissioner and member agree remedial action, the Commissioner will report the matter and remedial action direct to the PPC. The Commissioner will inform the complainant of the action taken in response to the complaint.

33. If remedial action is not appropriate in the circumstances, and the member's written response is not sufficient to enable the Commissioner either to dismiss the complaint or agree remedial action, the Commissioner may pursue an investigation. This can include seeking further information, either from the member concerned or others, including the original complainant, third parties, or public or private bodies. Such information may be sought in writing or the Commissioner may decide to interview witnesses either informally or by means of formal oral evidence. The Commissioner holds her meetings with witnesses in private. In the case of informal interviews, a note will be made of the meeting and all parties will subsequently be asked to confirm its accuracy. In the case of formal oral evidence, a recording and full transcript will be made. The PPC decides to what extent the evidence is published.
34. The Commissioner has the power as per Section 13 of the Commissioner for Standards (Jersey) Law 2017 to summons people to appear and to provide records.
35. Sections 14, 15, and 16 of the Commissioner for Standards (Jersey) Law 2017 set out the criminal offences and related penalties arising from any failure to assist the Commissioner in the discharge of her functions. Section 17 sets out the relevant personal and professional privilege protections which apply.

Assessing the evidence

36. If the Commissioner's investigation has uncovered material evidence that is at variance with the member's version of events, she will put this to the member, who will have the chance to challenge it. Before finalising her report, the Commissioner will share with the member a draft of her findings of fact and provide the member an opportunity to comment. The Commissioner may also share with the complainant a draft of her findings of fact on a confidential basis, where the Commissioner considers it is appropriate in the circumstances to do so.
37. If, having considered the member's comments, the Commissioner considers that there remain significant contested issues of fact, she will prepare her own account of the facts of the case, while drawing the attention of the PPC to those points which are contested.
38. The Commissioner usually reports her findings in the following form:
 - a. summary of the initial complaint and of the relevant elements of the Code of Conduct;
 - b. brief account of the key facts in the case, with reference to evidence as appropriate, and with any contested points of fact highlighted;
 - c. her findings with reasons as to whether or not the Code of Conduct has been breached and any evidence, written and oral;
 - d. a recommendation as to what action, if any, should be taken

2nd April 2023
Dr Melissa McCullough
Pan-Island Commissioner for Standards

Appendix 1: Code of Conduct for Elected Members

SCHEDULE 3

Standing Orders of the States of Jersey

SCHEDULE 3²⁹⁶

(Standing Order 155)

CODE OF CONDUCT FOR ELECTED MEMBERS**1 Purpose of the code**

The purpose of the code of conduct is to assist elected members in the discharge of their obligations to the States, their constituents and the public of Jersey. All elected members are required, in accordance with standing orders, to comply with this code.

2 Public duty

The primary duty of elected members is to act in the interests of the people of Jersey and of the States. In doing so, members have a duty to uphold the law in accordance with their oath of office and to act on all occasions in accordance with the public trust placed in them.

Elected members have a general duty to act in what they believe to be the best interests of Jersey as a whole, and a special duty to be accessible to the people of the constituency for which they have been elected to serve and to represent their interests conscientiously.

Elected members must give due priority to attendance at meetings of the States in accordance with the terms of their oath of office and should be present in the Chamber when the States are meeting unless they have very compelling reasons not to do so.

3 Personal conduct

Elected members should observe the following general principles of conduct for holders of public office –

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

*The principles in practice***4 Conflict between public and private interest**

Elected members should base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the 2, at once, and in favour of the public interest.

5 Maintaining the integrity of the States

Elected members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey and shall endeavour, in the course of their public and private conduct, not to act in a manner which would bring the States, or its Members generally, into disrepute.

Elected members should at all times treat other members of the States, officers, and members of the public with respect and courtesy and without malice, notwithstanding the disagreements on issues and policy which are a normal part of the political process.

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.

7 Gifts and hospitality

The giving or acceptance of gifts, hospitality and services can give rise to a perception of corruption. In giving or receiving any gift, hospitality or service, members should consider whether they could justify acceptance to the public. In the event of doubt, members should seek advice from the Greffier of the States or the Commissioner for Standards.

Elected members should not accept gifts, hospitality or services which might appear to a reasonable person to compromise their personal judgement or integrity or place the recipient under any form of obligation to the giver, in order to guard against corruption or the perception of corruption. The same principle applies to gifts, hospitality or services offered or received to a family member or cohabitee.

The giving, receipt or offer of a gift, hospitality or service which a reasonable person might consider to be connected to membership of the States must, if it is of sufficient value, be registered in accordance with the rules on the registration of interests.

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.

9 Co-operation with committees and panels

Elected members shall co-operate when requested to appear and give evidence before or produce documents to –

- (a) a scrutiny or review panel, for the purpose of the review, consideration or scrutiny of a matter by the panel pursuant to its terms of reference and the topics assigned to it, or to a sub-panel or any person appointed by the scrutiny panel to review, consider, scrutinize or liaise upon any particular matter;
- (b) the PAC and the PPC, for the purpose of the preparation of a report upon or assessment of any matter pursuant to the PAC's and the PPC's terms of reference; and
- (c) a committee of inquiry, for the purpose of the inquiry which the committee is appointed to conduct.

Appendix 2: Register of Interests of Elected Members

SCHEDULE 2

Standing Orders of the States of Jersey

SCHEDULE 2²⁹⁵

(Standing Order 152)

REGISTER OF INTERESTS OF ELECTED MEMBERS**1 Employment, offices, directorships and partnerships**

- (1) An elected member must register the name and address of any person, company, trust, professional association, union, political party or other organization from whom he or she receives any remuneration or benefit by virtue of being –
 - (a) employed;
 - (b) the holder of any office;
 - (c) a director of any company; or
 - (d) a partner in a partnership or firm.
- (2) If the elected member is a director of a company by which he or she is not remunerated, but receives remuneration through another company in the same group, the directorship must be registered.
- (3) When registering the name and address of a person, the elected member must also provide a brief description of the person's business or work.
- (4) If an elected member's total income from any interest declared under this paragraph exceeds 25%, 50% or 75% of their total annual income in the previous 12 months, he or she must register which of these thresholds has been surpassed.
- (5) An elected member is not required to register –
 - (a) remuneration he or she receives out of the consolidated fund, by virtue of being an elected member; or
 - (b) remuneration he or she receives out of the funds of a parish, by virtue of being its Connétable.

2 Self-employment, etc.

- (1) An elected member must register any consultancy, trade, profession, vocation or other work for which he or she receives any payment or benefit and which does not fall within paragraph 1.
- (2) An elected member must register the name and address of a person from whom he or she receives any payment or benefit in return for the work if the payment or benefit received from that person forms at least 5% of the member's total income or at least 10% of the member's total income from that work.
- (3) When registering the name and address of a person the elected member must also provide a description of the person's business or work.

- (4) If an elected member's total income from any interest declared under this paragraph exceeds 25%, 50% or 75% of their total annual income in the previous 12 months, he or she must register which of these thresholds has been surpassed.

3 Shareholdings

- (1) An elected member must register his or her interest in the shares of any company that are held by the elected member or held, whether jointly or separately, by a relevant person where –
- (a) the nominal value of the shares are greater than 1% of the total value of the issued share capital of the company; or
 - (b) the market value of the shares exceed half of the amount that the member is entitled to receive, in his or her capacity as a member of the States of Jersey, by way of remuneration (including any allowance).
- (2) For the purpose of sub-paragraph (1), a person owns shares if he or she owns them in his or her own name or if the shares are held, on his or her behalf, or for his or her benefit, by any other person.
- (3) When registering an interest in the shares of a company the elected member must register –
- (a) the name of the company in which the shares are held;
 - (b) the registered address of the company;
 - (c) the nature of the business undertaken by the company;
 - (d) the type of share owned; and
 - (e) in the case where the company is a subsidiary or a holding company of another company, the nature of the business undertaken by that other company.
- (4) For the purposes of this paragraph –
- (a) a company is a subsidiary of another company if –
 - (i) the second company holds a majority of the voting rights in the first company,
 - (ii) the second company is a member of the first company and has the right to appoint or remove a majority of the board of directors of the first company,
 - (iii) the second company is a member of the first company and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first company, or
 - (iv) the first company is a subsidiary of a company which is itself a subsidiary of the second company; and
 - (b) a company is the holding body of another company if the second company is a subsidiary of the first company.

4 Sponsorship

- (1) An elected member must register the name and address of any person who provides him or her with sponsorship for the purpose of enabling the member to carry out his or her duties as an elected member.
- (2) Sponsorship may take the form of the donation of money or of any benefit.
- (3) When registering the name and address of the sponsor, the elected member must provide a brief description of the sponsorship including the amount of sponsorship received within the previous 12 month period.

5 Gifts, hospitality and other benefits

- (1) An elected member must register the name and address of any person who gives or offers the elected member, or his or her spouse, civil partner or cohabitee or other relevant person, any gift, hospitality or other benefit which has a monetary value greater than £40 (or a cumulative value of more than £100 if more than one gift is given or offered by a person over a 12 month period) if the giving or offer of the gift, hospitality or benefit is, or could reasonably be considered to be, in any way, related to membership of the States.
- (2) An elected member must register the name and address of any person to whom he or she gives or offers any gift, hospitality, or other benefit which has a monetary value greater than £40 (or a cumulative value of more than £100 if more than one gift is given or offered by a person over a 12 month period) if the giving or offer of the gift, hospitality or benefit is, or could reasonably be considered to be, in any way, related to membership of the States.
- (3) When registering the name and address under paragraphs (1) or (2) the elected member must also provide a brief description of the gift, hospitality or other benefit given or offered.
- (4) A Connétable is not required to register an interest in relation to a gift, hospitality or benefit if the giving or offer of the gift, hospitality or benefit entirely relates to his or her parochial duties and confers no personal benefit on the Connétable or a relevant person.

6 Overseas visits

An elected member must register the name and address of any person (apart from the States or any administration of the States) who pays all or part of the costs of a visit made outside Jersey by the elected member or his or her spouse, civil partner or cohabitee or other relevant person if the visit is, in any way, related to his or her membership of the States.

7 Land

- (1) An elected member must register a description of any land in Jersey sufficient to identify it, which is wholly owned, or jointly owned with another person (including land wholly or jointly owned by a company or holding company in relation to which the elected member has registered a

shareholding under paragraph 3) – (a) by or on behalf of the elected member or his or her spouse, civil partner or cohabitee or other relevant person; or (b) by or on behalf of the elected member and his or her spouse, civil partner or cohabitee or other relevant person jointly.

- (2) No declaration is required in respect of land so owned which is the principal place of residence of the elected member or of his or her spouse, civil partner or cohabitee or other relevant person.
- (3) An elected member must register a brief description of any land (whether in Jersey or elsewhere) from which the elected member or his or her spouse, civil partner or cohabitee or other relevant person derives an income.
- (4) If an elected member's total income from any interest declared under this paragraph exceeds 25%, 50% or 75% of their total annual income in the previous 12 months, he or she must register which of these thresholds has been surpassed.

8 Miscellaneous

An elected member must register details of any other interest or benefit which the elected member or his or her spouse, civil partner or cohabitee or other relevant person receives which, although not required to be registered under the foregoing paragraphs of this Schedule, the elected member believes might reasonably be thought by other persons to influence his or her actions as an elected member.