

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION

The States are asked to decide whether, after consideration of the policy letter entitled "Review of the Code of Conduct for Members of the States of Deliberation" dated 25th February, 2020, they are of the opinion:-

1. To agree that the position of Commissioner for Standards should be established:
 - a) to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation, replacing the States Members' Conduct Panel; and
 - b) to investigate allegations of abuse of privilege, replacing the Privileges Panel.
2. To agree that the Commissioner for Standards should be made responsible for keeping the operation of the Code of Conduct and its associated procedures under review and for making recommendations for change to the States' Assembly & Constitution Committee as necessary.
3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions and paragraphs 3.6 to 3.8 of the policy letter.
4. To agree the changes to the Code of Conduct for Members of the States of Deliberation, and other procedural recommendations, as detailed in the tables under paragraph 4.2 of the policy letter.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

25th February, 2020

Dear Sir

1 Executive Summary

- 1.1 The States' Assembly & Constitution Committee ('the Committee') is mandated to advise the States and to develop and implement policies in relation to "matters concerning the propriety and conduct of States' members".
- 1.2 It appointed a sub-committee to undertake a review of the Code of Conduct for Members of the States of Deliberation ('the Code') against an agreed Terms of Reference. The review report is attached to this policy letter as Appendix A.
- 1.3 The Committee endorses the work and findings of the subcommittee and the recommendations contained in the review report, which have been replicated as the propositions to this report.
- 1.4 It agrees that the States' Members Conduct Panel and the Privileges Panel should be replaced by a Commissioner for Standards and that changes should be made to the Code to improve existing processes and strengthen the role of the existing Panel, and set a stronger framework for the future for when a Commissioner for Standards role is introduced.

2 Introduction

- 2.1 The Committee published the Terms of Reference for the review of the Code in 2018. Given higher priority workstreams and changes to the Committee's membership in late 2019, the review commenced in earnest when the Committee convened a sub-committee to progress the review in March 2019. The sub-committee was comprised of: Deputy Merrett (Vice-President of

SACC), Deputy Le Tocq (Member of SACC), Deputy Green, Deputy Hansmann Rouxel and Deputy Paint.

- 2.2 The work undertaken by the sub-committee is detailed in the review report. The Committee is grateful for the diligence and commitment shown by the sub-committee in producing the report, and supports its conclusions and recommendations.

3 Key findings

- 3.1 The Committee unanimously endorse the recommendation that the position of Commissioner for Standards should be established to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation, to replace the States Members' Conduct Panel; and to investigate allegations of abuse of privilege, replacing the Privileges Panel. Proposition 1 relates.
- 3.2 The Committee believes there is merit in bringing in a person external to the Island to undertake the role of Commissioner for Standards, and to bring the investigation process in line with other jurisdictions. The Committee concurs with the conclusion of the sub-committee that a Panel system comprised of former Deputies and members of the community, who may have or be perceived to have links to existing members, appointed by the Presiding Officer, no longer remains appropriate.
- 3.3 As stated by the sub-committee, the Committee reiterates that the decision to recommend the appointment of a Commissioner for Standards is in no way a criticism of the work of the Conduct Panel to date, but reflects the need to improve confidence in the Code of Conduct process and bring the investigation process in line with best practice. It will manage the transition from the Conduct Panel to the Commissioner for Standards in consultation with all parties.
- 3.4 It is agreed that the Commissioner for Standards should be made responsible for keeping the operation of the Code of Conduct and its associated procedures under review and for making recommendations for change to the States' Assembly & Constitution Committee as necessary. Proposition 2 relates.
- 3.5 As set out in section seven of the Review Report, the Committee agrees that it would be appropriate to approach the Commissioner for Standards in Jersey, regarding taking on the role, and working with the States of Jersey regarding future appointments to the role, in effect having a 'Pan-Island Commissioner' who could share good practice in relation to Code of Conduct matters between the two Islands.

- 3.6 If the States agree Proposition 1 to establish the role, the Committee will return to the States with an Ordinance which will amend the relevant section of [The Reform \(Guernsey\) Law, 1948](#) which provides for the establishment, constitution and powers of investigatory panels to formally empower a Commissioner for Standards to be established to investigate such allegations and complaints, and the constitution, powers and proceedings of the post.
- 3.7 The Committee agrees that the Commissioner role should be underpinned by specific, stand-alone legislation which should include, but not be limited to, the:
- appointment and administrative responsibilities of the Commissioner;
 - Commissioner's powers and duties;
 - powers to summons people to appear and to provide records; and
 - offences for failing to appear/provide information requested; providing false information or being obstructive.
- 3.8 It is recommended that the Commissioner for Standards is appointed in line with the Ordinance, when introduced, and the legislation is subsequently introduced, tailored to suit Guernsey's needs. Proposition 3 relates.
- 3.9 The Committee endorses the changes to the text of the Code of Conduct as set out under section two of the appendix report and section four below, with one exception. It does not support the recommendation that consideration should be given to the States' Greffier undertaking the function of an ethics adviser and it is therefore not included in the table under section four.
- 3.10 It believes these recommendations will improve the administration of the Code for the Panel and for the Commissioner, if appointed. It is conscious that the Code will need to be further amended if the States agree to the propositions in this report and would suggest the progression of this workstream is a high priority for the Committee in 2020 to 2021. Proposition 4 relates.
- 3.11 The Committee agrees that it would be unreasonable to expect the role of Commissioner to be undertaken on a purely honorary basis, and recommends that a daily honorarium should be payable. In addition, there will be a small amount of expenditure incurred on travel and associated costs, room hire, etc. Based on the experiences of the Jersey system, it is expected that the average annual cost of the Commissioner for Standards will be around £5,000 which can be absorbed within the existing budget of the Royal Court (which funds the expenditure of the States' Assembly & Constitution Committee). However, in the event of an exceptionally high number of referrals in an individual year, it may be necessary for an application to be made to the Policy & Resources Committee for one-off funding from the Budget Reserve.

4 Recommendations

4.1 The recommendations listed below mirror those made by the sub-committee in section 2 of its report. Members should read the appended review report in its entirety prior to considering the following recommendations. The recommendations are cross-referenced to the relevant paragraph of the review report.

4.2 The Committee recommends:

- a) that the position of Commissioner for Standards should be established:
 - to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation, replacing the States Members' Conduct Panel; and
 - to investigate allegations of abuse of privilege, replacing the Privileges Panel.
- b) that the Commissioner for Standards should be made responsible for keeping the operation of the Code of Conduct and its associated procedures under review and for making recommendations for change to the States' Assembly & Constitution Committee as necessary.
- c) the preparation of such legislation as may be necessary to give effect to the above decisions.
- d) the changes to the Code of Conduct for Members of the States of Deliberation, and other procedural recommendations, as detailed in the tables below.

1. Creation of a specific webpage for the Code of Conduct for Members of the States of Deliberation
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| <p>(a) A dedicated page on www.gov.gg should be created providing information on how to submit Code of Conduct complaints against Members of the States. (para 8.4)</p> <p>(b) Reports produced by the Investigation Panel should be published on the Code of Conduct for Members of the States webpage, when created. (para 8.42)</p> <p>(c) Details of substantiated and unsubstantiated complaints which have become public knowledge should be published on the Code of Conduct for Members of the States webpage, when created (para 5.13)</p> |
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2. Guidance notes on the Code of Conduct process, and an accompanying proforma, should be published and available on the dedicated webpage.

- (a) Easy to read guidance should be produced and available to download on the Code of Conduct process and how to make a complaint. (para 8.7)
- (b) Guidance notes on the Code of Conduct to include a specific section on sanctions. (para 5.22)
- (c) The investigation procedure should be clarified so the complainant is clear on their position once an investigation has commenced. (para 8.29)
- (d) The Panel to provide guidance regarding the timeframe:
 - for responses from Members and the complainants; and
 - that the Panel will work to. (para 8.30)
- (e) A pro forma should be drafted to assist people in making a complaint. (para 8.5)

3. On boarding, ongoing development and support for States' Members

- (a) A stand-alone session should be convened for Members on the Code of Conduct as part of the on-boarding and ongoing development programme for States' Members. (para 5.26)

4. Review of sanctions available

- (a) The States' Assembly & Constitution Committee, together with the Commissioner for Standards (if the proposal is approved), should review the sanctions available in the 2020 to 2024 term. (para 5.22)
- (b) The option of remedial action e.g. by way of a formal apology, should be available as an alternative to a caution. (para 8.41)

5. Changes to the text of the Code of Conduct

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| (a)
5.29 | Insert the following paragraph into Part I, the Purpose of the Code :

<i>The obligations set out in this Code are in addition to those which apply to all Members by virtue of the 'The Rules of Procedure of the States of Deliberation and their Committees'.</i> |
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(b) 5.25	<p>Update the Oath of Office before June 2020 to require Members to swear to abide by the Code of Conduct. Amend paragraph two under Public Duty to include the wording highlighted in bold:</p> <p><i>They also take an oath of office or make an affirmation in which they promise that “well and faithfully” they will perform the duties attaching to membership of the States of Deliberation and that they will adhere to the provisions set out in this Code of Conduct.</i></p>
(c) 5.31	<p>Delete paragraph five and strengthen paragraph three by inserting the words in bold:</p> <p><i>The primary duty of Members is to act in the public interest and to represent the interests of those who they have been elected to serve conscientiously. In so doing Members have a duty on all occasions to act in accordance with their oaths, and in accordance with the public trust placed in them.</i></p>
(d) 5.8	<p>Insert the following paragraph into Part I, under Public Duty:</p> <p><i>Elected members must give due priority to attendance at Meetings of the States of Deliberation and should be present in the Chamber when the States are meeting except with reasonable excuse.</i></p>
(e) 5.6	<p>Insert the following paragraphs into Part I, Members’ Conduct:</p> <p><i>Members shall give effect to the ideals of democratic government and uphold the Rule of Law.</i></p> <p><i>Members shall act in good conscience and exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.</i></p>
	<p>Amendments to Part III Procedure for Complaints relating to Part I matters.</p>
(f) 5.12	<p>Insert the following paragraph immediately after paragraph 26.</p> <p><i>In the interests of natural justice, a complaint should be made to the Panel in private and not publicised until the complaint has been determined and the decision communicated to the parties involved.</i></p>
(g) 8.11	<p>Insert the following paragraph immediately after paragraph 26 and the above recommendation.</p>

	<i>Whilst a complaint will normally be submitted by a third party, the Panel may initiate an investigation if it believes that a breach of the Code may have occurred. A Member can also request that their own behaviour is investigated by the Panel to establish if a breach of the Code has taken place.</i>
(h) 8.12	Amend paragraph 27A of Part III, Procedure for Complaints relating to Part I matters, as follows: <i>Immediately upon receipt of a complaint, or notification that the Panel is initiating an investigation, the secretary to the Panel shall notify the Member concerned that a complaint has been made and the nature of the complaint.</i>
(i) 8.14	Insert the following paragraph immediately before paragraph 28. <i>The Chairman of the Panel, or another Member of the Panel, will undertake an initial assessment of the complaint submitted to ascertain whether there is prima facie evidence to support the complaint. Following this assessment, the Chairman of the Panel, or that other Member of the Panel, will inform the complainant and the Member concerned whether an investigation will be undertaken.</i>
(j) 8.15	Insert the following paragraph immediately after paragraph 28. <i>If it is concluded that the matter does not merit investigation, an explanation of why the complaint was dismissed will be provided to the complainant in writing.</i>
(k) 8.24	Delete the following words from paragraph 28: “, one of whom shall be” and also “, and the other being nominated by the person under investigation. If the Member declines to so nominate, or fails to do so within such period as shall be determined by the Chairman, they shall forfeit their right and the Chairman shall make the appointment.”
(l) 8.26	Insert the following words in bold to paragraph 28, as amended: ... The Investigation Panel will comprise the Chairman and two other members of the Conduct Panel, nominated by the Chairman. The Member concerned will at every stage be given full details of the nature of the complaint and will be invited to address the Investigation Panel. The Member and the complainant will be informed of the Members of the Investigation Panel and provided with the opportunity to challenge the membership within three days if either considers that

	the Panel Member has a direct or indirect personal interest in the matter.
(m) 8.36	When a complaint has been dismissed by an Investigation Panel, a report should be produced and published; and provided to the Member and the complainant.
(n) 5.19	<p>A right of appeal for Members against whom a complaint has been upheld should be introduced. The following paragraphs should be added to Part III Procedure for Complaints relating to Part I matters:</p> <p><i>The Member has a right of appeal from the Investigation Panel via the Presiding Officer based on the following grounds:</i></p> <ul style="list-style-type: none"> • <i>that the Panel's conclusions were based on significant factual inaccuracies which, had they been known, might have led to the Panel finding differently; and/or</i> • <i>that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.</i> <p><i>A new Investigation Panel will be convened of members not involved in the initial investigation to consider the appeal, review the findings and recommendations of the original Investigation Panel, in light of the information provided by the Member, and produce a final report on the matter.</i></p>
(o) 8.1	Appendix 1 of the Code of Conduct should be updated with the postal and e-mail address that complaints should be submitted to.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 5.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 5.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

5.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to develop and implement policies in relation to matters concerning the propriety and conduct of States' Members.

Yours faithfully

N. R. Inder
President

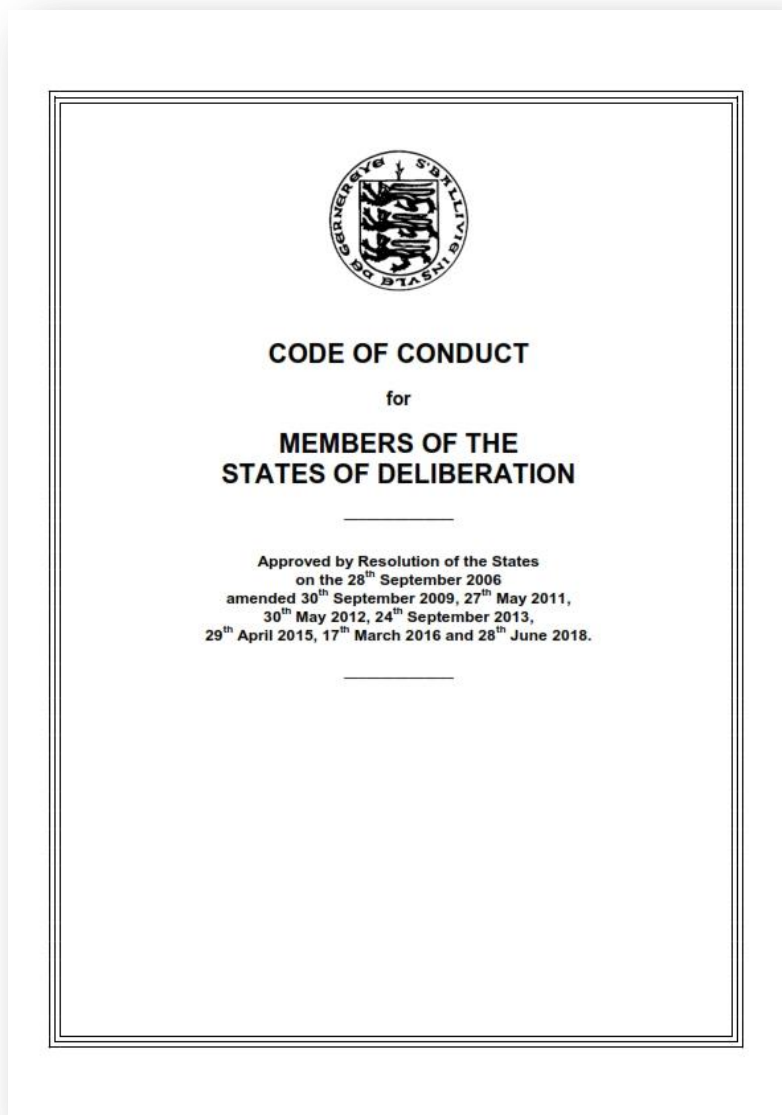
J S Merrett
Vice-President

P T R Ferbrache
J P Le Tocq
E A McSwiggan



States' Assembly & Constitution Committee

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION



SUB-COMMITTEE REVIEW REPORT

February 2020

1 EXECUTIVE SUMMARY

- 1.1 The sub-committee is pleased to present its review of the 'Code of Conduct for Members of the States of Deliberation' to the Committee. It has recommended a number of suggested changes to the Code which it believes will improve it and strongly recommends the States' Assembly & Constitution Committee support and propose these recommendations to the States.
- 1.2 The review has considered the existing Code against Commonwealth Parliamentary Association benchmarks, best practice and arrangements in other jurisdictions. Whilst there are only minor recommended changes to Part I of the Code, the sub-committee is proposing a fundamental change to the body that investigates complaints, as set out under Part II.
- 1.3 The sub-committee recommends that the States' Members Conduct Panel and the Privileges Panel are replaced by a Commissioner for Standards. The reason for this recommendation is set out in sections six and seven of this report.
- 1.4 It has also recommended a number of amendments to Part III of the Code, 'Procedure for Complaints relating to Part I matters'. The sub-committee believes these changes will improve existing processes and strengthen the role of the Panel, as well as setting a stronger framework for the future.
- 1.5 In making recommendations for change, the sub-committee wishes to make it clear that the proposed changes to the investigatory body are not in response to any failing of former and existing States Members' Conduct Panels, but to seek to improve the independence, impartiality, perception and operation of the investigatory procedure.

2 RECOMMENDATIONS

- 2.1 The sub-committee recommends that the Committee proposes:
 - (a) that the position of Commissioner for Standards should be established:
 - to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation, replacing the States Members' Conduct Panel; and
 - to investigate allegations of abuse of privilege, replacing the Privileges Panel.
 - (b) that the Commissioner for Standards should be made responsible for keeping the operation of the Code of Conduct and its associated procedures under review and for making recommendations for change to the States' Assembly & Constitution Committee as necessary.
 - (c) the preparation of such legislation as may be necessary to give effect to

the above decisions.

- (d) the changes to the Code of Conduct for Members of the States of Deliberation, and other recommendations, as detailed in the table below

1. Creation of a specific webpage for the Code of Conduct for Members of the States of Deliberation
(a) A dedicated page on www.gov.gg should be created providing information on how to submit Code of Conduct complaints against Members of the States. (para 8.4)
(b) Reports produced by the Investigation Panel should be published on the Code of Conduct for Members of the States webpage, when created. (para 8.42)
(c) Details of substantiated and unsubstantiated complaints which have become public knowledge should be published on the Code of Conduct for Members of the States webpage, when created (para 5.13)

2. Guidance notes on the Code of Conduct process, and an accompanying pro forma, should be published and available on the dedicated webpage.
(a) Easy to read guidance should be produced and available to download on the Code of Conduct process and how to make a complaint. (para 8.7)
(b) Guidance notes on the Code of Conduct to include a specific section on sanctions. (para 5.22)
(c) The investigation procedure should be clarified so the complainant is clear on their position once an investigation has commenced. (para 8.29)
(d) The Panel to provide guidance regarding the timeframe: <ul style="list-style-type: none">• for responses from Members and the complainants; and• that the Panel will work to. (para 8.30)
(e) A pro forma should be drafted to assist people in making a complaint. (para 8.5)

3. On boarding, ongoing development and support for States' Members
(a) A stand-alone session should be convened for Members on the Code of Conduct as part of the on-boarding and ongoing development programme for States' Members. (para 5.26)
(b) It is recommended that consideration should be given to the States' Greffier undertaking the function of an ethics adviser. (para 5.9)

4. Review of sanctions available
<p>(a) The States' Assembly & Constitution Committee, together with the Commissioner for Standards (if the proposal is approved), should review the sanctions available in the 2020 to 2024 term. (para 5.22)</p> <p>(b) The option of remedial action e.g. by way of a formal apology, should be available as an alternative to a caution. (para 8.41)</p>

5.	Changes to the text of the Code of Conduct
(a) 5.29	<p>Insert the following paragraph into Part I, the Purpose of the Code:</p> <p><i>The obligations set out in this Code are in addition to those which apply to all Members by virtue of the 'The Rules of Procedure of the States of Deliberation and their Committees'.</i></p>
(b) 5.25	<p>Update the Oath of Office before June 2020 to require Members to swear to abide by the Code of Conduct. Amend paragraph two under Public Duty to include the wording highlighted in bold:</p> <p><i>They also take an oath of office or make an affirmation in which they promise that "well and faithfully" they will perform the duties attaching to membership of the States of Deliberation and that they will adhere to the provisions set out in this Code of Conduct.</i></p>
(c) 5.31	<p>Delete paragraph five and strengthen paragraph three by inserting the words in bold:</p> <p><i>The primary duty of Members is to act in the public interest and to represent the interests of those who they have been elected to serve conscientiously. In so doing Members have a duty on all occasions to act in accordance with their oaths, and in accordance with the public trust placed in them.</i></p>
(d) 5.8	<p>Insert the following paragraph into Part I, under Public Duty:</p> <p><i>Elected members must give due priority to attendance at Meetings of the States of Deliberation and should be present in the Chamber when the States are meeting except with reasonable excuse.</i></p>
(e) 5.6	<p>Insert the following paragraphs into Part I, Members' Conduct:</p> <p><i>Members shall give effect to the ideals of democratic government and uphold the Rule of Law.</i></p> <p><i>Members shall act in good conscience and exercise the privileges and</i></p>

	<i>discharge the duties of public office diligently and with civility, dignity, care and honour.</i>
	Amendments to Part III Procedure for Complaints relating to Part I matters.
(f) 5.12	Insert the following paragraph immediately after paragraph 26. <i>In the interests of natural justice, a complaint should be made to the Panel in private and not publicised until the complaint has been determined and the decision communicated to the parties involved.</i>
(g) 8.11	Insert the following paragraph immediately after paragraph 26 and the above recommendation. <i>Whilst a complaint will normally be submitted by a third party, the Panel may initiate an investigation if it believes that a breach of the Code may have occurred. A Member can also request that their own behaviour is investigated by the Panel to establish if a breach of the Code has taken place.</i>
(h) 8.12	Amend paragraph 27A of Part III, Procedure for Complaints relating to Part I matters, as follows: <i>Immediately upon receipt of a complaint, or notification that the Panel is initiating an investigation, the secretary to the Panel shall notify the Member concerned that a complaint has been made and the nature of the complaint.</i>
(i) 8.14	Insert the following paragraph immediately before paragraph 28. <i>The Chairman of the Panel, or another Member of the Panel, will undertake an initial assessment of the complaint submitted to ascertain whether there is prima facie evidence to support the complaint. Following this assessment, the Chairman of the Panel, or that other Member of the Panel, will inform the complainant and the Member concerned whether an investigation will be undertaken.</i>
(j) 8.15	Insert the following paragraph immediately after paragraph 28. <i>If it is concluded that the matter does not merit investigation, an explanation of why the complaint was dismissed will be provided to the complainant in writing.</i>
(k) 8.24	Delete the following words from paragraph 28: “, one of whom shall be” and also “, and the other being nominated by the person under investigation. If the Member declines to so nominate, or fails to do so

	within such period as shall be determined by the Chairman, they shall forfeit their right and the Chairman shall make the appointment.”
(l) 8.26	<p>Insert the following words in bold to paragraph 28, as amended:</p> <p>... The Investigation Panel will comprise the Chairman and two other members of the Conduct Panel, nominated by the Chairman. The Member concerned will at every stage be given full details of the nature of the complaint and will be invited to address the Investigation Panel. The Member and the complainant will be informed of the Members of the Investigation Panel and provided with the opportunity to challenge the membership within three days if either considers that the Panel Member has a direct or indirect personal interest in the matter.</p>
(m) 8.36	When a complaint has been dismissed by an Investigation Panel, a report should be produced and published; and provided to the Member and the complainant.
(n) 5.19	<p>A right of appeal for Members against whom a complaint has been upheld should be introduced. The following paragraphs should be added to PART III Procedure for Complaints relating to Part I matters:</p> <p><i>The Member has a right of appeal from the Investigation Panel via the Presiding Officer based on the following grounds:</i></p> <ul style="list-style-type: none"> • <i>that the Panel’s conclusions were based on significant factual inaccuracies which, had they been known, might have led to the Panel finding differently; and/or</i> • <i>that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.</i> <p><i>A new Investigation Panel will be convened of members not involved in the initial investigation to consider the appeal, review the findings and recommendations of the original Investigation Panel, in light of the information provided by the Member, and produce a final report on the matter.</i></p>
(o) 8.1	Appendix 1 of the Code of Conduct should be updated with the postal and e-mail address that complaints should be submitted to.

3 HISTORY OF THE REVIEW AND APPOINTMENT OF SUB-COMMITTEE

- 3.1 The States' Assembly & Constitution Committee ('the Committee') is mandated to advise the States and to develop and implement policies in relation to "matters concerning the propriety and conduct of States' members".
- 3.2 On 7th March 2017, the President of the Policy & Resources Committee ('P&RC') wrote to the Committee to request that it investigate how matters relating to the Code of Conduct might be improved. This letter was copied to the Presiding Officer, the Chair of the Code of Conduct Panel and circulated to all Members and the media.
- 3.3 The Committee agreed on 31st March, 2017 that it would consider the review of the Code after the referendum policy letter had been written. The workstream was further deferred to focus the Committee's resources on preparations for the 2018 referendum on Guernsey's electoral system.
- 3.4 The Committee met with Members of the Code of Conduct Panel ("the Conduct Panel") in March 2018 and discussed the draft Terms of Reference for the review. The Conduct Panel agreed to undertake an internal review of the Code and associated procedures and report back to the Committee.
- 3.5 The Committee published the Terms of Reference for the review in June 2018 and agreed to go out to public consultation for two months (until 31st August, 2018). Whilst the Committee only received a small number of responses, the sub-committee has been grateful for the quality of these responses from Members and the public, when looking at how the Code has operated in practice.
- 3.6 On 27th June, 2018, the States of Deliberation considered and approved the Committee's interim proposed changes to the Code of Conduct in the policy letter entitled 'Amendments to the Code of Conduct for Members of the States of Deliberation'.
- 3.7 On 19th September, 2018 the Conduct Panel set out the changes which, from its experience, it suggested should be made to the Code. Its comments and suggestions are referenced throughout this report and the sub-committee is grateful for the assistance of the Conduct Panel throughout this review.
- 3.8 The workstream again had to be deferred to focus on the October 2018 referendum and the change in Committee Membership in November 2018. At the first meeting of the newly formed Committee, Deputies Merrett and Le Tocq agreed to form a sub-committee to consider the workstream. During the general update statement delivered at the February 2019 States' Meeting, States' Members were invited to express an interest in joining the sub-committee.

- 3.9 At its meeting in March 2019, the Committee convened a sub-committee to take forward the review, the membership of which is as follows:
- Deputy Merrett (Vice-President of SACC)
 - Deputy Le Tocq (Member of SACC)
 - Deputy Green
 - Deputy Hansmann Rouxel
 - Deputy Paint
- 3.10 The sub-committee met with the Conduct Panel and the States of Jersey Greffier in June 2019. A desktop review of the Code of Conduct was undertaken against the '[Recommended Benchmarks for Code of Conduct applying to Members of Parliament](#)'¹ produced by the Commonwealth Parliamentary Association². A copy of the Benchmarks are attached at Appendix A.
- 3.11 An analysis of the number of complaints submitted and the outcomes of these complaints since the Code was introduced was undertaken as set out in Appendix B. The sub-committee also considered how Code of Conduct matters were investigated in other jurisdictions. A summary of the findings can be found at Appendix C.
- 3.12 The sub-committee also considered the governance review reports produced by Professor Staite in 2019. These reviews had specifically sought the opinions of Committees and staff on the extent to which they believed the Members' Code of Conduct supported or is effective in relation to good governance. A summary of the review findings are detailed in Appendix D.

4 TERMS OF REFERENCE FOR THE REVIEW

- 4.1 In 2018, the then Committee created the following terms of reference for the Review.

The Committee will consider:

- (a) The scope and content of the Code of Conduct, including consideration of whether the standards of conduct expected of People's Deputies in discharging their parliamentary and public duties remain relevant and fit for purpose.
- (b) The procedure for complaints, including consideration of the types of complaints that can be considered, the manner in which complaints can be

¹ www.cpahq.org
www.cpahq.org/cpahq/Main/Document_Library/Codes_of_Conduct/Codes_of_Conduct%20for%20Parliamentarians.aspx

² The Commonwealth Parliamentary Association (CPA), to which Guernsey has belonged as a full member since 1953, exists to: *develop, promote and support parliamentarians and their staff; *identify benchmarks of good governance; and *implement the enduring values of the Commonwealth.

submitted, whether complaints should be investigated in private or in public and the timeframe for complaints to be considered.

- (c) The investigation process, including whether consideration should be given to the appointment of an independent Commissioner for Standards or a similar post.
- (d) The sanctions available when a breach of the code has been substantiated and whether a formal appeals process should be introduced as part of the Code.
- (e) Any other matters that may arise during the course of the review that the Committee identify as deserving further consideration.

In considering points (a) to (e), the Committee will consider practices in other jurisdictions.

5 THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION

- 5.1 Provisions for a Code of Conduct for People's Deputies are set out in [The Reform \(Guernsey\) Law, 1948](#) under section 20.F, which reads as follows:

Code of conduct

20F. (1) *The States of Deliberation may by resolution adopt (and subsequently amend, revoke or replace) a code of conduct –*

- (a) prescribing or, as may be appropriate, regulating the duties, standards, propriety and conduct, in public life, of People's Deputies, and*
- (b) containing such other provision in relation to those matters as the States of Deliberation think fit.*

(2) *A code of conduct may, without limitation, make provision –*

- (a) for the investigation and disposal of allegations and complaints that a People's Deputy –*
 - (i) has failed to comply with the code, or*
 - (ii) has been guilty of any breach or abuse of privilege,*
- (b) for the establishment of a panel or panels to investigate such allegations and complaints, and the constitution, powers and proceedings of any such panel,*
- (c) requiring any People's Deputy under investigation by a panel to co-operate fully with it,*
- (d) without prejudice to subparagraph (b), empowering the panel to request the production of documents from any person (including the People's Deputy under investigation) and to request any person to appear before it,*

(e) for the sanctions to be available against an offending People's Deputy, which may include –

(i) a reprimand or caution, or

(ii) suspension or expulsion (for example, by debarring him from proceedings of, or terminating his membership of, the States of Deliberation or any department, or by removing any of his functions in relation to such proceedings).

(3) People's Deputies must comply with a code of conduct in all aspects of their public life and are bound by any decision made under it; and the code and any decision shall have effect for the purposes of -

(a) this Law

(b) the States Committees (Constitution and Amendment) (Guernsey) Law, 1991 and any resolution of the States of Deliberation thereunder, and

(c) the Rules of Procedure of the States of Deliberation, the provisions of which shall apply accordingly.

(4) This article applies in relation to -

(a) an Alderney Representative, and

(b) a member of a department who is not also a Member of the States of Deliberation as set out in article 1(1),

(c) a person who has at any time been a members of the States of Deliberation,

as it applies in relation to a People's Deputy; and references in this article to a People's Deputy shall be construed accordingly.

- 5.2 The Code of Conduct for Members of the States of Deliberation was established by the States of Deliberation on 28th September 2006 further to a policy letter from the then House Committee. The Code has been amended on eight occasions since it has been established. Appendix E provides a list of the relevant reports and the changes made further to each report.
- 5.3 In line with section (a) of the Terms of Reference of the review, the sub-committee considered the scope and content of the Code of Conduct, and considered whether the standards of conduct expected of People's Deputies in discharging their parliamentary and public duties remained relevant and fit for purpose.
- 5.4 It undertook a desktop review of the Code of Conduct against the benchmarks developed by the Commonwealth Parliamentary Association ('CPA benchmarks') entitled '[Recommended Benchmarks for Code of Conduct applying to Members of Parliament](#)' which draws on good practice across the CPA. The document seeks to assist parliaments in the design and revision of Codes of Conduct.

- 5.5 Whilst the existing Code complies with a number of the CPA benchmarks, the sub-committee identified a number of areas where improvements could be made. The following sections cross-refer to specific paragraphs of the aforementioned CPA benchmarks.

CPA Benchmarks: Principles

- 2.3 *Members of Parliament shall:*
- *Act in good conscience*
 - *Respect the intrinsic dignity of all*
 - *Act so as to merit the trust and respect of the community*
 - *Give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law*
 - *Hold themselves accountable for conduct for which they are responsible*
 - *Exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.*

- 5.6 The sub-committee acknowledged that many of the above come under ‘Public Duty’, ‘Members’ Conduct’ and ‘Personal Conduct’. However, it recommends that some of the above are incorporated into the ‘Members’ Conduct’ section of the Code. Given Guernsey’s system of government, it was noted that bullet point four could not be adopted as drafted.

Recommendation:

Insert the following paragraphs into Part I, **Members’ Conduct**

Members shall give effect to the ideals of democratic government and uphold the Rule of Law.

Members shall act in good conscience and exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.

CPA Benchmarks: Attendance

- 3.6 *Every member shall attend every sitting of the House, in accordance with practice of the House, except with reasonable excuse, or in the case of extended absences, if excused in accordance with the practice of the House.*

- 5.7 Whilst there is an expectation that Members shall attend every sitting of the States of Deliberation, this is not currently set out in the Code of Conduct or the Rules of Procedure. The sub-committee recommends that this requirement is inserted into the Code of Conduct.
- 5.8 The sub-committee further recommends that the Member should inform the Presiding Officer of their absence from the meeting and the reason why they will be absent. It is suggested the Presiding Officer declare the absences.

Recommendation:

Insert the following paragraph into Part I, under **Public Duty**:

Elected members must give due priority to attendance at Meetings of the States of Deliberation and should be present in the Chamber when the States are meeting except with reasonable excuse.

CPA Benchmarks: Ethics Adviser

As part of an effective implementation of a Code of Conduct, advice shall be available to individual MPs to help them decide how to deal with ethical dilemmas. A code of conduct may provide for an ethics adviser according to the following model.

- 5.9 The sub-committee believe it is vital that advice should be available to Deputies on how to deal with ethical dilemmas. At present, it is likely that a Deputy would seek advice from their peers, Committee staff (if the matter related to their position on a Committee) or the Law Officers of the Crown. It is recommended that the function of an ethics adviser should be formally introduced, and it believes the States' Greffier would be best placed to undertake this role given their role in advising Members on a range of Parliamentary matters.

Recommendation:

It is recommended that consideration should be given to the States' Greffier undertaking the function of an ethics adviser.

CPA Benchmarks: Confidentiality of a complaint under consideration

5.18 A Member and the complainant shall treat any complaint as if sub judice

- 5.10 Sub judice³ means 'under judicial consideration and therefore prohibited from public discussion elsewhere'. In response to the consultation, some Members

³ Definition taken from the Concise Oxford English Dictionary (Twelfth Edition)

stated that they had been informed of the complaint against them by the media, rather than the Secretary to the Conduct Panel. The sub-committee noted that if a complainant informed the media of their complaint, or their intention to make a complaint, there was little the Conduct Panel could do to stop the matter entering the public domain, via either traditional or social media.

- 5.11 The sub-committee believes that in the interests of natural justice, the allegation should be made to the Conduct Panel in private and not publicised until the complaint has been determined and the results communicated. It suggests the guidance notes recommended should make reference to this.
- 5.12 It was suggested that any complaints that entered the public domain by the complainant prior to determination by the Conduct Panel should be treated as void. Whilst understanding the reasoning for this, the sub-committee does not support such an approach, given the opportunity for a person – possibly external to the complainant or Member – to put information in the public domain to prevent an investigation.

Recommendation:

It is recommended that the following paragraph is inserted immediately after paragraph 26 under 'Procedure for Complaints relating to Part I matters'.

In the interests of natural justice, a complaint should be made to the Panel in private and not publicised until the complaint has been determined and the decision communicated to the parties involved.

CPA Benchmarks: Unsubstantiated complaints entering the public domain

5.18 *If a complaint has become known publicly and has not been upheld, this outcome shall be made public.*

- 5.13 The sub-committee believes, as a standard, any complaint that is substantiated or alternatively is unsubstantiated but has become publicly known, should be published on the States of Guernsey website, including the name of the Member involved, date received, the complainant (unless anonymised), the relevant paragraph of the Code which it is alleged has been breached and the outcome, including where the Chairman of the Conduct Panel has found that the complaint is unsubstantiated, frivolous or vexatious.

Recommendation:

Details of substantiated and unsubstantiated complaints which have become public knowledge, should be published on the Code of Conduct for Members of the States webpage, when created.

CPA Benchmarks: Appeal or review

5.2 The Code shall make provision that a Member against whom a complaint has been upheld has rights to appeal or review.

- 5.14 Under the current Code, there is no mechanism to appeal a decision of the Conduct Panel. The need to have an appeal mechanism was identified by a number of respondents to the consultation. A couple of respondents argued that this should be available to both the Member and the complainant.
- 5.15 A Member having the right to appeal is commonplace in other jurisdictions. In Jersey, the Member has a right of appeal from the Commissioner and the Privileges and Procedures Committee to the States. The complainant has no right of appeal.
- 5.16 The Conduct Panel suggested that there should be a right of appeal by the Member only against the decision of the investigating Panel. It suggested that this could be a rehearing before a new group of three Conduct Panel Members who were not involved in the original investigation. It suggested that an appeal would have to be made within 14 days of the original decision on the matter and that no further appeal would be allowed.
- 5.17 The sub-committee proposes that it is introduced in Guernsey and that, within 10 working days of being provided with the Conduct Panel's report, the Member can appeal to the Presiding Officer based on the following grounds:
- that the Panel's conclusions were based on significant factual inaccuracies which, had they been known, might have led to the Panel finding differently; and/or
 - that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.
- 5.18 It is suggested that a new Investigation Panel is convened of Members not involved in the initial investigation to consider the appeal, review the findings and recommendations of the original Investigation Panel, in light of the information provided by the Member, and produce a final report on the matter.
- 5.19 The sub-committee believes that Members should have the right to appeal a decision of the Conduct Panel and relevant provisions introduced to enable this.

Recommendation:

A right of appeal for Members against whom a complaint has been upheld should be introduced. The following paragraphs should be added to Part III

Procedure for Complaints relating to Part I matters:

The Member has a right of appeal from the Investigation Panel via the Presiding Officer based on the following grounds:

- *that the Panel's conclusions were based on significant factual inaccuracies which, had they been known, might have led to the Panel finding differently; and/or*
- *that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.*

A new Investigation Panel will be convened of Members not involved in the initial investigation to consider the appeal, review the findings and recommendations of the original Investigation Panel, in light of the information provided by the Member, and produce a final report on the matter.

CPA Benchmark: Sanctions

5.3 The Code shall specify graduated sanctions and penalties for breaches of the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the parliament.

5.3.2 The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.

5.20 Section 20.F of [The Reform \(Guernsey\) Law, 1948](#) states that the sanctions available against an offending People's Deputy may include:

- *a reprimand or caution, or*
- *suspension or expulsion (for example, by debarring him from proceedings of, or terminating his membership of, the States of Deliberation or any department, or by removing any of his functions in relation to such proceedings).*

5.21 It is suggested that the sanctions are extended to be in line with other jurisdictions e.g. to include the ability for a Member to apologise etc.

5.22 At present, the sub-committee believes that further clarity could be provided through the production of the Code of Conduct guidance notes detailing the sanctions available and indicating what types of breaches would attract certain sanctions. However, if the States agree with the recommendation to appoint a Commissioner for Standards, it believes that the Committee and post-holder

should review the sanctions available, and recommend changes to ensure the sanctions are in line with best practice.

Recommendations:

- Guidance notes on the Code of Conduct to include a specific section on sanctions.
- The States' Assembly & Constitution Committee, together with the Commissioner for Standards, should review the sanctions available in the 2020 to 2024 term.

CPA Benchmarks: Acknowledging and accepting provisions of the Code when swearing an Oath or making an Affirmation

7.1.6 Members acknowledging and accepting provisions of a Code of Conduct when swearing an Oath or making an Affirmation.

- 5.23 The Reform Law states that *“every Member of the States of Deliberation shall before entering office take before the Royal Court an oath of office in the form appropriate to such office, and the oath of allegiance”*.
- 5.24 Under paragraph 2 of the Code it states that Members, before taking office, take:
- an oath or firm allegiance to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law; and
 - an oath of office or make an affirmation in which they promise that “well and faithfully” they will perform the duties attaching to membership of the States of Deliberation.
- 5.25 The sub-committee recommends that the oath of office is amended to include acknowledging and accepting the Code of Conduct when swearing an oath or making an affirmation and that this implemented before the June 2020 General Election.

Recommendation:

Update the oath of office before June 2020 to require Members to swear to abide by the Code of Conduct. Update paragraph two of the Code to include the wording highlighted in bold:

*They also take an oath of office or make an affirmation in which they promise that “well and faithfully” they will perform the duties attaching to membership of the States of Deliberation **and that they will adhere to the provisions set out in this Code of Conduct.***

CPA Benchmarks: Induction on the Code of Conduct

7.1.8. *Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence.*

- 5.26 The States' Assembly & Constitution Committee is in the process of developing an on-boarding and ongoing development programme for States' Members after the 2020 General Election. The sub-committee agreed that there should be a stand-alone session on the Code of Conduct, rather than incorporating it into other sessions, to highlight the key provisions and expectations set out in the Code, and to seek to reiterate the importance of Members being mindful of, and abiding by, the Code.
- 5.27 The sub-committee investigated the tools available to assist Members in "*engaging in self-assessment of their individual ethical competence*". However, it found that any existing tools to undertake this would need to be specifically tailored to States' Members, and there were therefore no 'off the shelf' solutions to this recommendation.

Recommendation:

A stand-alone session should be convened for Members on the Code of Conduct as part of the on-boarding and ongoing development programme for States' Members.

- 5.28 Further minor changes to the Code were identified by the sub-committee in the course of its review and are set out below.

(a) Purpose of the Code

- 5.29 The sub-committee recommend that this section is amended to include specific reference to the Rules of Procedure, as follows:

"The obligations set out in this Code are in addition to those which apply to all Members by virtue of the 'The Rules of Procedure of the States of Deliberation and their Committees'".

Recommendation:

Insert the following paragraph into Part I, the Purpose of the Code:

The obligations set out in this Code are in addition to those which apply to all Members by virtue of the 'The Rules of Procedure of the States of Deliberation and their Committees'.

(b) Public Duty

5.30 At present, paragraph five reads as follows:

Whilst Members have a general duty to act in the best interests of the public as a whole they have a special duty to be accessible to the people of the electoral district for which they have been elected to serve and to represent their interests conscientiously.

5.31 Given the move to one electoral district with the introduction of Island-wide voting, it is suggesting that paragraph five is deleted and paragraph three is strengthened (as set out in bold below).

*The primary duty of Members is to act in the public interest **and to represent the interests of those who they have been elected to serve conscientiously.** In so doing Members have a duty on all occasions to act in accordance with their oaths, and in accordance with the public trust placed in them.*

Recommendation:

(a)	<p>Delete paragraph five and strengthen paragraph three by inserting the words in bold:</p> <p><i>The primary duty of Members is to act in the public interest and to represent the interests of those who they have been elected to serve conscientiously. In so doing Members have a duty on all occasions to act in accordance with their oaths, and in accordance with the public trust placed in them.</i></p>
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(c) 2016 Extant Resolution

5.32 Further to consideration of the joint report from the Scrutiny Committee and the Public Accounts Committee, 'The Scrutiny Management Committee – Power, Resources and Impartiality', the States resolved:

1. To agree that legislation be drafted:
 - (a) making provision for the Scrutiny Management Committee to have the power to send for persons, papers and records as set out in paragraphs 2.3 to 2.6 of that Policy Letter; and
 - (b) extending legal privilege to those providing evidence to the Scrutiny Management Committee's hearings and reviews as set out in paragraph 2.24 of that Policy Letter.
2. To direct the States Assembly and Constitution Committee to review and report to the States with a revised Code of Conduct for Members of the

States of Deliberation to encompass the requirements of the Scrutiny Management Committee as set out in paragraphs 2.8 to 2.9 of that Policy Letter.

- 5.33 The legislation was included in The Reform (Guernsey) (Amendment) (No. 2) Law, 2019 approved by the States of Deliberation at its September 2019 Meeting. The following article was inserted between 20H and Article 22 of the Reform Law:

Scrutiny.

20I. (1) *The States may by Ordinance make any such provision as might be made by Order in Council to facilitate the effective scrutiny by the Scrutiny Management Committee of the conduct, policies, use of resources, and activities in general, of any committee of the States of Guernsey, any person or statutory body whose functions include functions of a public nature, and any other organisation which is or has been in receipt of public funds.*

(2) *Without prejudice to the generality of the foregoing, an Ordinance made under this Article may in particular -*

- (a) *confer on witnesses appearing before the Scrutiny Management Committee or any standing or ad hoc panel appointed by that Committee immunity from civil or criminal proceedings in respect of words spoken before it or contained in any document submitted to and accepted by it as evidence,*
- (b) *provide that answers given, statements made, and (once accepted as evidence) documents produced, by such a witness shall not be admissible in evidence against that person in any other civil or criminal proceedings,*
- (c) *specify circumstances in which, and procedures in accordance with which, any immunity and exclusion described in paragraphs (a) and (b) respectively may be withdrawn by the person chairing a meeting of that Committee or any such panel,*
- (d) *make provision in respect of the power of the Scrutiny Management Committee to request any person to –*
 - (i) *appear before that Committee or any standing or ad hoc panel appointed by that Committee, and*
 - (ii) *give evidence and produce documents to that*

Committee or any such panel,

- (e) provide for any specified court in Guernsey, on the application of the Scrutiny Management Committee, to order any person to –*
 - (i) appear before that Committee or any standing or ad hoc panel appointed by that Committee, and*
 - (ii) give evidence and produce documents to that Committee or any such panel, and*
- (f) make it an offence, punishable on conviction by imprisonment for a term of up to 2 years and to a fine of up to level 5 on the Uniform Scale, for any person to –*
 - (i) disobey an order of a Guernsey court requiring that person so to appear or to produce documents, or*
 - (ii) refuse to be examined before, or to answer any lawful and relevant question put by, that Committee or panel,*
 - (iii) knowingly or recklessly give false or misleading oral or written evidence to that Committee or panel,*
 - (iv) obstruct, deter, harass or molest any person who has been required or requested to appear before or produce documents to that committee or panel.*

*(3) In this Article "**proceedings**" includes disciplinary proceedings before an internal or professional tribunal; and in this Article and Article 20E, "**the Scrutiny Management Committee**" means the States Scrutiny Management Committee.*

5.34 The resolution directed the States' Assembly & Constitution Committee to review and report to the States with a revised Code of Conduct for Members of the States of Deliberation to encompass the requirements of the Scrutiny Management Committee as set out in paragraphs 2.8 to 2.9 of that Policy Letter. These requirements are as follows:

2.8 *The SRC's second policy letter acknowledged that, as a result of the SMC having the powers to compel, there would be a need to review the Code*

of Conduct for both Members of the States of Deliberation and the Civil Service Code. As noted above, it is envisaged that the vast majority of those persons requested to attend hearings or to provide documentation would do so voluntarily. However, an appropriate strengthening of the respective Codes of Conduct would enhance this notion of voluntary attendance.

2.9 Therefore, the Joint Committees are recommending that the States Assembly and Constitution Committee (the SACC) considers this matter and submit to the States for consideration a revised Code of Conduct for Members of the States of Deliberation. It is also recommending that the Civil Service Code be updated to encompass the requirements of the SMC.

5.35 The sub-committee is content that as the Scrutiny Management Committee can be given the relevant powers by Ordinance, its recommendation that the 'Members' Conduct' section is updated to include the following would appropriately strengthen the Code of Conduct in this regard, when read with other sections of the existing Code:

*Members shall give effect to the ideals of democratic government and **uphold the Rule of Law.***

Summary

5.36 The sub-committee has concluded that the scope and content of Part I of the Code of Conduct – if amended in line with the above recommendations – continues to be relevant and fit for purpose.

6 STATES' MEMBERS CONDUCT PANEL (Part II)

6.1 In line with section (c) of the Terms of Reference of the review, the sub-committee considered the investigation process, including whether consideration should be given to the appointment of an independent Commissioner for Standards or a similar post.

6.2 The Code sets out in Part II, 'States Members' Conduct Panel', that a Conduct Panel should be established to investigate complaints referred to it in accordance with procedures set out in Part III, 'Procedure for Complaints relating to Part I matters', of the Code. It states that the Conduct Panel shall comprise:

- a Chairman;
- a Deputy Chairman; and
- eight ordinary members

Appointment of Panel Members

- 6.3 Members are appointed in writing by the Presiding Officer for a period of five years. Members of the States and their spouses are not eligible to serve on the Conduct Panel. A person so appointed may at any time resign their appointment by notice in writing delivered to the Presiding Officer. Members whose term of office comes to an end by effluxion of time shall be eligible, if otherwise qualified, for re-appointment.
- 6.4 If it appears to the Presiding Officer that a Member of the Conduct Panel:
- a) has been absent from the Island for a period longer than six consecutive months; or
 - b) is incapacitated by physical or mental illness; or
 - c) is otherwise unable or unfit to discharge the functions of a member of the Panel

the Presiding Officer may declare their office to be vacant and thereupon shall appoint a person to fill the position vacated.

- 6.5 A member of the Conduct Panel who has any direct or indirect personal interest in a matter referred to the Conduct Panel has to declare that interest to the Chairman of the Panel and takes no further part in the investigation of the matter concerned. In the case of the Chairman they shall declare any such interest to the Deputy Chairman of the Panel.
- 6.6 In the event that both the Chairman and Deputy Chairman are unable to act, the Presiding Officer shall appoint one of the ordinary members to be Acting Chairman in respect of the particular matter to be investigated.
- 6.7 The Conduct Panel are provided with support and advice from the Secretary to the Panel, who is also the Secretary to the Bailiff.
- 6.8 Whilst no criticism has been levelled at the Members of the Code of Conduct Panel, who appear to have undertaken their roles diligently, representations were made from a number of people raising issues with the method of appointment and ex-States' Members serving on the Panel.
- 6.9 The appropriateness of the Presiding Officer appointing the Conduct Panel was raised. The Conduct Panel stated that appointments to the Panel must be made by an independent entity and that this should continue to be the Presiding Officer. It acknowledged that some parties consulted in its internal review suggested that it should no longer be the Bailiff but had not put forward alternatives.
- 6.10 The Conduct Panel stated it had been suggested that there could be advertising to seek expressions of interest in Panel Membership. In January 2020, there

were two vacancies on the Panel which were advertised through the local media.

Membership of the Conduct Panel

- 6.11 The Conduct Panel is currently constituted as follows:

Chairman		Deputy Chairman	
The Very Reverend John A. Guille		Mr. Allister H. Langlois	
Other Members:	• Advocate Russell Clark	• Dame Mary Perkins, DBE	
	• Mrs. Sandra A. James, MBE	• Mrs. Barbara E. Steer	
	• Mr. Scott J. Ogier	• Mr Stephen Trevor	
	• Advocate Louise Hall	• Mr Michael Fooks	

- 6.12 Three of the ten current Members are former States' Members (including the Deputy Chairman). Until the summer of 2019, the Chairman was a former States' Member, and a Member who resigned in February, 2020, had also been a former States' Member. Arguments have been submitted to the sub-committee for and against the inclusion of former States' Members in the Membership of the Conduct Panel.
- 6.13 The Conduct Panel believe it should continue to have a mixture of past States' Members and others. It asserts that given the nature of many complaints, having experience of being a States' Member is often valuable. It also states that there should also continue to be a gender balance on the Panel.
- 6.14 Respondents to the consultation and others who had made representations to the Committee suggested that having former States' Members on the Conduct Panel compromised the independence of the Panel, given some of its Members may have had working political relationships with the Member under investigation. The public perception of having former States' Members on the Panel was also raised.
- 6.15 The membership of the Conduct Panel has been one of the key issues raised as part of this review. The sub-committee has concluded a Panel system comprised of former Deputies and members of the community, who may have or be perceived to have links to existing members, appointed by the Presiding Officer, no longer remains appropriate, and sets out the argument for change in Section 7 of this report.

Term of Office for Conduct Panel Members

- 6.16 Members are appointed for a period of five years. The Conduct Panel stated it had been suggested that the term of office of Panel members should be reduced to four years, to start perhaps six months after a General Election, in

case there are suitable former Members who have then become available. This would make it more in line with the political term of four years.

- 6.17 The sub-committee did not disagree that, should a Panel system be retained, the term of office of a Conduct Panel member should be reduced to four years as set out above. However, given its recommendation to establish the office of Commissioner for Standards, if accepted, this change is unlikely to be required, and therefore it has not made any recommendation to this effect. If the Committee and/or the States do not wish to support the proposal for a Commissioner for Standards, the Committee could return to the States in future to make this change.

7 COMMISSIONER FOR STANDARDS

- 7.1 The terms of reference directed that when considering the investigation process, which is considered in the following section, the review should look at whether consideration should be given to the appointment of an independent Commissioner for Standards or a similar post.
- 7.2 Appendix B to this report sets out the arrangements in other jurisdictions for the investigation of Code of Conduct complaints. A Commissioner for Standards role, or similar, is in place in the following Parliaments in Great Britain:

States of Jersey	Commissioner for Standards
Scottish Parliament	Commissioner for Ethical Standards in Public Life
National Assembly for Wales	Commissioner for Standards
Northern Ireland Assembly	Commissioner for Standards
House of Commons	Commissioner for Standards
House of Lords	Commissioner for Standards

- 7.3 It appears that the appointment of a Commissioner for Standards in the above jurisdictions has worked well. Whilst not an overriding factor, the sub-committee concluded there would be merit in aligning the investigatory body in Guernsey to that of other comparable jurisdictions.
- 7.4 As stated in 6.14, a key issue raised in the course of the review related to the arbitration of investigations. The sub-committee concluded a Panel system comprised of former Deputies and members of the community, who may have or be perceived to have links to existing members, appointed by the Presiding Officer, no longer remains appropriate.

- 7.5 The sub-committee also concluded that there is a clear lack of confidence – from both States’ Members, civil servants and the public – in the current complaints procedure and process of investigation which needs to be addressed with a fundamental change. One example of this is set out in the Committee *for* Home Affairs: Governance Review:

... Staff highlighted the widely held perception that the Code was not implemented fairly or in a suitably confidential manner. Others expressed views that the Code of Conduct panels are biased in favour of Committee members and that the existence of strong personal alliances, and even familial connections, between panel members and members of this or other Committees, undermined the confidence of staff and Deputies in the ability of the Code of Conduct to hold Committee members to account.

- 7.6 In a small community, perceptions or assumptions about conflicts of interest or perceived relationships are naturally more acute than in larger jurisdictions, regardless of the reality of the situation. The sub-committee believes an external Commissioner would assist in countering these perceptions.
- 7.7 The sub-committee wishes to make it clear that its conclusion that a fundamental change is required is not a reflection on the competence or diligence of existing, or former, Conduct Panels but seeks to improve confidence in the manner in which complaints are investigated and the Code of Conduct more generally.
- 7.8 The sub-committee believes the appointment of a Commissioner will provide an assurance of independence, that the person has proven experience in investigations of this type and can undertake their investigation in an entirely objective and impartial way.
- 7.9 Given the volume of complaints that are dealt with by the current Conduct Panel, the position of Commissioner would not be a full-time position and a person should be recruited to work flexible hours as is required by the role.
- 7.10 As in normal practice in other jurisdictions, and largely in common with the process that exists now, the Commissioner would consider any complaints submitted and would report details of the investigation as to whether or not there has been a breach of the Code to the States’ Assembly & Constitution Committee, with a recommendation as to what action, if any, should be taken. As is the case now, if there was a recommendation for a sanction above that of a caution, the Committee would then present the report to the States of Deliberation.
- 7.11 It was therefore unanimously agreed to recommend to the Committee that it proposes the appointment of a Commissioner for Standards in its policy letter. It suggests that this should largely be based on the States of Jersey model and

that it would be prudent to approach the Commissioner for Standards in Jersey, regarding taking on the role.

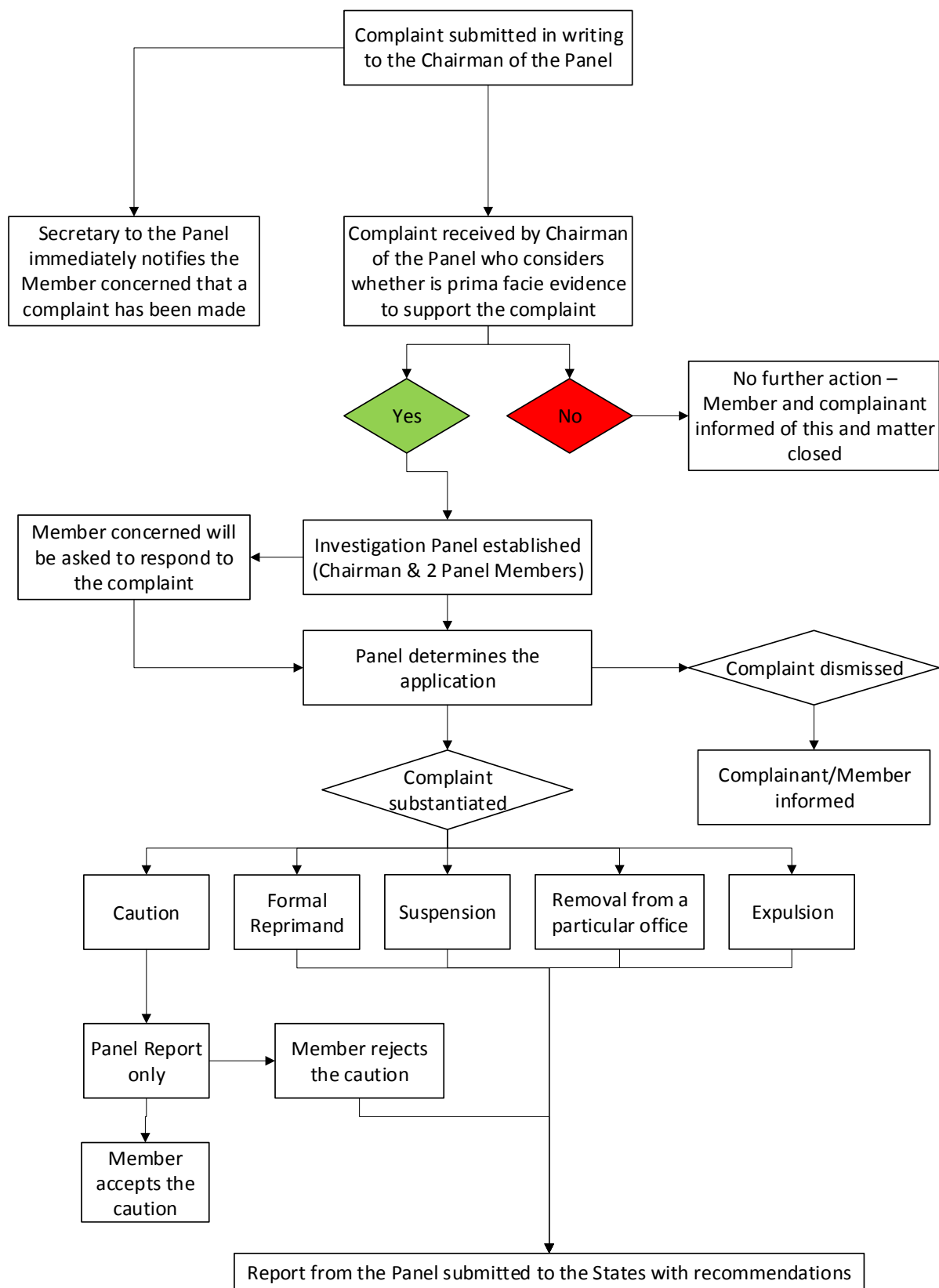
- 7.12 The sub-committee recommends that the role be introduced as soon as is practicable but acknowledged a number of processes that will need to be undertaken before this can take place.
- 7.13 As highlighted in section 5, provisions for a Code of Conduct for People's Deputies are set out in [The Reform \(Guernsey\) Law, 1948](#) under section 20F. Whilst this section of the Law enables the States of Deliberation to adopt (and subsequently amend, revoke or replace) a Code of Conduct, which includes that Code of Conduct making provision "*for the establishment of a panel or panels to investigate such allegations and complaints, and the constitution, powers and proceedings of any such panel*", the sub-committee believes this section of the Law should be amended by Ordinance formally empowering a Commissioner for Standards to be established to investigate such allegations and complaints, and the constitution, powers and proceedings of the post.
- 7.14 The sub-committee recommends that a formal approach is made to the States of Jersey and the appointed Commissioner for Standards in Jersey, who has been in post since 2017, to take on the role coterminous with his contract in Jersey. It strongly believes that there are benefits in the two Islands working together in the appointment of a Commissioner in future, and believes both Islands will benefit from the Commissioner having experience of the two similar jurisdictions. Initial liaison with the States Greffier in Jersey and the Commissioner has indicated that there would be scope for a 'Pan-Island Commissioner' and for the sharing of good practice in relation to Code of Conduct matters between the two Islands.
- 7.15 The sub-committee further recommends that the role should be underpinned by specific legislation which should include, but not be limited to, the:
- appointment and administrative responsibilities of the Commissioner;
 - Commissioner's powers and duties;
 - powers to summons people to appear and to provide records; and
 - offences for failing to appear/provide information requested; providing false information or being obstructive.
- 7.16 It is recommended that the Commissioner for Standards is appointed in line with the Ordinance, when introduced, and specific legislation is subsequently introduced, tailored to suit Guernsey's needs.
- 7.17 The sub-committee is conscious that if the States agrees to the appointment of a Commissioner for Standards further changes will be required to Part II and Part III of the Code of Conduct but has deferred making any suggested changes until the States have confirmed whether they support the proposals.

- 7.18 The sub-committee does not believe it would be reasonable to expect the role of Commissioner to be undertaken on a purely honorary basis, and recommends that a daily honorarium should be payable. In addition, there will be a small amount of expenditure incurred on travel and associated costs, room hire, etc. Based on the experiences of the Jersey system, it is expected that the average annual cost of the Commissioner for Standards will be around £5,000 which can be absorbed within the existing budget of the Royal Court (which funds the expenditure of the States' Assembly & Constitution Committee). However, in the event of an exceptionally high number of referrals in an individual year, it may be necessary for an application to be made to the Policy & Resources Committee for one-off funding from the Budget Reserve.

Recommendation:

That the position of Commissioner for Standards should be established to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation, replacing the States Members' Conduct Panel, further to the preparation of such legislation as may be necessary to give effect to that proposal.

Complaints Procedure: Flow Chart



8 Procedure for Complaints (Part III)

- 8.1 In line with section (b) of the Terms of Reference of the review, the sub-committee considered the procedure for complaints, including considering the:
- process of submitting a complaint;
 - notification of such complaints to Members;
 - initial consideration of the complaint;
 - investigation process, including whether this should take place in private or public; and
 - determination of the complaint.
- 8.2 This section suggests improvements that can be made to the current process, noting that, should the States agree to replace the Conduct Panel with a Commissioner for Standards, this will need to be updated accordingly.

Submitting a complaint

- 8.3 The Code states that complaints, whether from Members or from members of the public, alleging that the conduct of a Member is in breach of the Code of Conduct must be addressed in writing to the Chairman of the Conduct Panel. Whilst Appendix 1 to the Code lists the Members of the Code of Conduct Panel, no postal or e-mail address is provided.
- 8.4 Whilst there is a section on the www.gov.gg/yourdeputies page about the Code of Conduct, it contains only limited information. The sub-committee believes a dedicated page should be published on the States of Guernsey website about the Code of Conduct and the procedure for complaints, containing all the information a person would require to submit a complaint.
- 8.5 The sub-committee further suggests that an online form should be created on the Code of Conduct webpage to enable people to detail their complaint and upload any supporting documentation and for this to be received directly by the Secretary to the Panel. It is recommended the page follow a similar format to that published by the States of Jersey:
<https://statesassembly.gov.je/Pages/complaints.aspx>
- 8.6 The sub-committee believes the Code of Conduct and associated processes are difficult to access, with members of the public being referred to the Code contained in 'The Red Book' when inquiring how to submit a complaint. The only guidance in the Code regarding submitting complaints is as follows:

Unsubstantiated allegations will not be considered by the Chairman of the Panel. Complainants are required to supply the Chairman of the Panel with supporting evidence and a complaint founded only upon a media report will not

normally be treated as a substantiated allegation. Anonymous complaints will only be considered in exceptional circumstances.

- 8.7 It recommends that an easy-to-read guidance note regarding the Code of Conduct process and how to make a complaint is published, and that a pro forma is also produced which, whilst not mandatory to be used by a complainant, will provide a helpful structure to assist people in lodging a complaint. This should include what information the Conduct Panel need to receive to reach a decision e.g. making it clear in what respect the Member may have breached the Code, asking for the evidence the person has to substantiate this, etc.
- 8.8 The Conduct Panel indicated in 2018 that the references on the States' website and links to information about how to make complaints against States' Members would be completely rewritten, made far easier to find, and have links from logical other parts of the States' website e.g. ensuring that keywords such as "Guernsey States Member complaint" appears higher up on search engine results. The sub-committee understands that progress continues on this matter but believes it should be prioritised in line with the recommendations of this section. It believes such changes would increase the transparency and accessibility of the complaints process.

Recommendations:

- Appendix 1 of the Code of Conduct should be updated with the postal and e-mail address that complaints should be submitted to.
- A dedicated page on www.gov.gg should be created providing information on how to submit code of conduct complaints against Members of the States.
- Easy to read guidance should be produced and available to download on the Code of Conduct process and how to make a complaint.
- A pro forma should be drafted to assist people in making a complaint.

- 8.9 In Jersey, the Commissioner for Standards may initiate an investigation if they believe 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 if a breach of the Code has taken place.
- 8.10 Under the current procedure in Guernsey, there is no mechanism whereby the Conduct Panel can instigate a complaint. The Conduct Panel confirmed that there had been occasions this political term when it appeared a Member had been in breach of the Code but a complaint had not been submitted. The sub-committee believed the Conduct Panel should be given the power to initiate an investigation if they believed a breach of the Code may have occurred.

- 8.11 The Conduct Panel suggested that Members of the States should be permitted to refer themselves for possible Code breaches. However, this should only be permitted if an “Ethics Officer” was in post. Representations were received from existing States’ Members which supported the introduction of a self-referral mechanism. The sub-committee supports such a mechanism.

Recommendation:

Insert the following paragraph immediately after paragraph 26:

Whilst a complaint will normally be submitted by a third party, the Panel may initiate an investigation if it believes that a breach of the Code may have occurred. A Member can also request that their own behaviour is investigated by the Panel to establish if a breach of the Code has taken place.

Members being notified of a complaint

- 8.12 The Secretary to the Panel is required to notify the Member concerned immediately when a complaint has been made. Feedback was received that whilst Members have been informed that a complaint has been made, they are sometimes not informed of the substance of the complaint until later. This has led to some distress for Members being unaware of the content of the complaint.

Recommendation:

Amend paragraph 27A of Part III, Procedure for Complaints relating to Part I matters, as follows:

*Immediately upon receipt of a complaint, **or notification that the Panel is initiating an investigation**, the secretary to the Panel shall notify the Member concerned that a complaint has been made and the nature of the complaint.*

Initial consideration of the complaint

- 8.13 The initial complaint is considered by the Chairman of the Conduct Panel who considers whether there is prima facie evidence to support the complaint. The Code is silent as to the next steps if the complaint is unfounded.
- 8.14 The Conduct Panel recommended that any member of the Panel should be able to determine on receipt whether there is prima facie evidence to support a complaint being investigated, even if the Chairman or Deputy Chairman is not conflicted. The sub-committee supports this recommendation.

Recommendation:

Insert the following paragraph immediately before paragraph 28:

The Chairman of the Panel, or another Member of the Panel, will undertake an initial assessment of the complaint submitted to ascertain whether there is prima facie evidence to support the complaint. Following this assessment, the Chairman of the Panel, or that other Member of the Panel, will inform the complainant and the Member concerned whether an investigation will be undertaken.

- 8.15 The sub-committee believes it should be made clear in the procedure that if the Chairman decides that the complaint does not merit investigation, they should provide a brief explanation in writing for dismissing the complaint.

Recommendation:

Insert the following paragraph immediately after paragraph 28.

If it is concluded that the matter does not merit investigation, an explanation of why the complaint was dismissed will be provided to the complainant in writing.

- 8.16 If there is prima facie evidence to support the complaint, an investigation will commence.
- 8.17 It is important to note that if the Chairman when considering the prima facie evidence or the Investigation Panel in the course of the investigation has cause to believe that a criminal offence may have been committed, they or it (as the case may be) shall immediately suspend the proceedings and forthwith refer the matter to the Chief Officer of Police. The investigation shall not be resumed until either judicial proceedings have been concluded or the Chief Officer of Police has certified to the Chairman that they have no further interest.

Investigation of the complaint

- 8.18 Where the Chairman of the Conduct Panel is satisfied that there is prima facie evidence to support the complaint, the Member concerned will be asked to respond to the complaint and an investigation will be conducted.
- 8.19 The Investigation Panel comprises the Chairman and two other members of the Conduct Panel, one of who is nominated by the Chairman, and the other being nominated by the Member under investigation. If the Member declines to nominate a Panel Member, or fails to do so within a period set by the

Chairman, they forfeit their right and the Chairman makes the appointment.

8.20 The Member concerned will at every stage be given full details of the nature of the complaint and will be invited to address the Investigation Panel. All Members are required to co-operate fully and promptly with the Investigation Panel during any investigation, even if the Member concerned considers that the alleged breach is unsubstantiated. Failure to co-operate in any investigation will, in itself, be regarded as a breach of the Code.

8.21 The Investigation Panel may request the production of papers and records and may request the attendance of any person before it, and may request that specific documents in the possession of a Member relating to its inquiries be laid before it.

8.22 The sub-committee questioned the reasoning for the Member under investigation having the option to nominate one of the Investigation Panel. It noted that the Committee in 2011 had sought to delete this provision for the following reasons:

The Committee believes that such a provision is un-necessary and serves only to lengthen the process of any investigation. All the members of the States Members' Conduct Panel are persons of probity and can be relied on to judge any matter before them impartially. Paragraph 24 of the Code requires any member of the Panel who has any direct or indirect personal interest in a matter referred to the Panel to declare such interest immediately to the Chairman or Deputy Chairman of the Panel.

8.23 This proposal was lost (Pour: 19; Contre: 22; Abstained: 1; Not Present: 5). In the absence of a Hansard Report (introduced in 2012), it is unclear why the proposal was defeated.

8.24 The sub-committee concurs with the reasoning to delete the provision set out in the 2011 report and recommends that this provision is deleted.

Recommendation:

delete the following words from the relevant provision: “, one of whom shall be” and also “, and the other being nominated by the person under investigation. If the Member declines to so nominate, or fails to do so within such period as shall be determined by the Chairman, they shall forfeit their right and the Chairman shall make the appointment.”
--

8.25 It was noted that the Code currently provides that:

A member of the Panel who has any direct or indirect personal interest in a matter referred to the Panel shall forthwith declare that interest to the Chairman of the Panel and shall take no further part in the investigation of the

matter concerned. In the case of the Chairman he shall declare any such interest to the Deputy Chairman of the Panel.

- 8.26 It was suggested that a Member and the complainant should be informed of the appointed Investigation Panel and be provided with the opportunity to challenge the membership of the Panel within a set timeframe e.g. 3 days, if they perceived that member had a direct or indirect personal interest in the matter. The sub-committee supports this proposal.

Recommendation:

Insert the following words in bold to paragraph 28, as amended:

... The Investigation Panel will comprise the Chairman and two other members of the Conduct Panel, nominated by the Chairman. The Member concerned will at every stage be given full details of the nature of the complaint and will be invited to address the Investigation Panel. **The Member and the complainant will be informed of the Members of the Investigation Panel and provided with the opportunity to challenge the membership within three days if either consider that the Panel Member has a direct or indirect personal interest in the matter.**

- 8.27 The sub-committee noted that whilst the procedure makes it clear as to what is expected of the Member concerned, it is silent regarding the role of the complainant in the investigation. In Jersey, the complainant has no formal 'role' once an investigation is under way. The complainant is expected to co-operate with any investigation and to supply all the evidence in their position when asked to do so. Members subject to a complaint do not have any entitlement to cross-examine complainants, though they are given an opportunity to review and, if they wish, challenge the factual basis of any evidence supplied by complainants or others.
- 8.28 In Guernsey, the Conduct Panel may request the complainant meet with the Panel to provide information to assist its investigation; however, this is at the Panel's discretion, and is not a right.
- 8.29 The sub-committee believe the procedure should be clarified so the complainant is clear on their position once an investigation has commenced.

Recommendation:

The investigation procedure should be clarified so the complainant is clear on their position once an investigation has commenced.

- 8.30 The sub-committee noted that there is an absence of timeframes in which the Member and the complainant are required to submit information. Whilst appreciating that the level of information required – and therefore the amount of time it may take to collate - will vary depending on the nature of the complaint, the sub-committee believes it would be reasonable for the Conduct Panel to provide guidelines on timeframes it would expect to receive responses within and the timeframes it itself would aim to work within. This should improve the timeliness in which complaints can be considered.

Recommendation:

The Panel to provide guidance regarding the timeframe:

- for responses from Members and the complainants; and
- that the Panel will work to.

- 8.31 The sub-committee also noted that the Conduct Panel do not have any powers or enforcement, including the power to summons people to appear and provide records. The Panel had suggested that it should be able to obtain information from States' Committees about a complaint that had not been provided by the parties e.g. the minutes of a Committee meeting may be referenced but not available to the complainant.

- 8.32 The sub-committee considered whether the absence of powers or enforcement had caused any issues in investigation of complaints to date. It found there was no evidence to suggest that this has been a significant issue or impediment in the investigation of complaints.

- 8.33 In Jersey, the Commissioner for Standards (Jersey) Law, 2017 sets out the powers and enforcement available to the Commissioner, which includes the ability to:

- summons a person to appear before the Commissioner and/or produce a specified record;
- To require a person to answer questions

A person shall be guilty of an offence if they fail or refuse to appear before the Commissioner, produce a specified record, answer questions truthfully and if they provide false records of information, or if they obstruct an investigation.

- 8.34 Under the current system, hearings are held in private and the Conduct Panel supports this continuing. The sub-committee agrees that in the interests of natural justice, the matter should remain private until the complaint has been finally determined, and has made a recommendation to this effect at 5.12.

Determination of the complaint

Unsubstantiated complaint

- 8.35 The current procedure sets out the options when the Investigation Panel finds that a complaint has been substantiated but not when the Panel dismisses a complaint. Appendix A shows that a number of complaints have been subject to investigation and the complaint dismissed but there is no report available. However, a complaint submitted against one Member in April 2019 was dismissed and a report published and available to view.
- 8.36 The sub-committee believes the procedure should be clear and consistently applied that if an Investigation Panel is convened to consider a complaint, if the complaint is dismissed a report should be produced and published. It should also be clear how the decision of the Conduct Panel is communicated to the Member and the complainant.

Recommendation:

(a)	When a complaint has been dismissed by an Investigation Panel, a report should be produced and published; and provided to the Member and the complainant.
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Substantiated complaint and sanctions available

- 8.37 There are a number of options available to the Investigation Panel if it finds a complaint has been substantiated. The sanctions available are for Members to be:
- cautioned
 - formally reprimanded
 - suspended
 - removed from a particular office
 - expelled
- 8.38 If the breach of conduct was of a minor nature the Investigation Panel will normally resolve the matter by cautioning the Member concerned. A report of the Investigation Panel's decision is forwarded to the Presiding Officer and to Her Majesty's Greffier who makes the report available for public inspection whenever the Greffe is open for normal business.
- 8.39 The sub-committee believes there should be the option to agree remedial action with the member in the case of minor breaches. As stated in the Jersey 'Commissioner for Standard's Statement':

Remedial action involves “putting the record straight”, for instance by making an amendment to the Register of Interests of Elected Members; the member will also 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 reports the circumstances and remedial action direct to the PPC. The Commissioner informs the complainant of the action taken in response to the complaint.

- 8.40 The Conduct Panel recommended that consideration should be given to an additional, lowest level sanction of requiring a Member to apologise to the complainant/s. The Panel suggested that this would be used primarily when the complainant was also a States’ Member. The Sub-Committee supports such an approach and recommends this included in the review of sanctions.
- 8.41 The sub-committee also recommends that the aforementioned review of the sanctions should clarify what conduct could justify a sanction of suspending, removing a Member from a particular office, or expelling a Member, and clearly setting out how the process would be managed.

Recommendation:

The option of remedial action e.g. by way of a formal apology, should be available as an alternative to a caution.
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- 8.42 The sub-committee notes that at present, anyone wishing to read the Conduct Panel’s report needs to physically attend the Greffe to do so. In the interests of transparency, it suggests that any reports from the Investigation Panel should be available to read online, on the suggested webpage, as well as in hard copy at the Greffe for the duration of that individual’s Membership of the States.

Recommendation:

Reports produced by the Investigation Panel should be published on the Code of Conduct for Members of the States webpage, when created.

- 8.43 If a Member refuses to accept a caution as aforementioned, or if the Conduct Panel believes that the Member should be formally reprimanded, suspended, removed from a particular office or expelled, the Conduct Panel reports its findings to the States’ Assembly & Constitution Committee which submits that report to the Presiding Officer for inclusion in a Billet d’État with the recommendations of the Panel.
- 8.44 If the complaint concerns the President or a Member of the States’ Assembly & Constitution Committee, a Panel of the five most senior Members of the States by length of service will be created and submit the report to the Presiding Officer.

- 8.45 Since the introduction of the Conduct Panel, complaints submitted have had the following outcome:

* Complaint outcomes	2016 – 2020	2012 – 2016	2008 – 2012
Total number of complaints...	16	16	7
... dismissed by the Chair (no prima facie evidence)	9	9	1
... dismissed by the Investigation Panel	2	3	2
... caution given	4	0	1*
... went to the States	0	1	2
... withdrawn	0	3	2
... ongoing	1	0	0

* The Deputy did not accept the caution given by the Panel so the matter went to the States of Deliberation

- 8.46 The sub-committee questioned the large volume of complaints submitted which the Chair had concluded there was no prima facie evidence to support (over half the complaints received over the last two political terms).
- 8.47 It asked if the Conduct Panel requested further information or evidence from the complainant before reaching a decision that there was no prima facie evidence or solely determined the matter from the complainant initial submission. It was confirmed that, where necessary, extra information has been requested from the complainant before a decision was taken.
- 8.48 As stated in paragraphs 5.22, sanctions should be extended to be in line with other jurisdictions e.g. to include the ability for a Member to apologise and if a Commissioner for Standards is appointed, a review of the sanctions available should take place.

9 ABSOLUTE PRIVILEGE AND INVESTIGATION OF ALLEGATIONS OF ABUSE OF PRIVILEGE

- 9.1 To date, no complaint has been submitted regarding an alleged abuse of privilege by a Member.
- 9.2 The sub-committee believe that if the States agree that a Commissioner for Standards should be appointed, investigations of allegations of abuse of privilege should be transferred from the 'Privileges Panel' to the Commissioner and the provisions of this section reviewed accordingly.

Recommendation:

That the position of Commissioner for Standards should be established to investigate allegations of abuse of privilege, replacing the Privileges Panel.

Recommended Benchmarks for Codes of Conduct applying to Members of Parliament



ACKNOWLEDGMENTS



MONASH University

These Benchmarks are the outcome of a partnership between the Commonwealth Parliamentary Association (CPA) and Monash University and a subsequent workshop hosted by the Parliament of Victoria, Melbourne, Australia in April 2015, bringing together Parliamentarians and Clerks from across the regions of the CPA and other experts in the field.

Published by:

The Commonwealth Parliamentary Association (CPA)
CPA Secretariat, Suite 700, Westminster House,
7 Millbank, London SW1P 3JA,
United Kingdom.

Telephone: +44 (0)20 7799 1460
Fax: +44 (0)20 7222 6073
Email: hq.sec@cpahq.org
Website: www.cpahq.org

FOREWORD

As an Association, the **Commonwealth Parliamentary Association (CPA)** has continued to lead the way in Parliamentary strengthening with regards to its Benchmarks work and the implementation of the good governance values of the Commonwealth, including enhancing public trust in parliament and its members.

Following the *CPA Benchmarks for Democratic Legislatures* which were published in 2006 in collaboration with the then World Bank Institute and the UNDP, and developed by a CPA-organized parliamentary study group, attention moved to developing a Code of Conduct for Parliamentarians.

The public's trust in its representatives is a fundamental aspect of good governance and an open, transparent society. It is crucial because if Parliamentarians demonstrate high standards of ethics consistent with their important public interest roles, especially when they are scrutinising the executive arm of government, it enhances public trust.

Good conduct is crucial as it can help uncover and deter unethical behaviour and corruption. Good conduct is also crucial because it builds trust - when there are trusting relationships between the people, parliament and other institutions, democracy works at its best. When people trust that their elected representatives are acting in their best interests, this helps legitimise our parliaments and our democratic systems. Good conduct is also crucial because it is fundamental to the effectiveness of parliament in fulfilling its essential roles of legislating, approving budgets, scrutinising Executive Government and representing the public interest.

The '**Recommended Benchmarks for Codes of Conduct applying to Members of Parliament**' was developed by the CPA in partnership with Associate Professor Hon. Dr Ken Coghill of Monash University in Australia.

This partnership was further enhanced by a CPA Workshop for Parliamentarians on the Benchmarks for Codes of Conduct applying to Members of Parliament which was hosted by the Victoria CPA Branch in Melbourne, Australia in April 2015. The Workshop examined the importance of codes, what they should contain and how they could be implemented.

The CPA Workshop was attended by Parliamentarians from eight out of the nine regions of the CPA with representatives from the following CPA Branches: Western Australia; Kenya; Bangladesh; New South Wales; United Kingdom; Canada; Jamaica; India; Samoa; Perak, Malaysia; Victoria, Australia. Many of the participants were experts on Codes of Conduct in their respective jurisdictions.

It is often argued that a lack of political will is the perpetrator of poorly performing ethics and anti-corruption initiatives. Perhaps political will is guided, facilitated and supported by a code of conduct that specifies a series of action-based components that are measurable and visible and where members are accountable for their actions, engendering a greater sense of political and civic responsibility.

A code can raise awareness, educate members and enable enforcement of acceptable standards of conduct. With these we can ensure the practice of civic values that instil public trust and improve the democratic health and performance of our countries.

The Commonwealth and the CPA recognize diversity as a strength: different experiences, approaches and attitudes foster variations in practices and policies which stimulate innovation everywhere. We at the CPA recognize that no single Parliament is a source of 'best practice' in all areas and that all Parliaments can be sources of valuable innovations regardless of their size or age and that in fact there are many forms of 'good practice'; which is why Benchmarks are so valuable; drawing from good practice across the CPA.

Hon. Dr Shirin Sharmin Chaudhury, MP
Chairperson of the CPA Executive Committee
Speaker of the Parliament of Bangladesh

HOW TO USE THESE BENCHMARKS

The increasing complexities of the matters with which Parliament and Members of Parliament^a must deal add to the pressures on parliamentary performance. The standards of conduct and ethical behaviour expected of Members of Parliament are rising. Codes of Conduct provide valuable guidance and direction for Members of Parliament in the contributions they make to their Parliament's functions. These Benchmarks assist parliaments in the design and revision of Codes of Conduct.^{b, 1}

The Commonwealth Parliamentary Association (CPA) is committed to supporting Parliamentarians and parliamentary staff to identify benchmarks of good governance and the implementation of the good values of the Commonwealth including enhancing public trust in parliament and its members; a fundamental aspect of good governance and an open society.

The **Recommended Benchmarks for Codes of Conduct for Members of Parliament** are designed to be used by individual houses of parliament or other legislatures to assist in them to revise and strengthen existing provisions affecting the conduct of their Members or to develop new codes of conduct. The recommended Benchmarks are introduced by brief but important sections that explain the context for codes of conduct, summarised in:

- **PURPOSES AND ROLES OF PARLIAMENT**
- **PUBLIC OFFICE OF MEMBER OF PARLIAMENT**
- **PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT**

The **PRINCIPLES** on which the Benchmarks are based then follows. These draw on principles that have become widely accepted in the international community and are essential reading for an understanding of the Benchmarks. The Benchmarks are general in nature so that they can be adapted to any parliament, ranging from small states and their assemblies to the largest, and from least developed to the most well-resourced.

The CPA encourages Branches to use these Benchmarks as a set of provisions related to each other and together aimed to improve the integrity and performance of each legislature; to take the underlying contribution to integrity of each recommended Benchmark and adapt it to a particular parliamentary system so as to guide the conduct of members to benefit the performance of the parliament. Other measures to complement your Code of Conduct are described in the section **COMPLEMENTARY PROVISIONS**. Further information is available in the list of References and the Endnotes.

^a Member of Parliament is used to include all members of parliaments and legislatures e.g. Senator.

^b The term code of conduct is used here to refer to any code or like document affecting the conduct of individual Members of Parliament.

PURPOSES AND FUNCTIONS OF PARLIAMENTS

Parliament is the highest legislative authority in a nation, province, state or territory.

Its major functions are: legislating (examining, debating and approving new or amended laws); budget-making (approving the collection of taxes and other revenue and authorising spending by the government); representation of the citizens; and scrutiny (checking the work of government).²

PUBLIC OFFICE OF MEMBERS OF PARLIAMENT

Members of Parliament are public officers; as such, a Member must act in the best interests of the nation, province, state or territory concerned.

As public officers, they have a fiduciary relationship with the citizens on whose behalf they act and they are entrusted with responsibility to protect and uphold the common interests of the citizens. In other words, they must put the public interest above all others.³

Members of Parliament have complementary obligations to their parliament:

- their own behaviour should reflect favourably on the reputation of the institution of parliament;
- they should protect, strengthen and promote the parliament.
-

Political parties exist to serve the best interests of the nation, province, state or territory as a whole, as assessed by their Members of Parliament. Again, those Members of Parliament must put the public interest above all others.

PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT

- 1.1. A Code of Conduct forms an important part of the Integrity System.⁴
- 1.2. Codes affecting the conduct of individual Members of Parliament encourage ethical conduct, reduce risks to the integrity of the Parliament as the paramount political institution, enable it to perform its functions more effectively, enhance propriety and strengthening the community's trust in Parliament.
- 1.3. A Code of Conduct for Members of Parliament applies to all office holders who are members of the House of Parliament, including the Presiding Officer, the Prime Minister/Premier/Chief Minister and ministers.
- 1.4. A Code of Conduct includes both aspirational provisions (what parliamentarians ought to do) and prescriptive provisions (what parliamentarians must do or not do), and should be seen as the minimum standard for conduct.⁵
- 1.5. Codes of Conduct have a purpose different from Standing Orders which are primarily rules of procedure.
- 1.6. A code should be written in a style that is simple, clear and specific.

PRINCIPLES

- 2.1. A Member of Parliament as a public officer exercises a public trust.⁶
- 2.2. Members of Parliament shall behave according to the following principles:
 - **Selflessness** - Members of Parliament should act solely in terms of the public interest.
 - **Integrity** - Members of Parliament 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** - Members of Parliament must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

- **Accountability** - Members of Parliament are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - **Openness** - Members of Parliament 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** - Members of Parliament should be truthful.
 - **Leadership** - Members of Parliament 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.^{7, 8}
- 2.3. Members of Parliament shall:
- Act in good conscience
 - Respect the intrinsic dignity of all
 - Act so as to merit the trust and respect of the community
 - Give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law
 - Hold themselves accountable for conduct for which they are responsible
 - Exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.
- 2.4. Members of Parliament have individual responsibility as contributors to the functioning of the institution.
- 2.5. Parliamentary immunity (i.e. parliamentary privilege) protects the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation.
- 2.6. Members of Parliament shall respect the roles, independence, rights and responsibilities of parliamentary staff.
- 2.7. In a parliamentary democracy, every Member of Parliament has a responsibility to ensure that the Executive Government is accountable to the Parliament.

BENCHMARKS FOR CODES OF CONDUCT FOR PARLIAMENTARIANS

3.1 **Disclosure and Publication of Interests**

The code shall indicate that each Member shall disclose every interest which may create a perception of conflict between an interest and the duties and responsibilities set out in PRINCIPLES. It shall prescribe provisions to which each Member is subject, with provisions to the effect as follows.

- 3.1.1 Each Member shall disclose to the Parliament all relevant interests that a reasonable person might think could give rise to the perception of influencing behaviour between the Member's duties and responsibilities and his/her personal interests (eg land and property assets, share-holdings, gifts¹⁰, foreign travel, symbolic rewards (e.g. honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations). These may be subject to a specified thresholds. This applies to items received and could also apply to items donated or given. These shall be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament above a specified threshold.^c
- 3.1.2 A Member shall not vote in a division on a question about a matter, other than public policy (i.e. government policy, not identifying any particular person individually and immediately) in which he or she has a particular direct pecuniary interest above a threshold (if specified).¹¹
- 3.1.3 A Member shall not use for personal benefit confidential information (i.e. non-public information) gained as a public officer.
- 3.1.4 There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House.
- 3.1.5 The Parliament shall publish the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the most accessible means available e.g. parliamentary website.^d
- 3.1.6 These provisions also apply to interests held by the member's spouse or close family members.

^c Five to 30 days is suggested.

^d In open data format.

3.2 **Use of Public Property**

A code should make provision to the effect that a Member may use public funds, property or facilities only in the public interest and as permitted by law (does not include for party political purposes).

3.3 **Inducements**

3.3.1 A Member shall not accept any form of inducement that could give rise to conflict of interest or influence behaviour.

3.3.2 A member shall not engage in paid lobbying, paid parliamentary advice or paid advocacy.

3.3.3 A Member shall not use his or her position to seek or secure future employment, paid lobbying, consultancy work or other remuneration or benefit upon ceasing to be a Member of Parliament.

3.3.4 A Member shall represent the interests of constituents on an equitable basis and not on the basis of personal or political affiliations, or inducements.

3.4 **Civility**

Members shall treat each other, the Parliament and the people with respect, dignity and courtesy, including parliamentary staff.

3.5 **Behaviour**

A Member shall not assault, harass, or intimidate another person.

3.6 **Attendance**

Every member shall attend every sitting of the House, in accordance with practice of the House, except with reasonable excuse, or in the case of extended absences, if excused in accordance with the practice of the House.

ETHICS ADVISER

As part of an effective implementation of a Code of Conduct, advice shall be available to individual MPs to help them decide how to deal with ethical dilemmas. A code of conduct may provide for an ethics adviser according to the following model.

- 4.1 The adviser shall be independent of influence by any person in giving advice. (The House should designate the title of the office¹²)
- 4.2 The adviser shall be selected by a non-partisan process or other method designed to secure multiparty support.
- 4.3 The adviser shall have knowledge, experience, personal qualities and standing within the community suitable to the office; skill in professional ethics or law is desirable.
- 4.4 The Code shall protect the adviser from removal except for proven misbehaviour or other reasonable grounds.
- 4.5 Members shall endeavour to routinely discuss ethical dilemmas with an ethics adviser.
- 4.6 Members if unable to discuss an ethical dilemma with an ethics adviser or having done so, remain in doubt, must act with caution and not engage in any potentially compromising action.
- 4.7 Advice may be sought on conflicts of interest and any issue arising from codes of conduct and ethics and integrity issues.
- 4.8 The adviser shall base advice in each instance on the facts as related by the MP and any other relevant facts of which s/he becomes aware.
- 4.9 The adviser shall not disclose the fact that s/he has been consulted, nor any information provided by the MP or any advice given to the MP.
- 4.10 Advice sought and given is confidential, and shall not be accessible through provisions for freedom of information. However the person who seeks written advice may make it, and the related request, public.
- 4.11 The adviser shall not investigate any complaint.

ENFORCEMENT

As part of the effective implementation of a code, an independent system for investigating alleged breaches should be established; a suggested model follows:

5.1 **Complaints and Investigations**

A code shall make provisions to the effect that:

- 5.1.1 A complaint alleging breach of the Code by a Member shall be made to an identified office holder who must forthwith refer it to an investigator for investigation of the facts.
- 5.1.2 At least one investigator must be appointed by the House as soon as practicable following adoption of the Code.
- 5.1.3 An Investigator shall be independent of Parliament, any Member of the Parliament, Government, or political party or grouping, and is appointed for a fixed term.
- 5.1.4 The investigator must be selected by a non-partisan process or other method designed to secure multiparty support.
- 5.1.5 An Investigator shall have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office.
- 5.1.6 The Code shall protect the investigator from removal except for proven misbehaviour or other reasonable grounds.
- 5.1.7 The investigator may determine that a complaint is frivolous or vexatious and decline to investigate it.
- 5.1.8 A Member and the complainant shall treat any complaint as if sub judice.
- 5.1.9 Any Member of Parliament shall cooperate with and assist an Investigator in the investigation of any complaint under the Code.
- 5.1.10 If there is evidence of a breach of criminal law, it must forthwith be referred to the police or corruption control agency as appropriate.
- 5.1.11 After investigation, the investigator must present a report to the Presiding Officer (or Deputy if concerning the Presiding Officer) who must determine whether or not a breach has occurred, and if a breach has occurred, refer the report to the House for further proceedings in accordance with its rules.
- 5.1.12 If a complaint has become known publicly and has not been upheld, this outcome shall be made public.

5.2 **Appeal or review**

The Code shall make provision that a Member against whom a complaint has been upheld, has rights to appeal or review.

5.3 **Sanctions and penalties**

- 5.3.1 The Code shall specify graduated sanctions and penalties for breaches of

the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the parliament.^e

- 5.3.2 The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.

FOSTERING A CULTURE OF ETHICAL CONDUCT

Each House should sustain a culture of ethical conduct reflecting a sound understanding of the parliamentary role, the public interest and the institution of parliament. Such a culture may be facilitated by:

- 7.1.1 Introductory and continuing education to assist Members to enhance their skills in ethical deliberation.
- 7.1.2 Induction which includes mentoring and experience-sharing activities involving both new and experienced Members.
- 7.1.3 Exemplary behaviour by those in leadership roles
- 7.1.4 Endeavours to detect and act to deter even minor breaches from which serious breaches may develop.
- 7.1.5 Members being encouraged to consult with the Ethics Advisor before acting on a matter that raises ethical issues.
- 7.1.6 Members acknowledging and accepting provisions of a Code of Conduct when swearing an Oath or making an Affirmation.
- 7.1.7 Publishing and making available the Code to both Members and the public.
- 7.1.8 Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence.
- 7.1.9 Encouraging discussions with the ethics adviser which shall be treated as routine and normal, with frequent informal contact between the ethics adviser and Members.
- 7.1.10 Requiring every Member to participate in activities to enhance their ethical competence on a regular basis. These activities could be online, if resources permit.
- 7.1.11 Requiring Members to provide evidence on a regular basis that they have read and understood the provisions of the Code
- 7.1.12 Endeavouring to adapt the code to changing expectations of society with regard to ethical conduct.

^e See examples of sanctions shown in the table.

EXAMPLES OF SANCTIONS

Sanction	Sanctions administered by	Country
Warning	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Remark	The Knesset Ethics Committee	Israel
Formal reprimand/reprimand	Lok Sabha (House of the People)	India
	House of Representatives	Grenada
	House of Commons	United Kingdom
	House of Representatives	United States of America
Rebuke	The Knesset Ethics Committee	Israel
Severe Rebuke	The Knesset Ethics Committee	Israel
Censure	House of Representatives	United States of America
Formal Admonition/Admonition/ Admonition to abide by the standards of conduct/Admonition to refrain from presenting at the House for a certain period of time	Lok Sabha (House of the People)	India
	House of Commons	United Kingdom
	Deliberative Council on Political Ethics	Japan
Suspension from membership of the House for a specified period (which also involves loss of salary for that period)	House of Commons	United Kingdom
Suspension from office/Suspension	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Disqualification from membership on grounds of defection	Speaker of the House	India
Order to withdraw	House of Representatives	Grenada
Loss of mandate (= Expulsion)	N/A	Fiji
	High Court	Grenada
	Lok Sabha (House of the People)	India
	The Knesset	Israel
	House of Commons	United Kingdom
Disqualification to hold public office	N/A	The Philippines
Committal	House of Commons	United Kingdom
Imprisonment	Lok Sabha (House of the People)	India
	N/A	The Philippines

Adapted from: Bruce 1996; Mawer 2006.

APPENDIX: COMPLEMENTARY PROVISIONS

The Code of Conduct is complemented by other structures and practices in the organisation of parliament, government and the law which are essential to its effectiveness. These vary greatly according to the scale and historical development of each system of government. The Parliament should aspire to complementary norms, institutions and mechanisms which collectively enable the most effective performance of the Parliament and the wider system of government. Features of these are suggested as follows:

1. Integrity System

- 1.1. The Integrity system is the overarching system including codes, norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The links between integrity bodies are important. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works. The size and resources of a nation, province, state or territory will influence the institutional structure and mechanisms of its integrity system. Accordingly, it is useful to consider essential structures and the functions to be provided.
 - 1.1.1. These structures may include:
 - A supreme audit institution (SAI) (e.g. Chief Financial Controller, Comptroller General, or Auditor General), established by act of parliament, being an independent officer of the parliament
 - Ombudsman, also being an independent officer of the parliament, established by act of parliament
 - A parliamentary public accounts committee, chaired by a non-government Member of Parliament, with powers and resources to critically review government policies and expenditure
 - Parliamentary immunity (i.e. parliamentary privilege) protecting the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation
 - A non-partisan institution, established by act of parliament, authorised and empowered to regulate the receipt of donations and other funds and expenditure by political candidates and parties.
 - 1.1.2. These functions may include:
 - The capacity for independent, thorough investigation of allegations of unethical or corrupt behaviour
 - public interest disclosure (“whistle-blower”) legislation, to include application to Members, Officers and staff of Parliament.

2. Election campaign donations and expenditure

- 2.1. Each Member shall disclose to the relevant authority all donations received or donated towards political campaign costs and other political expenses and all expenditure for campaign and other political costs, including political party funds for which the Member has any responsibility; these must be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament.

3. Ministerial Code of Conduct

- 3.1. A Ministerial Code of Conduct for members of the Executive shall apply in addition to the Code of Conduct for Members of Parliament; the latter applies to all members of that parliament, including the Presiding Officer(s) and members of the Executive.
- 3.2. A Ministerial Code of Conduct shall be issued by the head of government i.e. Prime Minister, Premier or Chief Minister of the nation, province/state or territory.
- 3.3. Breaches of the Ministerial Code of Conduct shall be dealt with by the head of government.
- 3.4. The provisions of such a Code are beyond the scope of these Benchmarks.

4. Code of Conduct for Parliamentary Officers

- 4.1. A Code of Conduct for Parliamentary Officers and staff may be adopted to complement the Code of Conduct for Members of Parliament.
- 4.2. The provisions of such a Code are beyond the scope of these Benchmarks.

5. Post-parliamentary employment by former Members of Parliament

- 5.1. Any regulation of post-parliamentary employment, remuneration or other benefits received by former Members of Parliament shall be by act of parliament, as non-statutory codes cannot bind non-Members.

6. Lobbyists, Lobbying Register

- 6.1. Regulation of lobbying, including registration of lobbyists, shall be by act of parliament, as non-statutory codes cannot bind non-Members.

7. Civil Society's Role

- 7.1. Members of Parliament and Parliamentary Officers and staff should actively enable monitoring and reporting by civil society organisations of compliance with the Code of Conduct.

8. Political Parties

- 8.1. Political parties have roles in fostering a culture of ethical conduct.

9. Award

- 9.1. An award may be made to recognise exemplary conduct.

REFERENCES

- Brennan, G. (2013). *Presentation of Accountability Round Table Integrity Awards*. <http://www.accountabilityrt.org/integrity-awards/sir-gerard-brennan-presentation-of-accountability-round-table-integrity-awards-dec-2013/>
- Bruce, W. (1996). Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in *Local Government*. *Public Integrity Annual*, 17, 23-30.
- Committee on Standards in Public Life. (1995). *Guidance. The 7 principles of public life* <https://www.gov.uk/government/publications/the-7-principles-of-public-life>; or <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>
- Finn, P. (2012). Public Trusts and Fiduciary Relations. In K. Coghill, C. Sampford, & T. Smith (Eds.), *Fiduciary Duty and the Atmospheric Trust* (pp. 31-42). Farnham (UK); Burlington (Vermont, USA): Ashgate.
- House of Representatives (Australia). (2012). *House of Representatives Practice*, 6th Edition (6th Ed.).
- House of Representatives Standing Committee of Privileges and Members' Interests (Australia). (2011). *Draft Code of Conduct for Members of Parliament Discussion Paper*.
- Kania, R. R. E. (2004). Ethical Acceptability of Gratuities: Still Saying Yes after All These Years. *Criminal Justice Ethics*, 23, 54-63.
- Kirwan Institute. (2013). *Understanding Implicit Bias*. <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>
- Malmendier, U., & Schmidt, K. (2012). *You Owe Me*. Discussion Paper No. 392. Discussion Paper Series of SFB/TR 15 Governance and the Efficiency of Economic Systems. <http://epub.ub.uni-muenchen.de/14279/1/392.pdf>; <http://www.nber.org/papers/w18543>
- Mawer, S. P. (2006). Case study of the House of Commons: How Can Parliamentary Codes and Registers of Members' Interests Help? In R. Stapenhurst, N. Johnston, & R. Pelizzo (Eds.), *The Role of Parliaments in Curbing Corruption* (pp. 207-213). Washington DC: World Bank.
- Parliament UK. (no date). *Parliament and government*. <http://www.parliament.uk/about/how/role/parliament-government/>
- Pelizzo, R., & Stapenhurst, R. (2006). Legislative Ethics and Codes of Conduct. In R. Stapenhurst, N. Johnston, & R. Pelizzo (Eds.), *The Role of Parliaments in Curbing Corruption* (pp. 197-205). Washington DC: World Bank.
- Sampford, C. (2014). *Integrity Systems: Some History*. Paper presented at the Assessing National Integrity Systems in the G20 and Beyond (A workshop with Transparency International), The Ship Inn Function Room & Brisbane Convention and Exhibition Centre, Brisbane.
- St James Ethics Centre. (2015). *The Politicians' Pledge*. <http://www.smh.com.au/cqstatic/141b7u/thepledge.pdf>
- Smith, T. (2014, 23 July). *Integrity in politics? Public office as a public trust? Is there hope?* Paper. Accountability Round Table.

ENDNOTES

¹ Provisions similar to provisions in a Code of Conduct may be included in: Act of parliament; Conflict of Interest Code; Code of Official Conduct; Code of Ethics; rules of procedure; Standing Orders. Codes of Conduct and Codes of Ethics are often distinguished e.g. as follows:

Codes of ethics “are usually products of professional associations. They serve as a quality assurance statement to society and provide a set of standards for appropriate conduct for members of the profession that issues the code. Codes of ethics for those in government service challenge employees to identify with shared professional values that describe appropriate actions about acting rightly in the service of the public good” (Bruce, 1996, 23).

Codes of conduct are quite different. They “. . . are more concrete and practical . . . for they represent executive orders or legislatively defined and enforceable behavioral standards with sanction for violation. They contain a list of the kinds of behavior required in a given set of circumstances and provide direction to those whose conduct they govern. Codes of conduct contain minimalistic prohibitions to unquestionably subversive or criminal acts. They are designed to protect the government employee, the client, and/or the public at large” (Bruce 1996, 24). (Pelizzo & Stapenhurst, 2006, p. 199)

² Adapted from (Parliament UK, no date)

³ The responsibility of Members to act in the common interests of all people represented in the parliament reflects their fiduciary duty. Fiduciary relationships are explained by Finn as requiring that where a person has been empowered to act in the interests of others, he or she must do so and not act in self-interest (Finn, 2012).

Sir Gerard Brennan, retired Australian Chief Justice, stated “It has long been an established legal principle that a Member of Parliament holds ‘a fiduciary relation towards the public’ and ‘undertakes and has imposed upon him a public duty and a public trust’ ” (2013).

Sir Gerard Brennan has explained that “The obligations cast on members of Parliament and officers of the Executive Government are many and varied and the law takes cognizance of the realities of political life, but asserts and, in interpreting statutes,

assumes that the public interest is the paramount consideration in the exercise of all public powers...Whenever political action is to be taken, its morality – and, indeed, its legality – depends on whether the public interest is the paramount interest to be served...Power, whether legislative or executive, is reposed in members of the Parliament by the public for exercise in the interests of the public and not primarily for the interests of members or the parties to which they belong”(Brennan, 2013)

⁴ Integrity Systems are a form of risk management that provide insurance against corruption. They include norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works (Sampford, 2014).

⁵ The Australian House of Representatives Committee reported that codes of conduct which it examined “seemed to fall into the two categories . . . – prescriptive or aspirational. One approach is to establish a more directive or prescriptive code which would include quite detailed rules and be a rather lengthy statement. The aim of a prescriptive code is to provide a comprehensive account of the conduct required of members in all conceivable situations. The alternative approach is for a more aspirational set of principles from which each member must determine his or her own behaviour. An aspirational code aims to provide a frame of reference for making decisions that involve competing values.” ((House of Representatives Standing Committee of Privileges and Members’ Interests (Australia), 2011), p.29).

Few if any codes are solely either aspirational or prescriptive. A code including both aspirational and prescriptive provisions is more likely to be effective according to the research leading to these Benchmarks.

⁶ As a holder of public office, a Member must avoid:

- official misconduct that involves a breach of powers and duties entrusted to a Member for the public benefit and in which the Member has abused them or his position;
- wilful neglect of duty;
- wilfully embarking on a course of action which the Member has no legal right to undertake;
- oppression and extortion;

- incompatible positions;
- arrangements which are in conflict with his or her official duties;
- bribery;
- misuse of public property.
(adapted from (Smith, 2014))

⁷ These principles are adapted from *The Seven Principles of Public Life* (“Nolan Principles”) for holders of public office (Committee on Standards in Public Life, 1995).

⁸ See also the general principles to govern the conduct of members of relevant authorities in England and police authorities in Wales as follows:

Selflessness

i. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

ii. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

iii. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

iv. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

v. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

vi. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

vii. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect

the impartiality and integrity of the authority’s statutory officers, and its other employees.

Duty to Uphold the Law

viii. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

ix. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

x. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Statutory Instrument 2001 No. 1401. The Relevant Authorities (General Principles) Order 2001 (United Kingdom). Retrieved 18 March 2015 from http://www.tisonline.net/ContentUploads/CaseUploads/RelAuthOrder_6102009154823.doc

⁹ This section is adapted from the Politicians’ Pledge (St James Ethics Centre, 2015).

¹⁰ This is not to suggest a total ban on accepting or donating gifts but it recognises that the very act of offering or receiving a gift establishes a favourable pre-disposition to the other person, irrespective of the value of the gift (Malmendier & Schmidt, 2012). Total bans on accepting any gifts risk leading to failure by even the most ethical Members of Parliament. Once a person is tainted as unethical for accepting or offering a gift no matter how commonplace, reasonable, and harmless social behaviour, critics have a tool with which to tar and tarnish the reputation the individual, and other Members of Parliament (Kania, 2004). Disclosure greatly reduces the risk of appearance of impropriety.

¹¹ Adapted from House of Representatives Practice (House of Representatives (Australia), 2012).

¹² Examples of titles include: Conflict of Interest and Ethics Commissioner; Parliamentary Ethics Adviser; (Parliamentary) Integrity Commissioner; Parliamentary Commissioner for Standards.

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Designed and edited by the CPA Secretariat
editor@cpahq.org

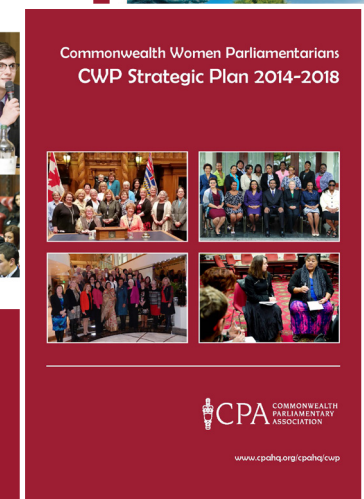
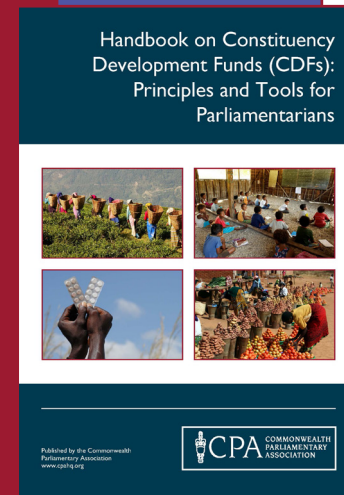
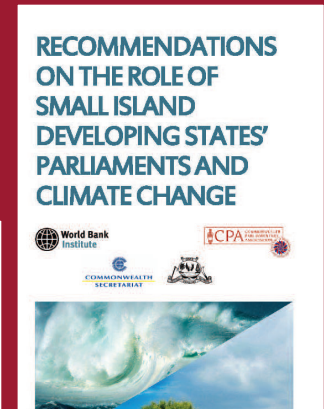
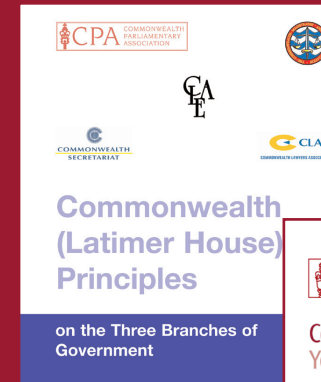
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The Commonwealth Parliamentary Association (CPA)
CPA Secretariat, Suite 700, Westminster House,
7 Millbank, London SW1P 3JA,
United Kingdom.

Telephone: (+44-20) 7799 1460
Fax: (+44-20) 7222 6073
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The Commonwealth Parliamentary Association (CPA)

CPA Secretariat, Suite 700,
Westminster House, 7 Millbank,
London SW1P 3JA,
United Kingdom.

Telephone: +44 (0)20 7799 1460
Fax: +44 (0)20 7222 6073

Email: hq.sec@cpahq.org
Website: www.cpahq.org

Code of Conduct Complaints: 2006 – 2019

The tables in this appendix anonymously list the number of complaints, their source and their outcome since the Code of Conduct was introduced in 2006. Unless stated otherwise, the complaint was made against 1 People's Deputy (up-to-date to 20th February, 2020).

2016 -2020							
	Year	Complaint submitted by	Dismissed by Chair*	Investigation Panel set up	Caution given	To the States	Complaint withdrawn
1	2019	Deputy against 5 Deputies	Ongoing	n/k	n/k	n/k	n/k
2	2019	2 Members of the Public	-	1	1	-	-
3	2019	Member of the Public	1	-	-	-	-
4	2019	Member of the Public	1	-	-	-	-
5	2019	Deputy	-	1	-	-	-
6	2019	Deputy	-	1	1	-	-
7	2018	Member of the Public	-	1	1	-	-
8	2018	Member of the Public	1	-	-	-	-
9	2018	Member of the Public	-	1	1	-	-
10	2018	2 Members of the Public	1	-	-	-	-
11	2018	Member of the Public	1	-	-	-	-
12	2017	Member of the Public against 2 Deputies	1	-	-	-	-
13	2017	External organisation against 3 Deputies	1	-	-	-	-
14	2017	External organisation against 3 Deputies	1	-	-	-	-
15	2016	Member of the Public	-	1	-	-	-
16	2016	Member of the Public	1	-	-	-	-
		Total	9	6	4	0	0

2012 - 2016							
	Date	Complaint submitted by	Dismissed by Chair	Investigation Panel set up	Caution	To the States	Complaint withdrawn
1	2016	Member of the Public	1	-	-	-	-
2	2016	Member of the Public	1	-	-	-	-
3	2016	Member of the Public	-	-	-	-	1
4	2016	Member of the Public	1	-	-	-	-
5	2016	Deputy	1	-	-	-	-
6	2015	Member of the Public	-	1	-	-	-
7	2015	Member of the Public	1	-	-	-	-
8	2015	Member of the Public	1	-	-	-	-
9	2015	Deputy	-	1	-	-	-
10	2015	Member of the Public	1	-	-	-	-
11	2014	Member of the Public	1	-	-	-	-
12	2014	Member of the Public	-	-	-	-	1
13	2014	Deputy	-	-	-	-	1
14	2013	Member of the Public	1	-	-	-	-
15	2013	Deputy	-	1	-	1	-
16	2012	Member of the Public	-	1	-	-	-
		Total	9	4	0	1	3

2008 - 2012							
	Date	Complaint submitted by	Dismissed by Chair	Investigation Panel set up	Caution	To the States	Complaint withdrawn
1	2012	Deputy	-	1	-	-	-
2	2011	Member of the Public	1	-	-	-	-
3	2009	Member of the Public	-	1	-	-	-
4	2009	Department Board	-	-	-	-	1
5	2009	Department Board	-	1	1	1	-
6	2008	Numerous (Public/Deputy)	-	1	-	1	-
7	2008	Deputy	-	-	-	-	1
		Total	1	4	1	2	2

2007/2008							
	Date	Complaint submitted by	Dismissed by Chair	Investigation Panel set up	Caution	To the States	Complaint withdrawn
1	2007	Deputy	-	-	-	-	1
2	2007	2 Deputies	-	1	-	-	-
		Total	0	1	0	0	1

Code of Conduct Review: Arrangements in other jurisdictions

When setting the Terms of Reference for the review, the Committee stated it would consider practices in other jurisdictions as part of the review. This report provides a brief overview of the arrangements in the:

- Crown Dependencies
- National Assembly for Wales
- Scottish Parliament
- Northern Ireland Assembly
- House of Commons
- House of Lords

Jersey

States Members are expected to behave in accordance with the Code of Conduct for Elected Members, which is set out in **Schedule 3** of the [Standing Orders of the States of Jersey](#). Any person may complain to the Commissioner for Standards that an elected member has breached the code of conduct in Schedule 3 or that a Minister or Assistant Minister has breached the code of conduct and code of practice referred to in Article 18(3A) of the Law.

The Commissioner for Standards is appointed by the Privileges and Procedures Committee ('PPC'). The Commissioner may initiate investigations of their own accord if they believe a breach has occurred and they have the powers to summon people and records as part of any investigation.

Upon receipt of a complaint, the Commissioner will decide whether there are grounds to investigate. If there are no grounds for an investigation, the complainant will be notified. Otherwise, the Commissioner will undertake an investigation and report to PPC with their conclusions and recommendations as to what action, if any, should be taken.

The PPC must then review the Commissioner's report and give the States member who was the subject of the complaint an opportunity to address PPC (accompanied, should that member so wish). The PPC must then decide whether the Code of Conduct has been breached and what action, if any, to take. It must then inform the member concerned of its decision. The Committee may also report its findings to the Assembly, either by means of a written report or by means of an oral statement by the Chairman of PPC.

The [Commissioner for Standards \(Jersey\) Law 2017](#) sets out the establishment of the office of Commissioner for Standards, the appointment and administration, powers and duties and powers and enforcement.

The Isle of Man

The required [Standards of Conduct for Members](#) were approved in April 2016 and can be found as an Annex to the Standing Orders of Tynwald Court. The conduct of Ministers and members of Departments and Statutory Boards is provided for in the [Government Code of Conduct \(2007\) \(as amended 2016\)](#).

Complaints against a Member from a Member of the Public would usually be sent to the Clerk of Tynwald.

The Tynwald Committee on Members' Standards & Interests may investigate a specific matter relating to a Member's adherence to the rules of conduct under the Code. Members shall cooperate, at all stages, with any such investigation. No Member shall lobby a member of the Committee in a manner calculated or intended to influence its consideration of an alleged breach of this Code.

The Committee will consider any relevant matter and may report its conclusions and recommendations to the appropriate Chamber. The Tynwald and the Branches may impose a sanction on the Member where it is considered necessary. The President of Tynwald shall ensure that Members continue to receive guidance on the Code of Conduct.

National Assembly for Wales

The [Code of Conduct for Assembly Members and Associated Documents](#) applies to all Members of the National Assembly.

The Commissioner is appointed by the Assembly and their function, investigatory powers etc. are set out in the [National Assembly for Wales Commissioner for Standards Measure 2009](#).

The Standards Commissioner is an independent and impartial provider of advice on any matter of principle relating to Assembly Members' conduct, and is an independent investigator of complaints alleging that Members of the Assembly have breached any Code, Protocol or Resolution of the Assembly.

<http://standardscommissionerwales.org/making-a-complaint>

If a formal investigation into a complaint has been completed, the Commissioner makes a report to the Committee on Standards of Conduct which may include

comment or recommendation as to what sanction, if any, should be imposed on the Member in question.

Scotland

The standards of behaviour expected of an MSP are set out in their [Code of Conduct](#). The Code is approved by the Scottish Parliament.

Different types of complaint are dealt with by different offices within the Parliament.

- Most complaints about the conduct of members are investigated by the Commissioner for [Ethical Standards in Public Life in Scotland](#) (the Commissioner). This includes complaints in relation to members' registration and declaration of financial interests. It also includes complaints about paid advocacy, lobbying and general conduct. The manner in which complaints about MSPs are investigated is set out on their website: www.ethicalstandards.org.uk/investigation-process-msps.
- Complaints about conduct during business in the Parliament are considered by the Parliament's Presiding Officer and they provide [guidance](#) on what constitutes acceptable conduct in the Chamber.
- Complaints about how a member identifies him or herself or undertakes [constituency work](#) should be directed to the Presiding Officer.
- Complaints on a member's conduct in a committee meeting are considered by the [convener](#) of the relevant committee.
- Complaints about a member's use of the Reimbursement of Members' Expenses Scheme, the use of parliamentary resources, communications and other SPCB policies are referred to the [Scottish Parliamentary Corporate Body](#).

The role of Scottish Parliamentary Standards Commissioner was created by the [Scottish Parliamentary Standards Commissioner Act 2002](#). The post was abolished and replaced by the [Commissioner for Ethical Standards in Public Life in Scotland](#).

Complaints about MSPs are sent to '[Public Information](#)' at the Scottish Parliament. If a person has complained about the conduct of an individual MSP and the complaint is found to be sufficiently serious, it may also be referred on to the Standards, Procedures and Public Appointments Committee (SPPA Committee).

Northern Ireland Assembly

The [Code of Conduct of the Northern Ireland Assembly](#) (the Code) was last amended on 28th June 2016. Complaints against a Member for failure to comply with the Code of Conduct and the Guide to the Rules relating to the Conduct of Members should be made in writing to the Assembly Commissioner.

A standalone website provides comprehensive information on the role of the Commissioner: <http://standardscommissionerniassembly.org/>. The complaints process is clearly set out on the Commissioners website:

<http://standardscommissionerniassembly.org/the-complaints-process/>

The Commissioner is an independent person appointed by the Northern Ireland Assembly. The main role of the Commissioner is to investigate complaints about the conduct of Members of the Legislative Assembly (MLAs). The functions of the Commissioner are included in section 17 of the [Assembly Members \(Independent Financial Review and Standards\) Act \(Northern Ireland\) 2011](#). The website summarises the Commissioner's functions as follows:

- To investigate complaints about the conduct of MLAs
- To initiate an investigation if he believes that a breach of the Code of Conduct has occurred
- To report to the Committee on Standards and Privileges on the outcome of such investigations
- To give advice on any matter of general principle relating to the conduct of MLAs

In carrying out his functions the Commissioner has to comply with the provisions of the 2011 Act and of [Directions to the Northern Ireland Assembly Commissioner for Standards](#) given under section 24 of that Act.

House of Commons

The [Code of Conduct](#) describes the responsibilities that MPs have as Members of the House and are based on a set of principles. The Guide to the Rules relating to the conduct of Members sets out in detail MPs' obligations to register and declare their financial interests, and the restrictions on lobbying for reward or consideration. It also describes the procedure for the investigation of complaints.

The [Parliamentary Commissioner for Standards](#) in the House of Commons role is to:

- Provide advice
- Investigate allegations that MPs have broken their Code of Conduct and its supporting rules
- Decide complaints from the parliamentary community about harassment, bullying or sexual harassment by MPs

- Keep the MPs' Code of Conduct under review
- Keep the Register of Members' Financial Interests and the three other Registers which the House requires.

Paragraphs 10 to 18 of the Code of Conduct sets out what the Commissioner can investigate. The rules which support the Code are mostly in the [Guide to the Rules](#) which is published with the Code.

The Commissioner may investigate a specific matter relating to a Member's adherence to the rules of conduct under the Code. Members shall cooperate, at all stages, with any such investigation by or under the authority of the House. No Member shall lobby a member of the Committee on Standards in a manner calculated or intended to influence its consideration of an alleged breach of this Code.

The Committee on Standards will consider any report from the Commissioner to it and report its conclusions and recommendations to the House. The House may impose a sanction on the Member where it considers it necessary.

House of Lords

The [Code of Conduct](#) for Members of the House of Lords provides guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties. Information on the House of Lords Commissioner for Standards can be found at the following link, which includes complaint forms, the Code of Conduct and annual reports.

www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards/

A House of Lords Commissioner for Standards is appointed to investigate alleged breaches of this Code, or of the rules governing members' financial support or use of parliamentary facilities. Any such investigation is conducted in accordance with procedures set out in the Guide to the Code of Conduct.

After investigation the Commissioner makes a report of her findings. If the member is found not to have breached the Code, or if the member and the Commissioner have agreed remedial action, the report is normally published only on the Commissioner's webpages. The Commissioner has discretion to submit a report in such instances to the Conduct Committee.

If the member is found to have breached the Code and remedial action is inappropriate or has not been agreed, the Commissioner's report including any

recommended sanction goes to the Conduct Committee. The member concerned has a right of appeal to the Conduct Committee against the Commissioner's findings and any recommended sanction. In a case of bullying, harassment or sexual misconduct, the complainant has a right of appeal to the Conduct Committee against the Commissioner's findings.

The Conduct Committee, having heard any appeal, and having agreed any appropriate sanction, reports its conclusions and recommendations to the House. The final decision rests with the House.

2018 and 2019 Governance Review: Code of Conduct

Background

- 1.1 In 2018 & 2019, Committee governance reviews were commissioned by the Policy & Resources Committee to support the States of Guernsey programme for public service reform and transformation. These reviews were undertaken by Professor Catherine Staite.
- 1.2 The first Review in the series was undertaken in 2018, with the Committee *for* Health & Social Care. The report was published in May 2019. The second Committee reviewed was the Committee *for* Home Affairs with the report published in June 2019. The third Committee to be reviewed was the Policy & Resources Committee with the report published December 2019.
- 1.3 One of the questions in the review related to the Code of Conduct for Members of the States. Committees and their staff were asked to what extent they believed the Members' Code of Conduct supports or is effective in relation to good governance.

Findings from the review of the Committee *for* Health & Social Care

- 1.4 The response from the review of the Committee *for* Health & Social Care⁴ was as follows:

8 *To what extent does the Members' Code of Conduct support good governance*

1	2	3	4	5
1	7	2		

Low scores reflect lack of confidence in the Code of Conduct as a mechanism for supporting good governance.

- *The Code of Conduct can't be the centrepieces of good governance but does need to be there when things go wrong*
- *The panel is a bit toothless*
- *Personal integrity, peer pressure and public issues provide the right sort of checks and balances*
- *Induction training should cover ethics and values*

⁴ Meeting the challenge: towards stronger governance - Governance Review of the Committee *for* Health and Social Care www.gov.gg/CHttpHandler.ashx?id=119135&p=0

Findings from the review of the Committee for Home Affairs

- 1.5 The response from the review of the Committee for Home Affairs⁵ was as follows:

To what extent do you think the Members' Code of Conduct is effective in ensuring the highest standards of good governance?

Every interviewee was critical of the operation of the current Code of Conduct, to some extent. Some Committee member interviewees commented that it should not be necessary to invoke the Code by making complaints and that it should only ever need to be used in serious cases. Staff highlighted the widely held perception that the Code was not implemented fairly or in a suitably confidential manner. Others expressed views that the Code of Conduct panels are biased in favour of Committee members and that the existence of strong personal alliances, and even familial connections, between panel members and members of this or other Committees, undermined the confidence of staff and Deputies in the ability of the Code of Conduct to hold Committee members to account.

Findings from the review of the Policy & Resources Committee

- 1.6 The response from the review of the Policy & Resources Committee⁶ was as follows:

4.5 The Code of Conduct for Deputies

Responses, by interviewees, to the question about the extent to which the Code of Conduct for Deputies helped support good governance were consistently negative. One example of a number of comments was that the problem is not so much with Code but the processes that enforce the Code.

It was thought that the Code of Conduct process is sometimes abused by those involved in trivial disputes. There was a consistent view that the behaviour demonstrated by some, but by no means all, Deputies is the most challenging experienced in recent years.

Some interviewees were of the view that, when behaviours are toxic, changing the Code of Conduct will not make a difference. The Code of Conduct is under review and it is hoped that a new approach might improve matters, but most interviewees were clearly of the view that politicians need to take responsibility for their own behaviour, adhere to the highest standards and exercise self-

⁵ Meeting the challenge: towards better governance - The Committee for Home Affairs: Governance Review www.gov.gg/CHttpHandler.ashx?id=119832&p=0

⁶ Strengthening governance: Policy & Resources Committee - Report of a Governance Review of the Policy and Resources Committee www.gov.gg/CHttpHandler.ashx?id=122332&p=0

discipline.

1.7 Under Section 6 of the Report, Recommendations', it stated:

6.3 Behaviours

- *Clarify the roles and responsibilities of politicians and civil servants, including the complex web of accountabilities.*
- *Consider implementing a stronger protocol, including a set of standards of behaviour, which new and returning Deputies will be asked to sign up to.*
- *Speed up the development of new approaches to redesign and enforce the Code of Conduct for Deputies.*
- *Introduce a CPD approach to the continuing development of both Deputies and civil servants and make completion of the programme a pre-requisite of continuing to hold, or taking up, any senior political role.*

The History of the Code of Conduct for Members of the States of Deliberation

1.1 The Code of Conduct was established by the States of Deliberation on 28th September 2006 further to a policy letter from the then House Committee. The Code has been amended on eight occasions since it has been established further to the following reports:

Resolution	Billet	Title
28.09.2006	XVI	House Committee Code of Conduct for Members of the States of Deliberation
30.09.2009	XXI Vol 2	States Assembly and Constitution Committee Amendments to the Reform (Guernsey) Law, 1948, as amended, The Rules of Procedure of the States of Deliberation, the Rules Relating to the Constitution and Operation of States Departments and Committees and the Code of Conduct for Members of the States of Deliberation
27.05.2011	VIII Vol 2	States Assembly and Constitution Committee Amendments to the Reform (Guernsey) Law, 1948, as amended; the Rules of Procedure of the States of Deliberation; the Rules Relating to the Constitution and Operation of States Departments and Committees; the Code of Conduct for Members of the States of Deliberation
30.05.2012	XII	States Assembly and Constitution Committee Declaration of Members' Interests
30.07.2013	XV Vol 2	States Assembly and Constitution Committee Amendments to, the Rules of Procedure of The States of Deliberation, the Rules relating to the Constitution and Operation of States Departments and Committees, the Code of Conduct for Members of the States of Deliberation
29.04.2015	VI	States Assembly and Constitution Committee The Rules of Procedure of the States of Deliberation, The Rules Relating to the Constitution and Operation of States' Departments and Committees and Related Matters,
17.03.2016	VII Vol II	States' Assembly and Constitution Committee Code of Conduct - Submission of Reports to the States
28.06.2018	XVIII	States' Assembly and Constitution Committee Amendments to the Code of Conduct for Members of the States of Deliberation

- 1.2 In 2009, the Committee proposed amendments to the Code of Conduct for Members of the States of Deliberation as follows:
- confirming that ‘confidential information’ includes minutes and other papers circulated to members of departments and committees
 - extending the sanctions which a Code of Conduct Panel may recommend to including removal from a particular office
 - determining that the States may caution a Member who has refused a caution offered by a Code of Conduct Panel
 - making provision for complaints relating to members of the States Assembly and Constitution Committee to be referred to a special panel rather than to the Chief Minister
 - applying the provisions relating to the declaration of gifts etc. to include those received from companies or organisations in which Members or their close family have a controlling interest
 - extending the meaning of “close family” to include cohabitees insofar as it relates to the declaration of gifts and hospitality received
 - excluding mediation from the code of conduct process.
- 1.3 In 2011, it was recommended to remove the provision that a Member under investigation may appoint one of the members of the Investigation Panel. This proposal was lost (Pour: 19; Contre: 22; Abstained: 1; Not Present: 5). In the absence of a Hansard Report (introduced in 2012), it is unclear why the proposal was defeated.
- 1.4 In 2012, the States approved a new form for the Declaration of Members Interests with Explanatory Notes annexed thereto and consequential minor amendments to the Code of Conduct for Members of the States of Deliberation.
- 1.5 In 2013, the code was clarified as paragraph 51 that the Code of Conduct applies to electronic communications.
- 1.6 In 2015, amendments were made under the following headings:
- Rule 33: Procedure for Complaints;
 - New Rule: Communications by the Panel;
 - New Rule: Confidentiality of correspondence between States’ Members and committees.
- 1.7 In 2016, it was amended to make it clear whose recommendations are to be submitted to the States in respect of a complaint against a Member of the States i.e. it is the recommendations of the Panel, not the States’ Assembly & Constitution Committee.
- 1.8 In 2018, changes were made to the Code to enable States’ Members to make

arrangements for correspondence and matters relating to States business to be organised by a private office. It also enabled anonymous complaints to be considered in exceptional circumstances and made tweaks to wording to align the Code to the UNCAC International Code of Conduct for Public Officials.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

2nd March, 2020

Dear Deputy St Pier,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4.(2) of the Rules of Procedure of the States of Deliberation and their Committees, the States' Assembly & Constitution Committee requests that the Propositions be considered at the meeting of the States of Deliberation scheduled for 22nd April, 2020.

The propositions ask the States to agree that the position of Commissioner for Standards should be established to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation and to investigate allegations of abuse of privilege. The Committee believes it will be beneficial for work to begin during this political term to progress this workstream, to assist in the position being introduced as soon as possible in the next political term.

Yours sincerely,

N. R. Inder
President

J S Merrett
Vice-President

P T R Ferbrache
J P Le Tocq
E A McSwiggan