

Commissioner for Standards Statement for Guernsey

1. The Commissioner for Standards (“the Commissioner”) investigates complaints of alleged breaches of the Code of Conduct for Members of the States of Deliberation (“the Code”)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. An elected Member of the States of Deliberation (“Member”) can also request that their own behaviour is investigated by the Commissioner to establish whether there has been a breach of the Code.

Complaints

2. Whether the complainant is a member of the public or a Member of the States, they may wish to consider whether it might first be useful, if appropriate, to try to resolve their complaint informally.
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:
 1. By email: commissioner@pi-cfs.org
 2. Online via the website: <https://pi-cfs.org/>
 3. By Post to:
States’ Greffier Royal Court House
St James’ Street
St Peter Port
Guernsey
GY1 2NZ
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 relevant 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 that there is a *prima facie* case that a breach of the Code has occurred and that the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process; and
 - h. relate to alleged conduct which falls within the scope of the Code.

¹ <https://www.gov.gg/CHttpHandler.ashx?id=4669&p=0>

5. The Commissioner has the discretion to consider a complaint even where c, e, f or g in the above criteria 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 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 consider anonymous complaints² or complaints where the complainant is not prepared to have their 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 States' Greffier for onward transmission to the States' Assembly & Constitution Committee ("the SACC") with the exception of complaints that relate to unacceptable behaviours (see 10 below).
8. Matters falling within the Commissioner's remit include:
 - a. failure to adhere to the requirements of the Code
 - b. failure to register relevant interests³;
 - c. failure to declare relevant interests in the course of parliamentary business including committee and scrutiny panel proceedings;
 - d. unacceptable behaviour including bullying, harassment, sexual harassment, intimidation and victimisation.
9. Matters not falling within the Commissioner's remit include:
 - a. policy matters or a members' political views or opinions;
 - b. service or performance standards or outcomes received (other than in exceptional circumstances);
 - c. 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;
 - d. a complaint about a former Member of the States (unless in relation to sections 22, 23 and 24 (confidential information)).

Complaints Relating to Unacceptable Behaviour

10. The Commissioner will consider complaints relating to unacceptable behaviour including bullying, harassment, sexual harassment, intimidation and victimisation. Complaints

² The Commissioner is statutorily barred from investigating anonymous complaints. Notwithstanding this exclusion, the Commissioner may consider anonymous complaints where they provide corroborating evidence for admissible complaints.

³ <https://www.gov.gg/declarationsofinterest>

relating to unacceptable behaviour fall within the scope of section 10 and/or section 11 and/or 12 of the Code.

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. the complaint 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 wishes to bring 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. any Member, in respect of whom she is considering a complaint, no longer holds office as a Member of the States (unless in relation to sections 22, 23 and 24 (confidential information)).

Investigation: Procedural Safeguards

17. The Commissioner determines the procedure and timing of any investigation.
18. 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.
19. 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).
20. Information collated in relation to complaints will be held and managed in accordance with the [Data Protection \(Bailiwick of Guernsey\) Law, 2017, as amended](#) and Data Protection principles.
21. 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 police or other agency is conducting its own investigation. The same suspension of investigation applies while related proceedings (for instance any action for defamation) are before a court of law.
22. 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 or agency, the Commissioner may liaise with the police or such other public body or agency as they deem appropriate.
23. In investigating and adjudicating allegations of non-compliance with the Code, the Commissioner shall act in accordance with the principles of natural justice and fairness.
24. 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 and her recommendations, to the States' Greffier.
25. The Commissioner's conclusions and recommendations are binding.
26. Members are expected to co-operate with any investigation into their conduct; requested written evidence must be in their own name and letters sent on their behalf by legal advisers or others may 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 a Member chooses to bring a colleague, friend or adviser, they are free to consult him or her

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

27. 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 answer any questions and supply all evidence in his or her possession when asked to do so.
28. 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.
29. The civil standard of proof is adopted at all stages in the investigation process by the Commissioner. Therefore, in order to find against a Member of the States, the Commissioner needs to be satisfied that the allegation is proven on the balance of probabilities, that is, "more likely than not".

Confidentiality

30. 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 States' Greffier.

Investigations: General Procedure

31. On receipt of a complaint, the Commissioner will write to the complainant at the earliest opportunity to acknowledge receipt of their complaint. At the same time, she will send a copy to the States' Greffier. 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 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.
32. 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(s) for dismissing the complaint. This will be copied to the States' Greffier.
33. 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 SACC. The Commissioner will inform the complainant of the action taken in response to the complaint.

34. If remedial action is not considered appropriate by the Commissioner 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 (paragraphs 39 and 40 of the Code).
35. The Commissioner has the power under Part 3 paragraph 9 of the First Schedule to the Reform (Guernsey) (Amendment) Law 2022 to summons people to appear and to provide documents.
36. Part 4, paragraphs 10-14 of the First Schedule to the Reform (Guernsey) (Amendment) Law 2022 set out the criminal offences and related penalties arising from any failure to assist the Commissioner in the discharge of her functions. In particular, it should be noted that any person who, without reasonable excuse, refuses to comply with a requirement of the Commissioner, or gives false or misleading information to the Commissioner or otherwise interferes with witnesses, or obstructs the Commissioner or destroys documents, is liable to prosecution.
37. Part 4 sets out the relevant personal and professional privilege protections which apply.

Assessing the evidence

38. 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 with 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.
39. 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 attention to those points which are contested.
40. The Commissioner usually reports her findings to the States' Greffier in the following form:
 - a. summary of the initial complaint and of the relevant elements of the Code;
 - 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 has been breached and any relevant evidence, written and oral;
 - d. a recommendation as to what action, if any, should be taken

Right to appeal the decision of the Commissioner

41. An appeal against a decision by the Commissioner can be made either by the complainant or the respondent to the States' Greffier who will allocate the appeal to one of the available Appeals Commissioners ("AC").
42. The role of the AC is to review the decisions taken by the Commissioner. The AC does not re-investigate the allegations during an appeal, nor does he/she take fresh decisions on the basis of the investigation.
43. To submit an appeal, it must be:
 - a. made in writing
 - b. submitted by the complainant or respondent, not by an adviser or supporter
 - c. submitted within 20 working days of being notified of the Commissioner's decision⁴
 - d. set out which of the below grounds apply
44. An appeal can be brought under one or more of the following grounds:
 - a. there was a material error in the relevant investigation by the Commissioner that affected the decision,
 - b. the decision was unreasonable,
 - c. the process followed by the Commissioner in reaching the decision was flawed,
 - d. credible new evidence has become available which, if accepted, would have a real prospect of affecting the decision,
 - e. in the case of a decision to impose a sanction, the sanction imposed was disproportionate, or
 - f. there is another compelling reason to allow an appeal to be made.
45. An appeal submission should include as much detail as necessary to consider the appeal and to understand the nature of the issues being raised.⁵
46. Where an appeal is wholly or partly on the grounds of credible fresh evidence, that evidence should be included in the appeal submission or by way of a summary.
47. The AC will:
 - a. consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and whether there is any substance to the grounds;
 - b. consider whether to disclose an appeal submission to the other party. This will normally only be if the AC wishes to request further information from them or to ask them to respond to a specific point;

⁴ The deadline may be extended if there are mitigating circumstances. A request for an extension should be done as early as possible and before the appeal deadline. Any request should clearly state the mitigating circumstances and, where appropriate, provide evidence of such circumstances. Any request for an extension to the deadline must be made by the complainant or respondent, not by an adviser or supporter, and there is no guarantee the extension will be approved.

⁵ The AC may or may not ask for more information. Insufficient supporting information in an appeal submission may reduce the likelihood that the AC will decide that there is any substance to the grounds raised.

- c. consider the substantive appeal and reach a conclusion on the merits. The AC may request additional evidence but will not conduct a re-hearing of the case.
48. The AC will normally decide the appeal based on written submissions. Exceptionally, the AC may decide that it should hold an oral hearing with one or both of the parties (separately), but only if there is a specific reason for doing so.
49. The AC will apply the civil standard of proof, the balance of probabilities, as applied by the Commissioner.
50. The AC will make a decision on the appeal and say whether or not the complaint has been upheld. Depending on the outcome, the AC may then need to go on to consider the question of sanction. The AC can uphold, reduce or increase the sanction. In cases where the complaint has not been upheld, no sanction will be imposed.
51. The AC will notify the States' Greffier of the outcome of the appeal. The States' Greffier will forward the outcome to the complainant and the respondent and at the same time provide a copy to the SACC.
52. The AC may, exceptionally, require or recommend that the complaint is re-investigated taking into account its decision.
53. The decision of the AC is final and cannot be appealed.

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