

**CODE OF CONDUCT****COMPLAINT AGAINST DEPUTY C LE TISSIER****FINDINGS OF THE NEW INVESTIGATION PANEL****Introduction**

1. This is the report of the findings of the new investigation panel set up to consider an appeal lodged by Deputy Christopher Le Tissier against the decision of the original investigation panel set up under the terms of the Code of Conduct for Members of the States of Deliberation (“**the Code**”) to consider a number of complaints lodged against Deputy Le Tissier.
2. The appeal was brought on four grounds being: bias (a. apparent and b. pre-determination); procedural irregularities in the panel hearing; announcement of the decision; and sanction imposed.
3. The new investigation panel comprised Mr Allister Langlois, Deputy Chairman, States’ Members’ Conduct Panel, Advocate Louise Hall and Mr Stephen Trevor. In this report, references to **we**” and “**our**” are to the new investigation panel. References to “**the previous panel**” are to the original investigation panel.

**Summary**

4. Our report runs to 25 pages. Our main conclusions on the grounds of appeal and our recommendations are summarised below.

*Bias:*

- That the members of the previous panel did not have apparent bias against Deputy Le Tissier either individually or collectively.
- That the previous panel made its final decision with an open mind, taking into account relevant issues. It did not predetermine the matter in the sense of bias, as alleged.

*Procedural irregularities in the panel hearing*

- That Deputy Le Tissier was not given the opportunity to comment on comments made orally by the seven complainants to the previous panel prejudiced Deputy Le Tissier's right to a fair hearing. However, having provided the notes of the previous panel's meeting to Deputy Le Tissier, having ourselves heard from Deputy Le Tissier, and having made our own further investigations to address the prejudice caused to him by this procedural irregularity, we reached our own conclusion that he had acted in breach of the Code in a number of serious respects (see paragraphs 96 to 110 below), including that his Twitter posts had not made clear that he was a States Deputy, some Twitter posts deceitfully suggested that they were not written by a States Deputy, he used offensive language, showed disrespect for others' opinions and had brought the States into disrepute by his actions.
- That the previous panel did not predetermine the issues before it in a manner that was inconsistent with Deputy Le Tissier's own admissions.
- That the matter of appropriate sanction is a matter for each investigation panel, convened under the Code, to determine alone and that that it was irregular for the previous panel to ask the complainants what they thought the sanction should be.

*Announcement of the decision*

- That the previous panel's report being placed briefly in the public domain was unfortunate but not did not prejudice Deputy Le Tissier's right to a fair hearing.

*Sanction imposed*

- That the previous panel's findings demonstrate that it took account of the seriousness of the matter before it; however, we find that the previous panel's failure to consider the sanction by reference to objective criteria or a scale of seriousness was prejudicial to Deputy Le Tissier. Having considered the nature of the breaches, and having regard to the objective factors listed at paragraphs 113 to 120, our recommendation differs from the recommendation of the previous panel.
5. Our recommendation to the States' Assembly & Constitution Committee is that Deputy Le Tissier should be suspended from all States' service for a period of one year without payment.

**Complaints and self-referral to previous panel**

6. In March 2021 seven people each lodged a complaint under the Code asserting that the actions of Deputy Christopher Le Tissier on social media over a period of time had breached various sections of the Code. The seven people were Mr Andrew Ozanne O.B.E, Mr Nigel de la Rue,

Dr Gilly Carr, Mrs Jenny Tasker, Mr John Roche, Ms Sarah Griffith M.B.E, and Ms Grace Ruddy. Deputy Le Tissier also referred himself to the Conduct Panel for investigation.

7. The seven complainants asserted that a number of sections of the Code had been breached. The sections cited by one or more complainants were sections 3, 6, 7, 8, 9 and 11.

8. Section 3 is in the following terms:

*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.*

9. Section 6 is in the following terms:

*Members shall observe the following general principles of conduct for holders of public office -*

- ***Selflessness***                      *Members shall take decisions solely in terms of the public interest. They shall not do so in order to gain financial or other material benefits for themselves, their family or friends, their business associates or any voluntary or charitable organisation with which they are involved.*
- ***Integrity***                              *Members shall not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*
- ***Objectivity***                            *In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members shall make choices on merit, and at no time improperly discriminate against or afford undue preferential treatment to any group or individual.*
- ***Accountability***                      *Members are accountable for their decisions and actions to the States and the public and must submit themselves to whatever scrutiny is appropriate to their office.*
- ***Openness***                              *Members shall be as open as possible about all decisions and actions that they take and must not knowingly deceive or mislead. They shall*

*give reasons for their decisions and restrict information only when the wider public interest, or statutory provision, clearly demand.*

- **Honesty**            *Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*
  
- **Leadership**        *Members shall promote and support these principles by leadership and example.*

10. Section 7 is in the following terms:

*Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest. After leaving their official positions, they will not take improper advantage of their previous office.*

11. Section 8 is in the following terms:

*Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Deliberation and never undertake any action which would bring the States, or its Members generally, into disrepute.*

12. Section 9 is in the following terms:

*Members shall at all times treat other Members, civil servants and members of the public with respect and courtesy and without malice, notwithstanding the disagreements on issues and policy which are a normal part of the political process.*

13. Section 11 is in the following terms:

*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.*

### **Original panel's decision**

14. Having reviewed each complaint, the Chairman of the States Members' Conduct Panel, The Very Rev'd John Guille, determined that prima facie evidence had been submitted to support it. The previous panel was therefore established as an investigation panel to consider all the complaints and Deputy Le Tissier was asked to respond to the complaints.

15. The previous panel comprised The Very Rev'd John Guille (as Chairman), Advocate Russell Clark and Mrs Sandra James M.B.E.
16. Deputy Le Tissier provided a written response to the complaints. On 5<sup>th</sup> March 2021 he stated it would be appropriate to self-refer, and on 12<sup>th</sup> March 2021 he provided a response to the complaints which we deem to be the self-referral (“**response/self-referral**”).
17. Deputy Le Tissier was afforded, in accordance with the procedures for hearing complaints under the Code, the opportunity to present his case in person to the previous panel, which he took. All the complainants were afforded the opportunity to appear individually in person to speak about their complaints, which they all took. Dr Carr appeared by video link.
18. The meeting of the previous panel was held on 23<sup>rd</sup> March 2021. The seven complainants and then Deputy Le Tissier each appeared separately before the previous panel.
19. The previous panel’s report was produced on 29<sup>th</sup> March and circulated to all the parties for their information. The report recommended that Deputy Le Tissier be expelled from the States. As such, the matter had to be put to the States for their consideration. The report was therefore sent to the States’ Assembly & Constitution Committee for it to put the matter to the States in accordance with section 39 of the Code.
20. Later on 29<sup>th</sup> March Deputy Le Tissier’s Advocate notified the Presiding Officer and the Secretary to the Panel that his client would be lodging an appeal under section 41 of the Code against the decision.

### **Appeal and new panel’s methodology**

21. The appeal was lodged with the Presiding Officer on 27<sup>th</sup> April. Perfected grounds of appeal were sent on 27<sup>th</sup> May. The four grounds of appeal are:
  - A. Bias (a. apparent bias and b. pre-determination)
  - B. Procedural irregularities in the panel hearing (exclusion from part of the hearing, pre-judgement, and consultation with complainants as to the sanction they would wish to see imposed)
  - C. Announcement of the decision
  - D. Sanction imposed.
22. In the event of an appeal by a member against a decision from an investigation panel convened under the Code, Section 41 of the Code requires a new investigation panel to be convened 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.

23. Deputy Le Tissier requested that he be permitted to appear in person before the new Panel with his legal representative, namely Advocate Andrew Ayres, in attendance. The Code does not contain any provisions which restrict the new investigation panel from hearing a member in person. We therefore agreed to this request for the purpose of hearing any comments or representations that Deputy Le Tissier wished to make arising from his grounds of appeal only.
24. In accordance with legal authorities (see paragraph 30 below), we undertook our own investigation of circumstances relevant to the grounds of appeal.
25. In producing our report, we considered all the documents from the original complaint matter – being the seven complaints, the response/self-referral from Deputy Le Tissier, notes of the meeting of the previous panel, the report of the previous panel, the notice of appeal, a statement from Deputy Mark Helyar and legal cases and submissions from Deputy Le Tissier’s Advocate. We also took into account the comments and representations made to us by Deputy Le Tissier and the results of our own investigation.

### **Notice of Appeal – Grounds A - D**

26. Deputy Le Tissier’s appeal alleged that, in the previous panel’s determination, procedural irregularities had arisen in four respects. Those are covered under A to D below together with the steps we took and our findings in each area.

#### ***A. Bias***

##### **a. Apparent Bias**

27. In his grounds of appeal, Deputy Le Tissier has alleged apparent bias on the part of two members of the previous panel, namely Mrs Sandra James M.B.E. (“Mrs James”) and Advocate Russell Clark (“Advocate Clark”).
28. In the case of Mrs James, Deputy Le Tissier has submitted that her affiliation/membership with the Guernsey Partnership of Independents was, in itself, sufficient to give rise to the appearance of bias and that this appearance of bias was compounded by the fact that Mrs James was unsuccessful in her bid to be elected as a Deputy as a member of that party.

29. In the case of Advocate Clark, Deputy Le Tissier has submitted that his promotion of Gavin St Pier, the founding member of the Guernsey Partnership of Independents, to various third parties and his support of that group, in itself, gave rise to an appearance of bias.

*Legal authorities*

30. Deputy Le Tissier relied on a number of legal authorities in support of his submissions from which we note the following legal tests for establishing apparent bias:

- (1) "...a real danger of bias on the part of the relevant tribunal member in question, in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him" R v Gough [1993] HL 2 All ER 72. The "real danger" requires the question to be considered in terms of a possibility rather than a probability of bias;
- (2) "A fair and public hearing within a reasonable time by an independent and impartial tribunal" – European Convention on Human Rights Article 6 – where the question is whether 'objectively justifiable' doubts as to impartiality existed. The court has to decide whether, on an objective appraisal, the material facts give rise to a legitimate fear that the judge might not have been impartial. We note that the 'legitimate fear' test was adopted in the Guernsey case of McGonnell v the United Kingdom 8 February 2000; and
- (3) "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was bias. It must then ask whether the circumstances would lead a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased" – R v Medicaments No 2 [2001] 1 WLR 700.

31. We were prepared to note the Guide to Judicial Conduct included in Deputy Le Tissier's legal authorities, in particular sections under the heading 'Political Activities' as follows:

*"Fee paid judges (legal) - While there is no general prohibition on political activity in statute or Terms and Conditions, fee-paid office holders are expected to refrain from any political activity which would conflict with their judicial office or be seen to compromise their impartiality having regard, for example, to the approach of the Court of Appeal in the case of Locabail (UK) Ltd v Bayfield properties Ltd (2002) QB 451."*

*“Fee paid Non-Legal Members and Magistrates - Although there is no prohibition on political activity, non-legal members and magistrates who are involved in political activity should guard against any perception that their involvement is in their judicial capacity.”*

32. We noted the finding in Locabail (at paragraph 25) that *“It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the judge’s ... previous political associations”* (emphasis added).
33. We asked Advocate Ayres how he considered “previous political associations” applied in this case and he explained his view that it related primarily to associations predating the person’s judicial or decision-making role.

*Relevant circumstances*

34. In considering this ground of appeal, and in accordance with the test in R v Medicaments (paragraph 30(3) above), we have taken into account the circumstances which have a bearing on the suggestion that Mrs James and/or Advocate Clark were biased.
35. In support of his appeal on this ground Deputy Le Tissier produced a statement volunteered by Deputy Mark Helyar who is, amongst other current and former positions held, a sitting Deputy and founder member of the Guernsey Party (“**Deputy Helyar**”).
36. Deputy Le Tissier was, at the time of the events complained of, also a member of the Guernsey Party.
37. Deputy Helyar’s evidence is, in summary, that it was well known to Deputy St Pier personally, and the members of Deputy St Pier’s party (that is, the Guernsey Partnership of Independents) and his supporters, that the Guernsey Party and its members would, in October 2020, be “king makers” in relation to the appointment of the president of the Policy & Resources Committee. This was the result of a meeting on 11<sup>th</sup> October 2020 between Deputy St Pier, Deputy Helyar and two other deputies. At that meeting Deputy Helyar made clear that, although in his view, none of the members of the Guernsey Party would vote for Deputy St Pier in the forthcoming election, they might support an alternative candidate. Deputy Helyar received an e mail from Advocate Clark on 13<sup>th</sup> October 2020 which concluded as follows *“You will want to extract as much leverage as possible for the benefit of the GP [Guernsey Party] (and so you should) but for the good of the Island please support GStP [Gavin St Pier] on Friday”*. As a result of the

e mail, Deputy Helyar met Advocate Clark and a third person later on the same day to discuss the matters raised in the e mail. Deputy Helyar refers in his statement to being aware of “*at least one other deputy lobbied by Advocate Clark in this way*”. Deputy Helyar also states that Deputy Ferbrache was the “*stated choice of my party members including Deputy Le Tissier*”.

38. From our investigation we have established that:

- Mrs James was a member of the Guernsey Partnership of Independents and stood unsuccessfully as a candidate in the October 2020 election;
- Mrs James resigned from the Guernsey Partnership of Independents after the election and before she was re-appointed to the States’ Members’ Conduct Panel;
- Advocate Clark proposed a member of the Guernsey Party who was ultimately successful in the 2020 election, namely Deputy Nicholas Moakes;
- Advocate Clark declared a potential conflict of interest when first asked to sit on the Panel as follows – “I should declare that I am on good terms with Ms Griffiths and Mr de la Rue but do not believe that my association would prevent my remaining objective. Ms Griffiths was married to my former English teacher and Mr de la Rue ran Barings which was a client of mine.”;
- Mrs James had stood down from the Panel on 12<sup>th</sup> August 2020 on the basis that she was standing as a candidate in the 2020 election. She was unsuccessful in the election and was reappointed to the Panel on 8<sup>th</sup> November 2020.
- Mrs James did not declare a conflict in relation to the complaints about Deputy Le Tissier;
- Information on all candidates for the 2020 Guernsey election was readily available;
- Under section 34 of the Code, the member complained against is “*provided with the opportunity to challenge the membership [of the panel] within three days if [he] considers that the Panel Member has a direct or indirect personal interest in the matter.*”. Deputy Le Tissier did not raise any objection within that time;
- Section 23 of the Code of Conduct includes the provision that “*...Members of the States and their spouses shall not be eligible to serve on the Panel.*”

*Mrs James*

39. Applying the law to the circumstances in relation to Mrs James we found that, by standing for election in October 2020 as a member of the Guernsey Partnership of Independents, Mrs James’ affiliation with or membership of the Guernsey Partnership of Independents was not of itself, sufficient to compromise her impartiality or that of the previous panel. In making this finding, we noted that:

- (A) Deputy Le Tissier submitted that Mrs James’ impartiality was compromised because of her involvement with a different political party from that of which he is a member. Mrs James resigned from the Guernsey Partnership of Independents after standing unsuccessfully in the October 2020 election, and before being reappointed to the Panel on 9 November 2020, and therefore before her appointment to the previous panel. We see this as a form of “previous political association” of Mrs James which, in Locabail, is characterised as very unlikely to give rise to a sound objection based on appearance of bias. Having stood down from the Panel on 12 August 2020, there could be no perception amongst the Guernsey public that Mrs James was involved with the Guernsey Partnership of Independents in her capacity as a panel member. We do not therefore consider that the circumstances overall would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, of bias on the part of Mrs James (and therefore nor on the part of the previous panel as a whole as a result, as Deputy Le Tissier alleged).
- (B) Whilst the Code prohibits members of the States and their spouses from being eligible to serve on the panel, it does not prohibit former members of the States or unsuccessful candidates from being members of the panel;
- (C) The States did not, in its amendments to the Code in August 2020, disqualify unsuccessful candidates from being members of the panel;
- (D) Notwithstanding its findings at (A) to (C) above, we find that the fact of Mrs James’ having stood for election as a Guernsey Partnership of Independents candidate was available to Deputy Le Tissier at the time of the original panel hearing, enabling him, had he wished to do so, to object to her membership of that panel.

*Advocate Clark*

40. Applying the law to the circumstances in relation to Advocate Clark, we do not find that his promotion of Gavin St Pier, the founding member of the Guernsey Partnership of Independents, to various third parties and his support of that group, in itself, gave rise to an appearance of bias sufficient to compromise his impartiality for the following reasons:

- (A) The basis for perceived bias on Advocate Clark’s part is that he involved himself in lobbying a politician or politicians as to the choice of the next Chief Minister. The concern appears to be that Advocate Clark would be inclined to bias against Deputy Le Tissier based solely on him being a member of the Guernsey Party on the basis that the Guernsey Party had supported Deputy Ferbrache’s candidacy for President, Policy & Resources Committee over Deputy St Pier’s. We noted that it was conceded on Deputy Le Tissier’s behalf that the argument on appearance of bias is less forceful in relation to Advocate Clark than to Mrs James.

(B) In order to make out an appearance of bias, the relevant circumstances ascertained by us would need to demonstrate a real possibility of bias on the part of Advocate Clark. Adopting wording from R v Gough, this bias would be “*in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him*”. We note Deputy Helyar’s evidence that Advocate Clark wrote to him by e mail and subsequently met with him to ask him to support Deputy St Pier in the election for Chief Minister. Deputy Helyar’s evidence was that following the October 2020 election there were two candidates for the role of President of the Policy & Resources Committee, Deputy St Pier and Deputy Ferbrache. In the e mails produced by Deputy Helyar, Advocate Clark expressed a preference for Deputy St Pier, apparently on behalf of a business body but the inference from the e mails is that it was also his own view. We found that this was done in a balanced way, recognising strengths of both candidates. The Guernsey Party ultimately supported Deputy Ferbrache and he was successful.

(C) We considered the assertion of bias on the part of Advocate Clark, in the context of Locabail, to be akin to a “previous political association” and very remote and therefore highly unlikely to form the basis of a sound objection based on appearance of bias.

(D) We also noted that Advocate Clark had in fact acted as the proposer of a member of the Guernsey Party, and did not consider that the circumstances overall would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, of bias on the part of Advocate Clark.

#### b. Pre-determination

41. The notice of appeal asserted that the previous panel had shown bias against Deputy Le Tissier because it had pre-determined its decision. This was based on the fact that the notes of the previous panel’s meeting on 23<sup>rd</sup> March record some reference to the appropriate penalty before the previous panel had met the complainants and Deputy Le Tissier to obtain their comments. Deputy Le Tissier submitted that this amounted to a gross and obvious pre-determination which was a form of bias and supported an allegation of apparent bias.
  
42. We do not accept this. The part of the 23<sup>rd</sup> March meeting note on which Deputy Le Tissier’s submission is based reads: “*Pre-discussion - Clearly in favour of penalty more serious than reprimand*”. Although the previous panel had not met Deputy Le Tissier at this point, it had received his response/self-referral in which he wrote that he would “*like to apologise to the Panel both for my actions and for engendering the review process and bringing the States into disrepute*” and also “*I should have been aware that my actions fell below the required standard expected of a Deputy*”.

43. Although in his grounds of appeal, Deputy Le Tissier asserts states that he “...*did not expressly admit having breached any part of the Code of Conduct*”, we consider that the response/self-referral can reasonably be interpreted as an express admission of breaching section 8 of the Code. Section 8 requires that “*Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of the States of Deliberation and never undertake any action which would bring the States, or its Members generally, into disrepute*” (emphasis added). We believe it would have been reasonable for the previous panel to construe the wording of the response/self-referral as an admission by Deputy Le Tissier of a breach of section 8 of the Code of sufficient seriousness to bring the whole States (i.e. not just himself) into disrepute, warranting a sanction at the higher end of the scale (i.e. beyond a reprimand).
44. Further, we do not consider that the single comment on this issue in the meeting notes (“*Clearly in favour of penalty more serious than reprimand*”) evidences in itself that the previous panel had closed its mind to what else Deputy Le Tissier might say, or where its investigation might lead, or meant that it had predetermined its final decision on the matter or predetermined the actual sanction to be imposed. Accordingly, this ground of appeal is rejected.

#### ***B. Procedural irregularities in the panel hearing***

45. The notice of appeal asserted that Deputy Le Tissier was not given a fair hearing because of procedural irregularities in the meeting with the original panel. Specifically it was asserted that:
- (A) the complainants were afforded the opportunity to repeat, enlarge upon and/or alter their complaints verbally before the previous panel. Deputy Le Tissier had been excluded from that part of the hearing and was not informed of this, only finding out by chance during the part of the hearing in which he was involved. This was in contravention of the principles of both natural justice and fairness and also of the terms of section 34 of the Code of Conduct which provides that 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*” (we deal with this under the heading “**Procedural Exclusion**”);
- (B) the previous panel, both in pre-judging whether Deputy Le Tissier had breached any parts of the Code and in discussing the appropriate sanction before hearing from the complainants or from Deputy le Tissier himself, acted in breach of the principles of fairness and natural justice (we deal with this under the heading “**Procedural Pre-Judgement**”);
- (C) the previous panel solicited the views of the complainants as to what sanction they would wish to see imposed before Deputy Le Tissier was permitted to address the panel and

before a formal determination as to any breach(es) had been made, contrary to principles of natural justice and fairness (we deal with this under the heading “**Procedural Sanction**”).

*Procedural Exclusion*

46. It was submitted on behalf of Deputy Le Tissier that the only way in which this procedural irregularity would be overcome was by means of a re-hearing of his case before a different panel; however, as the Code does not provide for a re-hearing, it was also submitted that an acceptance of the argument that Deputy Le Tissier was deprived of a fair trial must result in the setting aside of the previous panel’s decision.
47. We find that the procedure adopted by the previous panel was in contravention of section 34 and that it may have deprived Deputy Le Tissier of a fair hearing. This is not because he should have been permitted to attend the previous panel’s meetings with the complainants – that was not necessary or appropriate in our view – but because they were able to expand on their written complaints, and to some extent did so, and Deputy Le Tissier was not able to comment on any additional points raised.
48. However, we considered that this would be remedied by giving Deputy Le Tissier the opportunity to address us on the additional points made orally by the seven complainants to the previous panel at the 23<sup>rd</sup> March 2021 meeting. We therefore agreed that Deputy Le Tissier should be given the opportunity to address us with the benefit of having seen the notes taken by the Secretary during the 23<sup>rd</sup> March 2021 meeting, summarising what the complainants had said orally, and the previous panel’s findings (those also being the extent of our own knowledge of the complaints’ oral points). Deputy Le Tissier took the opportunity offered and went through in detail all the points which he wished to make and had not been able to address at the meeting with the previous panel, as set out below.
49. Deputy Le Tissier noted from the notes of the meeting on 23<sup>rd</sup> March 2021 the comment attributed to Mr Ozanne that a “*tweet from the States Meeting was a lie by his own admission*”., Deputy Le Tissier categorically denied admitting any such ‘lie’. He pointed out that the tweet was sent at 1320 that day and therefore the States would have been in their lunch recess and, in any event, that meeting had been held online and therefore every States Member was at home then.
50. We noted that the oral comment attributed to Mr Ozanne had not appeared in his original written complaint nor the script from which he read at the previous panel meeting, which he provided to the previous panel in hard copy at the meeting. However, the previous panel had

not made any finding on that point. We therefore decided that his lack of opportunity to comment on the point at the original meeting was not prejudicial.

51. Deputy Le Tissier said that the reference in the notes of the first meeting to Mr Ozanne being a sitting member of the Committee *for* Home Affairs was wrong and cast doubt on the notes as a whole. We noted that the reference was obviously wrong and the report itself was accurate on Mr Ozanne's role as a former member.
52. Deputy Le Tissier said that Mr Ozanne appeared to have been given preferential treatment by being able to make a further written submission to the panel that was appended to the notes. The Secretary to the Panel was able to confirm that the appended noted comprised the script from which Mr Ozanne read to the previous panel and had been provided by him when he appeared before it.
53. Deputy Le Tissier said that the notes of the meeting showed that Mrs Tasker had said that he was anti former Deputies and he had not been able to address that issue. He denied that was the case and said that there was no evidence to support the claim. We noted that Deputy Le Tissier had sent a tweet which included the words "Bitter ex Deputies". Nevertheless, the original panel findings had not included reference to this point and his lack of opportunity to comment on it at the original meeting was not prejudicial.
54. Deputy Le Tissier noted that Mr Roche had said that he was anti-immigration but that was wrong. He was in favour of immigration. We accepted that Deputy Le Tissier had not written anything directly anti-immigration in the tweets complained of. However, we considered that the average reader might infer that he held an anti-immigration view from the wording of some of them, with the emphasis on "local", such as "*you are not local. Peter Ferbrache is. Gavin St Pier is not. Just leave Guernsey alone ...*" and "*If you have the stamp, as I do then I am true Guernsey. Nil, zero, nada, nul connections with the UK*".
55. Deputy Le Tissier took issue with the comment in the notes that, in Mr Roche's view, he had used unacceptable language. He said that the language he had used could be heard every day on television and was widely used. He did not swear – the words and phrases in the tweets were just colloquial terms.
56. We noted the language objected to, being "*Bollocks*" and "*wet dream*". We believe that, as a Member of the States, Deputy Le Tissier has a duty not to use language which might offend or bring the reputation of the States into disrepute. He had admitted that he had sent all the tweets concerned and, while Deputy Le Tissier might regard the words and phrases he had used as

inoffensive, they had offended some of the complainants who we consider to be representative of the general public.

57. Deputy Le Tissier took issue with Mr Roche referring to the tweets being sent “over a period”. We noted that, although they had been deleted later, the complainants had provided tweets which had been sent on various days over a period of several months, from 21<sup>st</sup> November 2020 until 2<sup>nd</sup> March 2021. We were therefore satisfied that the actions by Deputy Le Tissier which had led to the complaints could not be regarded as a one-off.
58. Deputy Le Tissier noted that the Code stated that a complaint founded solely upon a media report would not normally be treated as a substantiated allegation. He asserted that Ms Griffith had not seen the tweets relating to Dr Carr and must have founded her complaint solely on a media report. However, we noted that Ms Griffith had provided screenshots of those tweets and had therefore clearly seen them. In any event Dr Carr and others had seen them.
59. Deputy Le Tissier contested the claim by Ms Griffith that he had hoodwinked people by sending one tweet from a restaurant and a second tweet during a States Meeting suggesting that he was working at home, both of which implied that he was not a Deputy. He reiterated that he sent the second tweet during the lunch recess and that he was at home when he sent it because the States were meeting online. From our own investigation we noted that the December 2020 States Meeting was a physical sitting, not a meeting online. We further noted that Deputy Le Tissier had sent a tweet on the 14<sup>th</sup> December from La Piazza restaurant from which the reasonable inference could be drawn that he was not a Deputy, being “*went for Xmas lunch at La Piazza Trinity Sq. The place was heaving with Deputies ...*”. We noted that the point at issue was that the tweets read as if the sender were not a Member of the States. It did not therefore matter from where they had been sent or when: the inference was the same.
60. Deputy Le Tissier disputed Dr Carr’s assertion that he had attacked all non-locals. He said he had been making specific points about her comments about the treatment of certain police officers during World War II. He argued that he had not attacked all non-locals. Deputy Le Tissier denied that he had ever used the phrase ‘*pure bred locally*’ in his tweets, as alleged by Dr Carr, and argued that he would have challenged her on this point.
61. We noted that the reference in the notes to “pure-bred” could reasonably be regarded as a shorthand by Dr Carr of what Deputy Le Tissier had sent in a tweet on 1<sup>st</sup> January 2021 about local status (“*You are not local ...[etc.]*”). That tweet was included in the tweets complained of in the original information supplied by more than one of the complainants and therefore it could not be regarded as new material.

62. Deputy Le Tissier said he would have wanted to challenge Dr Carr on what she meant when she said he was guilty of “trolling” people by his tweets, not only in terms of the meaning of the word but also whether it applied to what he had written.
63. We noted that the concept of trolling had not been covered in the findings as something which Deputy Le Tissier had done to breach the Code. The expression was in Dr Carr’s letter of complaint and Deputy Le Tissier had the opportunity to comment on it; we do not accept that there should have been a procedure under which he would have the opportunity to question Dr Carr on what she meant by it.
64. Deputy Le Tissier disagreed with Dr Carr’s suggestion that he was anti-women. We noted that she had been speculating on his possible motivation for the tweets attacking her. We decided to discount this point, noting that the previous panel had not made a finding that Deputy Le Tissier was anti-women or any reference to that.
65. Deputy Le Tissier took issue with Ms Ruddy’s point that “*lots of people*” were shocked by his behaviour: it was simply her opinion. He said that lots of people regarded this whole matter as an internal States issue. We accepted Deputy Le Tissier’s point that Ms Ruddy had been expressing her opinion.
66. Deputy Le Tissier questioned how Ms Ruddy could have seen the tweets about “non-local” people because they had been deleted. However, we noted that he offered no proof that Ms Ruddy had not seen them before they were deleted, and that even if she had not personally seen them, others had done.
67. This concluded Deputy Le Tissier’s specific comments in the additional material raised by the seven complainants at the 23<sup>rd</sup> March meeting which he said rendered the process unfair.
68. Deputy Le Tissier went on to say that the statement which had been provided by Deputy Mark Helyar in support of his appeal also went to the issue of fairness.
69. Deputy Le Tissier also told us that, after he had been elected to the States and former Deputies had tweeted against him, he had changed the address of the account to “The Pirate@radiosutch299”. Shortly after he had changed the address from “The Pirate@radiosutch299” to “airbus666@radiosutch299”. We pressed Deputy Le Tissier on the timing of this change and he said it was after a few days or a week or up to a fortnight.

70. Deputy Le Tissier told us that he had been unaware that all tweets which had been posted under the old name would still be visible under the new name.
71. Deputy Le Tissier disputed that either address was anonymous as his Twitter account was linked to his YouTube account and he could be identified from that.
72. Deputy Le Tissier said that he believed that he had made the change to “The Pirate” in about February 2021. It had not been under that name for very long, only a couple of weeks. He thought that the exchange with Dr Carr and the tweet sent from La Piazza would have been sent originally from “ChrisLT”. We asked Dr Carr whether she could corroborate that she had originally seen the tweet as from “ChrisLT” but she did not have a definite recollection.
73. As Deputy Le Tissier insisted that his recollection about having originally tweeted as “ChrisLT” was clear, and as he is aware how serious it would be to mislead an investigation panel, we decided to accept his recollection on this point.
74. We noted that “ChrisLT” did not necessarily identify its user as Christopher Le Tissier and did not say that the user was a Deputy. While it may not have been anonymous in the strictest meaning of the word, the user’s identity was not immediately obvious from the tweets.
75. Deputy Le Tissier said that he had tried to download his tweets because he wanted to keep some of them for his records and otherwise they would have been deleted by Twitter in due course. However, there were too many for the download to work. He had therefore had to delete a portion because there had been thousands. In the end, he had suspended the account and then deleted it so he did not have any of them anymore. We noted that this hindered his ability to respond to some of the points about what he had tweeted and under which account name.
76. Deputy Le Tissier said that he had been asked by the previous panel if he was the Twitter user “beanjar”, which he was not. This was a new issue of which he had no prior warning. Although a more general question as to any other Twitter accounts would have been appropriate, we accept that this question should not have been put to him. However, Deputy Le Tissier was able to give an immediate, negative factual answer so he does not appear to have been prejudiced by it and there was no indication that it had affected the previous panel’s decision.

#### *Procedural Pre-judgement*

77. It was submitted on behalf of Deputy Le Tissier that the previous panel, both in pre-judging whether he breached any parts of the Code and in discussing the appropriate sanction before

hearing from the complainants or from himself, acted in breach of the principles of fairness and natural justice. We find that the previous panel made no predetermination of the issues before it that were inconsistent with Deputy Le Tissier's own admissions (see our findings under paragraphs 41 to 44 above).

### *Procedural Sanction*

78. It was submitted on behalf of Deputy Le Tissier that any evidence given by, or statements made by, the complainants as to what they considered to be an appropriate sanction was irrelevant and that the approach taken by the previous panel (in asking (in terms) what sanction they would wish to see imposed before hearing from Deputy Le Tissier) was contrary to the principles of natural justice and fairness.

79. We noted that the previous panel had asked the complainants what they thought that the sanction should be. We decided that it was irregular to ask the complainants what they felt was the appropriate sanction. We consider that the matter of the appropriate sanction is a matter for the relevant States' Members' Conduct Panel convened in each case to determine alone and based on its investigation. We therefore find in favour of the appellant on this ground of appeal. However, we consider this procedural irregularity is capable of remediation (see further, Ground D, below).

### ***C. Announcement of the decision***

80. Deputy Le Tissier asserted that he was deprived of his right to privacy pending the conclusion of the complaint proceedings by reason of the matter being put in the public domain. Deputy Le Tissier relied on section 29 of the Code which provides that "*[i]n 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*".

81. We noted that, on behalf of the previous panel, the Secretary had sent its report to H.M. Greffier and to the media, but had retracted it shortly afterwards when the error had been pointed out. However, we do not regard that as a breach of paragraph 29 of the Code because it occurred after the previous panel had made its decision (i.e. after the original complaints had been determined) and Deputy Le Tissier had been provided with a copy of the report (i.e. after the decision had been communicated to him). It did not affect the previous panel's or our decision.

#### ***D. Sanction imposed***

82. The notice of appeal noted that the previous panel devoted only one paragraph of its report to its recommendation that Deputy Le Tissier be expelled from the States on account of the “*severity and extent of the breaches*” and asserted that no attempt was made to assess his largely admitted conduct by reference to any objective criteria or a scale of seriousness.
83. The notice asserted that the sanction of expulsion must necessarily involve a criminal act and no credit was given for Deputy Le Tissier’s naivety rather than being deliberate acts.
84. In our view, the failure by the previous panel to record any objective criteria or scale of seriousness against which they reached their decision to recommend expulsion amounted to a procedural irregularity. However, we consider this to be capable of remedy by this panel and set out below our considerations on sanction, including the objective factors which we have taken into account in reaching our recommendation (see paragraphs 111 to 122 below).
85. In his submissions to us (written and verbal), Deputy Le Tissier also asserted under this ground that the previous panel had not taken any, or any sufficient, notice of its finding that he had been “naïf” rather than malicious in his actions, emphasising the view of one Panel member recorded in the meeting notes that he must be “*give[n] credit for admission of naivety/foolish (sic)*”. In Deputy Le Tissier’s view, no credit was given for this admission in the decision to recommend expulsion. We noted the full finding in the previous panel’s report on this issue, made under the sub-heading breaches of section 6, ‘Honesty’ - “*The use of an anonymous social media account per se may have been naïf rather than a deliberate attempt to deceive but it is not possible to regard the tweets that gave the reasonable inference that the person who wrote them was not a Member of the States as meeting the obligations of honesty imposed by the Code and which the electorate has the right to expect.*” We note in the previous panel’s findings the statement that “*we give Deputy Le Tissier credit for referring himself to the Panel, for his apology, and for admitting that his actions on social media were foolish and naïf*”. We note that it is possible to give credit by way of acknowledgement only, and the previous panel did this.
86. We do not agree with Deputy Le Tissier’s submission that the most serious level of sanctions available under the Code of Conduct must be reserved for cases where a criminal act has been committed.

## Conclusions on grounds of appeal

### Ground A - Bias

87. We do not find an appearance of bias on the part of Mrs James or Advocate Clark.
88. We do not find that the discussion of an appropriate penalty to impose at the very outset was a pre-determination of the outcome, but rather a reasonable response to Deputy Le Tissier's self-admission in the response/self-referral, to having brought the States into disrepute, in breach of section 8 of the Code, and to his statement in that letter that he "*should have been aware that my actions fell below the required standard expected of a Deputy*".

### Ground B - Procedural Irregularities at hearing

89. We find that that it was procedurally irregular that Deputy Le Tissier did not have the opportunity to comment on any additional matters the complainants had raised orally with the previous panel, and that this prejudiced Deputy Le Tissier's right to a fair hearing by the previous panel. However, having provided the notes of the previous panel's meeting to Deputy Le Tissier, and having ourselves heard from Deputy Le Tissier and made our own further investigations to address the prejudice caused to him by this procedural irregularity, we reached our own conclusion that Deputy Le Tissier had acted in breach of the Code in a number of respects (see paragraphs 96 to 110 below), including that his Twitter posts had not made clear that he was a States Deputy; some Twitter posts deceitfully suggested that they were not written by a States Deputy; he used offensive language; he showed disrespect for others' opinions; and he had brought the States into disrepute by his actions.
90. We do not consider that the previous panel made a pre-determination of the issues which was inconsistent with Deputy Le Tissier's own admissions.
91. We also consider the way the complainants were asked about their view on the appropriate sanction was procedurally irregular. We excluded their comments from our consideration of sanctions.

### Ground C - Announcement of decision

92. We do not find that Deputy Le Tissier's right to privacy was breached when the report was sent to the media in error. The report was sent after the previous panel had made its decision and after Deputy Le Tissier had been provided with a copy of the report (i.e. after the original

complaints had been determined and after the decision had been communicated to him, in accordance with section 29 of the Code).

#### Ground D - Sanction

93. Whilst we do not consider that the previous panel failed to give due weight to its finding of naivety, we do regard the failure by the previous panel to consider the sanction by reference to objective factors or a scale of seriousness to have been prejudicial to Deputy Le Tissier.

#### **New panel's findings on Deputy Le Tissier's conduct**

94. As set out above, we considered all the points which Deputy Le Tissier made when he appeared before us at our meeting. We accept that there were points raised by the complainants which should have been put to him by the original panel so that he could respond. Those points and Deputy Le Tissier's responses to them are set out at paragraphs 49 to 67 above.

95. Taking into account Deputy Le Tissier's responses, and adopting the findings of the previous panel (to the extent that (i) we did not differ from those findings and (ii) those findings were not influenced by anything said by any of the seven complainants at the 23<sup>rd</sup> March 2021 meeting), we made the following findings.

96. We found that Deputy Le Tissier's actions were not up to the expected standards in, and breached the following parts of, the Code:

#### Section 3 – public duty

97. We find in this regard that although Deputy Le Tissier may have made some or all of his posts as “ChrisLT”, he was not immediately identifiable as the holder of a Twitter account “ChrisLT” and even less so when it was changed to “The Pirate” and then to “airbus666”. His actions in making disparaging and offensive remarks against individuals and groups of people broke the trust which the public placed in him. This was a breach of his duty to act in accordance with the public trust placed in him as a member of the States.

#### Section 6

98. We find that Deputy Le Tissier's actions broke the following parts of section 6 for the reasons given.

##### *Integrity*

99. We have not found in the terms expressed in the Code that Deputy Le Tissier was in breach of this sub-section.

*Objectivity*

100. Deputy Le Tissier's comments seeking to distinguish between the validity of opinions held by people who are and who are not "local" might legitimately undermine the public's confidence in his objectivity. The Code requires all Members to act with objectivity. The relevance of this to Deputy Le Tissier, as a member of the Committee *for* Home Affairs whose responsibilities include the island's population management regime, is obvious.

*Accountability*

101. In choosing to make comments which could not be readily and immediately identified as his own Deputy Le Tissier was preventing others holding him to account.

*Openness*

102. By using a Twitter account which could not be readily and immediately identified as his own Deputy Le Tissier was not being open about his actions. We believe that he was knowingly deceiving the public in the tweet sent from La Piazza restaurant and others, suggesting he was not a Member of the States. We believe that it was reasonable to infer from them that the person writing the tweet wanted the reader to believe that he was not a Member of the States and he was therefore engaging in a deliberate deceit.
103. We agree with the previous panel that the screen of anonymity should not be claimed by an elected public servant. No Member of the States should expect to have the right to hide behind an anonymous account, or an account which is not readily identifiable as his/her own, while serving. Such actions are inconsistent with the obligations imposed by the Code of Conduct.

*Honesty*

104. The use of an anonymous social media account (or an account which is not readily identifiable) per se may have been naive rather than a deliberate attempt to deceive. However, the tweets from which the reasonable inference can be drawn that the person who wrote them was not a Member of the States cannot be regarded as meeting the obligations of honesty imposed by the Code and which the electorate has a right to expect.

*Leadership*

105. The public rightly expects high standards from States' employees; it is therefore beholden on Members in their capacity as the effective employers, to lead by example and set at least the same standard. On several occasions in the tweets which we saw, Deputy Le Tissier, writing as "The Pirate", used offensive, sexualized language which is not appropriate for a Deputy to use in a public forum.

106. We note Deputy Le Tissier's admission to the previous panel that he would probably not have used that language if he had been tweeting in an account in his own name.

#### Section 7 – Public interest

107. We have not found that Deputy Le Tissier breached section 7.

#### Section 8 – Conduct

108. Deputy Le Tissier has admitted in his response/self-referral to bringing the States into disrepute, in breach of this section. We find that Deputy Le Tissier's actions would not maintain or strengthen the public's trust and confidence in the integrity of the States of Deliberation but rather could bring and have brought the States and its Members into disrepute.

#### Section 9 – Courtesy to others

109. We find that Deputy Le Tissier used discourteous and, at times, offensive language to members of the public, candidates in the 2020 General Election and his fellow States Members. He did not show respect for their opinions.

#### Section 11 – Acting diligently

110. We find that Deputy Le Tissier did not act nor did he exercise the privileges or discharge the duties of public office diligently or with civility, dignity, care or honour.

### **New panel's consideration of sanctions and recommendation**

111. Taking into account our findings on the nature and seriousness of the breaches (as set out above), we considered that this case warranted a sanction under section 39 of the Code.

112. The Code does not set out at section 39, or elsewhere, the factors which an investigation panel should apply in deciding what sanction to recommend when a complaint is found to have been substantiated. We considered it would help us, in reaching a decision, to consider Deputy Le Tissier's conduct against factors typically applied when professional conduct is under consideration. We considered Deputy Le Tissier's conduct under the following headings:

#### *Seriousness*

113. Deputy Le Tissier breached multiple provisions of the Code in serious respects including by some deceitful conduct as regards the public. In relation to sanction, this is an aggravating factor. However, this was not a case of a Deputy abusing public office for personal gain, which is a material factor in our consideration of the appropriate sanction.

*Experience*

114. Deputy Le Tissier was an inexperienced Deputy at the time of the conduct so did not have long experience of applying the Code to his conduct. However, he was still required to understand the requirements and obligations of an elected Member of the States. As Deputy Le Tissier said in his response/self-referral, he should have been aware that his actions fell below the standard expected of a Deputy, and that remains the case despite his relative inexperience. We regard his inexperience as a minor mitigating factor.

*Impact of conduct*

115. Deputy Le Tissier's conduct has high impact, with the potential to damage Guernsey, the reputation of the States and of the Island. We base this on our own assessment of his conduct but the relatively high number of complaints received is also indicative of high impact. This is an aggravating factor.

*Inadvertence or culpability*

116. Deputy Le Tissier decided to take a series of steps which were neither inadvertent nor a single error of judgement. There was a course of conduct in our view in which he set out to deceive the public in some Twitter posts by creating the impression that he was not a Deputy. Although Deputy Le Tissier has apologised for his actions in his response/self-referral, he has shown limited contrition for them. In his meeting with us and generally, rather than considering his own conduct he has tended to focus on others' conduct, including but not limited to that of the complainants, and on minimising the seriousness of his conduct, including suggesting that his posts had been taken out of context. We did not gain the impression from our meeting or any other material which we saw that Deputy Le Tissier had really reflected on the impact of what he had done, the offence his comments had inevitably caused, and how they would undermine public trust in his role as a Deputy. We regard this as an aggravating factor.

*Self-referral*

117. Deputy Le Tissier referred his own conduct for consideration, after complaints had been made and after media coverage and criticism of it. We regard this as a minor mitigating factor.

*Personal mitigating factors*

118. We did not identify any such factors.

*Other mitigating or aggravating factors*

119. We noted that there had been no previous Code complaints against Deputy Le Tissier. As he is a very recently-elected Deputy, this is neutral rather than mitigating. We have also taken into

account Deputy Le Tissier’s verbal submission to us, not raised with the previous panel, that the address of the Twitter account at issue was initially “ChrisLT@radiosutch299”. We regard this as a minor mitigating factor because, whilst not anonymous, he was still not readily identifiable from this address as a Deputy.

120. We did not identify any other mitigating or aggravating factors.

121. In considering the scale of seriousness, and taking into account the above factors, we find that the breaches, whilst serious, were not so serious as to justify expulsion. In reaching our determination we took into account in particular the impact of the breaches and the element of deceit weighed against the fact that they did not involve an abuse of power for gain or criminal conduct.

122. It is our recommendation that Deputy Le Tissier should be suspended. We believe that the period of suspension should be one year, that it should be from all States’ service, and that all the allowances payable to Deputy Le Tissier under the Rules for payments to States Members should cease during the period of suspension.

123. These findings have been reported to the States’ Assembly & Constitution Committee with a request that it submit the report to the Presiding Officer for inclusion in a Billet d’État with our recommendations.

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**Mr A. Langlois**

Chairman of the new Investigation Panel

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**Advocate L. Hall**

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**Mr S. Trevor**

**Dated 17<sup>th</sup> June, 2021**