

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

COMMISSIONER FOR STANDARDS

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Commissioner for Standards' dated 6th May 2022, they are of the opinion:-

1. To rescind:-
 - a. resolution 1b, and
 - b. that part of resolution 3, insofar as it requires the Committee to return to the States with an Ordinance amending the Reform (Guernsey) Law, 1948

made by the States of Deliberation on 19th August 2020, following consideration of the policy letter entitled "Review of the Code of Conduct for Members of the States of Deliberation" (Billet d'État XVI of 2020, Article 10).

2. To agree that the position of Commissioner for Standards should be established by way of a Projet de Loi amending the Reform (Guernsey) Law, 1948 and providing for the matters referred to in the un-rescinded resolutions made by the States of Deliberation on 19th August 2020 and the matters set out in section 4 of the Policy Letter and to direct the preparation of legislation as may be necessary to give effect to this decision.
3. To insert the following sentence into section 41 of the 'Code for Members of the States of Deliberation' at the beginning of the second paragraph:

"An appeal must be submitted within 10 working days of being provided with the Panel's report, with the reasons for the appeal being set out in writing".

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

COMMISSIONER FOR STANDARDS

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

6th May 2022

Dear Sir

1 Executive Summary

- 1.1 In August 2020, the States of Deliberation resolved that the position of Commissioner for Standards should be established, further to a review of the Code of Conduct for Members of the States of Deliberation¹ being undertaken by the States' Assembly & Constitution Committee ("the Committee").
- 1.2 It was originally envisaged that the Commissioner for Standards would replace the States' Members' Conduct Panel and the Privileges Panel. However, the Committee has agreed the Privileges Panel should be retained to investigate allegations of abuse of privilege and therefore recommends rescission of the relevant resolution.
- 1.3 The Committee is working with the Privileges and Procedures Committee in Jersey to progress the appointment of a Commissioner for Standards to commence the role in both Islands on 1st March 2023.
- 1.4 In order to put the necessary legislation in place in advance of March 2023, the Committee is recommending a different approach to that suggested in the 2020 policy letter. It recommends that a statutory office of Commissioner for Standards is established by amending [The Reform \(Guernsey\) Law, 1948](#) by Projet de Loi with the intention to submit a draft Projet de Loi for consideration at the States Meeting to be held on 28th September 2022.
- 1.5 Section 5 of this policy letter sets out a proposed amendment to the Code which

¹ [Review of the Code of Conduct for Members of the States of Deliberation: Billet d'État No XVI of 2020](#)

would introduce a timeframe for the submission of an appeal further to a Member being provided with the Investigation Panel's report. It also provides information on other future workstreams relating to the Code of Conduct.

2 Introduction

2.1 Provisions for the States to adopt a Code of Conduct for People's Deputies are set out in [The Reform \(Guernsey\) Law, 1948](#) ("the Reform Law") under Article 20.F.

2.2 The Code of Conduct for Members of the States of Deliberation² ("the Code") was introduced by the States of Deliberation in September 2006 and the States' Members Conduct Panel established to investigate alleged breaches of the Code. Parts II and III of the Code set out the Panel's establishment and the procedure for complaints.

2.3 Part IV of the Code covers 'Absolute Privilege for States Proceedings' with reference to the relevant provision in the Reform Law, and Part V sets out the process for investigating allegations of abuse of privilege, providing that a Privileges Panel would be convened to investigate an alleged abuse of privilege.

2.4 A review of the Code was undertaken by a sub-committee appointed in March 2019 which resulted in propositions and a policy letter being submitted to the States of Deliberation in 2020 proposing changes to the Code. On 19th August 2020, the States resolved³ as follows:

X. After consideration of the policy letter entitled "Review of the Code of Conduct for Members of the States of Deliberation" dated 25th February, 2020:-

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

² [Code of Conduct for Members of the States of Deliberation](#) at www.gov.gg/memberscodeofconduct

³ [Billet d'État No XVI: Resolutions from 19th August 2020](#)

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.
- 2.5 Paragraphs 3.6 to 3.8 of that policy letter envisaged a two-stage approach for the establishment of the office of Commissioner:
1. The Reform Law would be amended by Ordinance 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.
 2. The role of the Commissioner would be underpinned by specific, stand-alone legislation which would 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.
- 2.6 Paragraph 3.8 recommended that the Commissioner for Standards be appointed in line with the Ordinance, when introduced, and that stand-alone legislation be subsequently introduced, tailored to suit Guernsey's needs.

3 Progressing the workstream

- 3.1 The Committee elected in October 2020 agreed that progressing the workstream to introduce a Commissioner for Standards was a high priority for this political term.
- 3.2 The Committee fully supports introducing a Commissioner for Standards to investigate alleged breaches of the Code. However, having reflected on the resolutions and considered arrangements in other jurisdictions, it proposes that Resolution 1b arising from the 2020 report should be rescinded.

(a) Proposal to rescind Resolution 1b

- 3.3 The previous Committee's report had primarily focused on Parts I to III of the Code. The Committee reconsidered resolution 1b which directed that the Commissioner for Standards should investigate allegations of abuse of privilege, replacing the Privileges Panel.

- 3.4 Under the Code, if a Member were to allege that another Member has abused privilege, the Member would request the Presiding Officer direct that the alleged abuse be referred to a Privileges Panel for consideration. Part V of the Code sets out the process of how an allegation would be considered initially by a First Instance Panel and, if a prima facie case has been made, that matter would then be referred to the Privileges Panel.
- 3.5 In Jersey, the Privileges and Procedures Committee investigate allegations of breach of privilege. In Westminster, the Committee of Privileges undertake inquiries. Commissioner for Standards in other jurisdictions do not investigate allegations of breaches of privilege. On reflection, and given the desire to align with the States of Jersey regarding the scope of the role, the Committee supports retaining the Privileges Panel to undertake any such investigation, and rescinding resolution 1b.
- 3.6 Since the introduction of the Code, there is no record of the Privileges Panel having been convened to investigate an alleged abuse of privilege. The Committee believes the topic of 'privilege' would benefit from review by the Committee, which should include consideration as to how any alleged breach should be investigated.
- 3.7 The Committee therefore proposes that the States should rescind resolution 1b and retain the Privileges Panel, as set out in Proposition 1.

(b) Working with Jersey to appoint a Commissioner

- 3.8 In November 2013, the States of Jersey agreed that a position of Commissioner for Standards should be established in Jersey. The [Commissioner for Standards \(Jersey\) Law, 2017](#) was adopted by Jersey in February 2017 and commenced on 24th July 2017. The appointed Commissioner for Standards began the role on 1st September 2017 for a five-year term.
- 3.9 The 2020 report from the Committee suggested 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 late 2021, the President met with the President of the Privileges and Procedures Committee in Jersey and discussed Guernsey's plan to introduce the position and for the same person to hold the two roles in Jersey and Guernsey.
- 3.10 In February 2022, the Committee was informed that whilst the Jersey Commissioner was coming to the end of his five-year term in September, the Privileges and Procedures Committee had offered, and he had accepted, a six-month extension, until the end of February 2023. The Privileges and Procedures Committee expects its successor Committee (to be elected after the Jersey General Election in June 2022) will seek to recruit a new Commissioner, with that

recruitment exercise likely to start in September or October, with a view to the Commissioner taking up the position in March 2023.

- 3.11 The Committee has confirmed to the Privileges and Procedures Committee that it is still the intention for the Commissioner to cover both Islands. It is important to note that each Island will have its own legislation, and Codes of Conduct, and therefore there would be two separate roles to fill. In light of this, the two Islands will plan the recruitment of a Commissioner as a joint exercise in the autumn and the Committees' Officers will work together to develop the job description and other material which will be required for the recruitment campaign.
- 3.12 Given the intention for the two Islands to appoint the same Commissioner for a five-year term, it is logical for the appointment of the Commissioner in both Islands to be coterminous and for Guernsey to seek to appoint the Commissioner to begin their role on 1st March 2023.

(c) Proposed change to the legislative approach

- 3.13 The Committee consulted with the Law Officers of the Crown regarding the preparation of legislation to give effect to the resolutions agreed in August 2020.
- 3.14 As stated in the introduction, the original policy letter envisaged a two-stage approach to introducing legislation:
- (1) Amending the Reform Law by Ordinance to establish the position of Commissioner for Standards; and
 - (2) Stand-alone legislation being created setting out the full role and duties of the Commissioner.
- 3.15 The Reform Law sets out the constitution of the States of Deliberation and enables the States to decide its Rules of Procedure and to adopt a Code of Conduct. Article 20F, 'Code of Conduct', sets out what the Code of Conduct may make provision for. At present, Article 20F states that the Code can make provision for a Panel to be established to investigate allegations and complaints that a People's Deputy has failed to comply with the Code.
- 3.16 It is therefore necessary to amend the Reform Law to enable the establishment of an office of Commissioner for Standards instead of a Panel. When the 2020 policy letter was drafted, it was envisaged that the Reform Law would be amended to enable the establishment of such an office, and that the relevant substantive provisions in respect of the establishment of the office, the Commissioner's powers and duties, and so on, would be set out in a separate Ordinance made under those amended provisions.

- 3.17 However, further to consultation with the Law Officers of the Crown, it is recommended that rather than this two-stage process, the States amend the Reform Law by Projet de Loi both to amend the relevant provisions as required, and to insert the substantive new provisions underpinning the role of the Commissioner. The Committee considers that this approach is simpler as it will mean that the relevant provisions are all in one place (the Reform Law), which will be more convenient; and is more appropriate in light of the aim, set out above, to appoint the Commissioner to begin their role on 1st March 2023.
- 3.18 Given this proposed change of approach, and the proposal to rescind Resolution 1b, the Committee has returned to the States for approval prior to bringing forward the relevant legislation. If the States approve the propositions to this policy letter, it is intended that the Projet de Loi will be presented to the States' Meeting on Wednesday 28th September for consideration.

(d) Financial implications

- 3.19 There are no financial implications to the States of carrying the proposals into effect. As stated in the 2020 policy letter:

“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 Preparation of the legislation

- 4.1 It is recommended that the Reform Law is amended to include provisions to enable the establishment of the office of Commissioner for Standards to investigate alleged breaches of the Code of Conduct for Members of the States of Deliberation and to make recommendations to the States' Assembly & Constitution Committee following any such investigation.
- 4.2 Given the intention to appoint the same Commissioner as Jersey, the similarity of the Codes adopted by the Islands and for ease of administration, it is proposed the legislation introduced should be similar to the [Commissioner for Standards \(Jersey\) Law, 2017](#). In addition to the matters mentioned in the summary below, the legislation will need to make such supplementary and incidental provision as is appropriate, including any amendments to other legislation. In view of the nature of the substantive provisions relating to the office of the Commissioner, it may be appropriate for those provisions to be set out in a Schedule to the Reform Law, and for provision to be made for that Schedule (or parts thereof) to

be susceptible to amendment by Ordinance (as other Schedules to the Reform Law are), to simplify the making of any future amendments.

(a) Appointment and administration

- 4.3 The legislation should establish the office of Commissioner for Standards and enable the Committee to appoint a person to the office of the Commissioner for Standards, further to notifying the States of its intention to make the appointment.
- 4.4 The post-holder will be disqualified from holding certain types of employment or office e.g. employment by the States or holding an office with a States body, whilst undertaking the role. Provisions will be included to enable a person to be appointed to carry out the duties of the office while the office is vacant or the holder of the office is unable to perform the functions of the office.
- 4.5 The persons appointed to the office of Commissioner shall hold the office on such terms and conditions as agreed between the person and the States' Assembly & Constitution Committee. The initial appointment will be for a fixed term of up to five years, which may be extended.
- 4.6 The legislation will make provision for the revocation of the appointment of a person to the office of Commissioner, and for the circumstances in which the office may become vacant e.g. resignation, convicted of an offence and ordered to be imprisoned etc.
- 4.7 It is intended that the Parliamentary Team will support the office of the Commissioner and the legislation must set out that the States ensures the Commissioner is provided with the resources they may reasonably require for the purpose of discharging the functions of the Commissioner.
- 4.8 As in Jersey, the legislation will provide that no civil or criminal proceedings may be instituted against the Commissioner for or in respect of any words spoken, written or published as a consequence of that person's role, and will afford appropriate legal protection to complainants and witnesses in an investigation.

(b) Powers and duties

- 4.9 The functions of the Commissioner will be set out in the legislation and will include:
- investigating a complaint that the Code has been breached or initiating investigations if the Commissioner believes the Code may have been breached;

- reporting to the Committee on the outcome of any investigation stating their conclusions and recommending what action, if any, should be taken; and
 - giving advice – on their own initiative or if requested by the States’ Assembly & Constitution Committee – on any matter relating to standards of conduct of States’ Members, including proposals to change the Code.
- 4.10 The legislation will set out when the Commissioner shall not accept a complaint, including any complaint made anonymously; if in the Commissioner’s opinion, it is frivolous, vexatious or unsubstantiated; or from a person who is not a member of the States regarding words spoken by, or actions of, an elected Member during a States’ Meeting.
- 4.11 The legislation will enable the Commissioner, on receipt of a complaint, to decide whether there are grounds to investigate the complaint and either undertake an investigation or notify the complainant that no such grounds exist. The Commissioner shall determine the procedure and timing of any investigation.
- 4.12 The independence of the Commissioner will be protected by the legislation which will include provision that the Commissioner may not be directed on how any function of the office of Commissioner is to be carried out, including, in particular, whether or not to undertake an investigation.
- 4.13 The legislation will make provision for how the functions of the Commissioner will be discharged. In Jersey, the Commissioner is required to make and publish a statement⁴ of the manner in which he or she proposes to discharge their functions under the Law and any other enactment. Consideration will be given as to whether a similar provision should be included for Guernsey.
- 4.14 The Commissioner will be required to prepare an annual report in respect of the activities of the office for the previous year and provide such a copy to the Committee to be laid before the States.

(c) Enforcement

- 4.15 The Commissioner should have the power under the legislation to require a person to appear before the Commissioner and/or to provide records (i.e. any written document or information). The Commissioner should have the power to require a person to answer questions and to retain or copy records produced. The retention process and period for the holding of records will be set out in the legislation.
- 4.16 The legislation will need to create appropriate offences in common with other legislation creating broadly comparable statutory offices, such as (but not limited

⁴ [Jersey: Commissioner for Standards’ Statement](#)

to) –

- failing to appear before the Commissioner, to answer questions or to provide information
- knowingly or recklessly providing false record or information
- hindering or obstructing a person in the exercise of a function under the legislation.

5 Proposed revision to the Code and other matters

- 5.1 If the States agree the propositions to this policy letter, and the proposed legislation which will return to the States, Part II of the Code, ‘States Members’ Conduct Panel’ and Part III, ‘Procedure for Complaints relating to Part I matters’, will be replaced with appropriate revisions reflecting the move from the States Members’ Conduct Panel to the Commissioner for Standards.
- 5.2 The Committee will bring a policy letter to the States to approve the relevant changes and for those changes to take effect when the Commissioner takes up the role.

(a) Proposed amendment to the Code

- 5.3 The sub-committee appointed by the Committee to undertake the review of the Code in 2019 undertook a desktop review of the Code against the benchmarks developed by the Commonwealth Parliamentary Association (‘the CPA’) entitled [‘Recommended Benchmarks for Code of Conduct applying to Members of Parliament’](#), a document which draws on good practice across the CPA and seeks to assist parliaments in the design and revision of Codes of Conduct.
- 5.4 A number of recommendations to amend the Code, arising from this desktop review, were subsequently agreed by the States in August 2020. One change included introducing the right of appeal for Members against whom a complaint had been upheld, further to consideration of the following benchmark:

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.

- 5.5 Paragraph 5.14 - 19 of the sub-committee’s report (pages 14 and 15) set out the reasoning for the proposed changes to the Code, which took into account suggestions from the then Conduct Panel.
- 5.6 The sub-committee had proposed that the right of appeal by a Member against the decision of the Investigating Panel should be introduced and that, within 10 working days of being provided with the Conduct Panel’s report, the Member

could appeal via the Presiding Officer on specific grounds. However, this suggested timeframe was erroneously not included in the proposed amendment to the Code.

- 5.7 The Committee therefore recommends, as set out in Proposition 3, that paragraph 41 of the Code is updated as follows (changes highlighted in bold) to insert this timeframe whilst the Panel continue to operate:

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.*

An appeal must be submitted within 10 working days of being provided with the Panel's report, with the reasons for the appeal being set out in writing. 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.

(b) Sanctions and penalties

- 5.8 In the Committee's 2020 report, the Committee proposed the following:

| 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) |

- 5.9 The option of a remedial action, by way of a formal apology, will be inserted into the provisions of the proposed Projet de Loi as an option which can be used in the case of minor breaches. The Committee remains committed to reviewing the sanctions available in consultation with the Commissioner for Standards and intends to progress this workstream further to their appointment in 2023.

(c) Review of Declarations of Interest requirements

- 5.10 In January 2022, all States' Members were informed that the Committee would be undertaking a series of reviews in 2022 looking at specific areas of the Rules of Procedure of the States of Deliberation and their Committees. The review that will be undertaken in the fourth quarter of 2022 will focus on Members' interests considering the extant resolution to consider the definition of 'direct and special interest', reviewing what information is required to be provided by Members and looking at developments in other jurisdictions.
- 5.11 The Committee intends to consult with all Members towards the end of the year and report to the States of Deliberation with any proposed changes to the Rules in the first quarter of 2023.

(d) Liaison with the Alderney and Sark

- 5.12 As well as liaison with the States Greffe in Jersey detailed in section 3b of this policy letter, there has been staff-level meetings between Committee staff and those in Sark and Alderney, regarding the potential for a Commissioner for Standards who will investigate alleged breaches of the Code of Conduct in those Islands, in essence a Commissioner who will investigate alleged breaches of the Codes of Conduct in each Island. This liaison will continue in 2022.

6 Compliance with Rule 4

- 6.1 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.
- 6.2 In accordance with Rule 4(1):
- a) The propositions contribute to the States' objectives and policy plans by progressing Resolution 1a made by the States of Deliberation on 19th August 2020, following consideration of the policy letter entitled "Review of the Code of Conduct for Members of the States of Deliberation" (Billet d'État XVI of 2020, Article 10).
 - b) In preparing the propositions, consultation has been undertaken with the Law Officers of the Crown.
 - c) The propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
 - d) There are no financial implications to the States of carrying the proposal into effect.

6.3 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's duties and powers to advise the States and to develop and implement policies in relation to "matters concerning the propriety and conduct of States' members".
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

Deputy C.P. Meerveld
President

Deputy L.C. Queripel
Vice-President

Deputy S.P. Fairclough
Deputy J.A.B. Gollop
Deputy L.J. McKenna

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

COMMISSIONER FOR STANDARDS

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

6th May 2022

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the States' Assembly & Constitution Committee requests that the propositions and policy letter entitled 'Commissioner for Standards' be considered at the States' meeting to be held on 29th June 2022.

Yours faithfully

Deputy C.P. Meerveld
President

Deputy L.C. Queripel
Vice-President

Deputy S.P. Fairclough
Deputy J.A.B. Gollop
Deputy L.J. McKenna