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CODE OF CONDUCT

COMPLAINT AGAINST DEPUTY V OLIVER

FINDINGS OF THE INVESTIGATION PANEL

Deputy Victoria Oliver is a Member of the States of Deliberation.

On 17 April 2023, Deputy Andrew Taylor wrote to the States Members' Conduct Panel asserting that Deputy Oliver had breached the Code of Conduct by attempting to remove him as the Vice-President of the Development & Planning Authority when it was not permitted by the Rules of Procedure of the States of Deliberation and their Committees and by the manner in which she did it. He asserted that what Deputy Oliver said was in breach of paragraphs 1, 3, 6, 8, 9, 11, 12 and 16 of the Code of Conduct.

Paragraph 3 of the Code of Conduct is in the following terms:

The primary duty of Members is to act in the public interest. 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.

Paragraph 6 of the Code of Conduct 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.*

Paragraph 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.

Paragraph 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.

Paragraph 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.

Paragraph 12 is in the following terms:

Members shall uphold the political impartiality of the Civil Service and shall not ask civil servants to act in a manner which would conflict with the Civil Service Code. Members should familiarize themselves with the contents of that Code. In reaching decisions they shall give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice from other persons.

Paragraph 16 is in the following terms:

To avoid misrepresentation of the States and to avoid the improper use of States' assets, Members must not use any goods, services or facilities provided for the functioning of government (a) for private purposes; nor (b) except where generally available in accordance with published arrangements to all Members, for electoral district purposes.

The Chairman undertook an initial assessment of the complaint and determined that prima facie evidence had been submitted to support it. An Investigation Panel to consider the complaint was therefore established and Deputy Oliver was asked to respond to the complaint.

The Investigation Panel was convened and comprised the Very Reverend John Guille as Chairman, Dame Mary Perkins and Advocate Russell Clark.

The Panel was given access to the recording of the meeting of the Development and Planning Authority ("**DPA**") held on 27 March 2023 in which the matters which are the subject of the complaint were discussed. The Panel also had separate meetings with Deputy Taylor and Deputy Oliver. The Panel is grateful to Deputy Taylor and to Deputy Oliver for their written and detailed oral submissions.

Deputy Taylor's complaint stemmed from a vote of the DPA held on 18th January 2023 by which a majority of the DPA purported to vote to replace Deputy Taylor as Vice-President of the DPA and to replace him in that role with Deputy John Dyke. Questions were raised at the time of the election as to whether a Committee of the States of Guernsey was able to take such action within the terms of the Rules of Procedure of the States of Deliberation and Their Committees made by the States of Deliberation pursuant to the Reform (Guernsey) Law, 1948, as amended, and the States Committees (Constitution and Amendment)(Guernsey) Law, 1991 and The States Reform (Guernsey) Law, 2015 (the "**Rules of Procedure**").

Rule 43 of the Rules of Procedure provide as follows:

Vice-Presidents

43. (1) All Committees shall elect a Vice-President from amongst those persons on that Committee who are sitting Members of the States.

(2) The requirement that the Vice-President of a Committee be a member who is a sitting Member of the States shall not apply to the Overseas Aid & Development Commission or the non-governmental bodies.

(3) The Vice-President shall be elected at the first meeting of the Committee following the election of a President by the States, save that if following the election of the President there remains any vacancy in the voting membership of the Committee the election of a Vice-President shall be deferred until the first meeting following the filling of that vacancy by the States.

(4) In any Committee, if the President ceases to hold office before the expiration of the period for which he or she was elected and a new President is elected by the States, the term of office of the Vice-President shall be deemed to have terminated and a new election of a Vice-President shall take place in accordance with paragraph (3).

(5) In any Committee, if the Vice-President ceases to be a sitting Member of the States, or ceases to be a member of that Committee before his or her term of office as Vice-President has been completed, a new Vice-President shall be elected from amongst those persons on that Committee who are sitting Members of the States to serve the unexpired portion of the Vice-President's term of office, but such an election shall not be held until the vacancy in the membership of the Committee caused by the departure of the member who held the office of Vice-President has been filled by the States. The election of a Vice-President shall be held at the first meeting following the filling of that vacancy by the States.

Rule 37(8) of the Rules of Procedure provides as follows:

If a majority of the voting members of a Committee believe that the continued membership of that Committee by one member is unreasonably hindering the ability of the Committee to fulfil its mandate then the majority may bring a proposition to the States that the period of office of the said one member should be terminated with immediate effect, and the States may, notwithstanding the other provisions of this rule, by resolution so terminate that period of office.

The Rules of Procedure are silent on whether Committees of the States are at liberty to remove a Vice-President and replace one mid-term.

Deputy Taylor accused Deputy Oliver of disregarding the Rules of Procedure in the manner in which she initiated the vote on 18 January 2023 contrary to Paragraph 1 of the Code of Conduct.

Deputy Taylor also accused Deputy Oliver of breaching Paragraphs 3 and 6 of the Code of Conduct by seeking his replacement in order to further her own desires and not to further the interests of the public.

Deputy Taylor has accused Deputy Oliver of manipulating media releases to deflect from her own conduct in breach of Paragraph 6 of the Code of Conduct.

Deputy Taylor accused Deputy Oliver of misleading members of the DPA contrary to Paragraph 6 of the Code of Conduct having stated that she had received advice from both Law Officers in support of the action taken by the DPA on 18 January 2023 and by withholding advice from His Majesty's Procureur and comments from the Bailiff from the members of the DPA.

Deputy Taylor has accused Deputy Oliver of undermining the confidence of the public in the States of Deliberation contrary to Paragraph 8 of the Code of Conduct.

Deputy Taylor has accused Deputy Oliver of treating him with a lack of courtesy contrary to Paragraph 9 of the Code of Conduct by not having first discussed with Deputy Taylor Deputy Oliver's desire to remove him as Vice-President.

Deputy Taylor accused Deputy Oliver of a breach of Paragraph 11 of the Code of Conduct in not discharging her role diligently and by allegedly abusing the States of Guernsey Communication Team by making personal press releases which Deputy Taylor says is also a breach of Paragraph 16 of the Code of Conduct.

Finally, Deputy Taylor has accused Deputy Oliver of a breach of Paragraph 12 of the Code of Conduct by allegedly disregarding advice of the Law Officers and placing reliance instead of the views of civil servants.

Deputy Oliver did not accept any of Deputy Taylor's criticisms.

Deputy Oliver accepted that she had said in Committee on 18 January 2023 that she had spoken with His Majesty's Procureur but in fact it had been His Majesty's Comptroller she had spoken with – an error for which she apologised.

The Panel heard that in November 2022 Deputy Taylor had informed the Bailiff of an intention to resign from the DPA. Deputy Taylor had not informed Deputy Oliver of this fact. Deputy Oliver was so informed by the media. Subsequently Deputy Taylor decided to

withdraw his resignation before the proposition was put to the States and so before his resignation became effective in accordance with Rule 37(6) of the Rules of Procedure. Deputy Taylor had not informed Deputy Oliver of this either. In the circumstances Deputy Oliver wanted to have a more supportive Vice-President to assist her on the DPA. Deputy Oliver had discussed the possible election of a new Vice-President with the Principal Officer of the DPA who had in turn sought advice from the States' Greffier's office on the interpretation of the Rules of Procedure in this regard.

The Principal Officer of the DPA was advised by a Parliamentary Officer that in circumstances where the Rules of Procedure were silent it was a matter for the Committee in question to resolve, noting that as the members of a Committee have the power to elect a Vice-President it made sense that they should also have the power to remove a Vice-President. The e mail refers to this also being the view of the Deputy Bailiff and was copied in to, amongst others, His Majesty's Comptroller to comment if they wished to add anything. Deputy Oliver told us that she had also had a brief discussion with His Majesty's Comptroller and the States Greffier who both expressed a similar view. Relying upon this advice the vote proceeded on 18 January 2023 and the DPA purported to elect Deputy Dyke as Vice-President of the DPA.

Deputy Oliver noted that Deputy Taylor, whilst objecting to the process, participated in the vote by putting his name forward for re-election and voting.

A communication to the Bailiff requesting that the Blue Book (where information about the Members of the States of Deliberation and the Rules of Procedure is to be found) be updated was sent on behalf of Deputy Oliver on 18 January 2023.

Deputy Taylor subsequently sought the opinion of His Majesty's Procureur as to whether the vote on 18 January was compliant with the Rules of Procedure.

His Majesty's Procureur took a different, and more stringent, view as to the Rules of Procedure. She contacted the Principal Officer of the DPA and opined that it was "arguable" that the DPA had no power to replace Deputy Taylor with Deputy Dyke as Vice-President. She said that her opinion was that the term of office of Vice-President is coterminous with that of President and that to be certain the DPA should have applied under Rule 37(8) to remove Deputy Taylor from the DPA.

Deputy Oliver told the Panel that at this stage she was not concerned given that His Majesty's Procureur's view was that the action taken by the DPA was "arguable" – therefore an argument could equally be mounted that the action taken had been compliant. Deputy Oliver said to the Panel that she had been told that legal advice was simply that, advice, which could be taken or not taken. The email from His Majesty's Procureur to the Principal Officer was not shared with other members of the DPA at that time.

On 25 January 2023 the Panel was told that His Majesty's Procureur gave advice to Deputy Taylor. It was not clear to the Panel if that advice was shared by Deputy Taylor with Deputy Oliver. Deputy Taylor instead asked Deputy Oliver to share the advice that she had received. No reply to that communication was received.

In light of this difference of opinion an e mail to the Bailiff was sent by the Principal Officer of the DPA seeking his views. A reply was sent on behalf of the Bailiff on 31 January 2023 indicating that in the Bailiff's opinion the better interpretation of the Rules of Procedure was that taken by His Majesty's Procureur. That email concluded by saying that the primary source of advice should be His Majesty's Procureur as the senior legal adviser to the States.

Deputy Oliver went back to the Bailiff on 16 February 2023 pointing out that the conflicting advice that she had received had put her and the DPA in a difficult position and further that as Deputy Taylor had participated in the vote on 18 January 2023 it was unfair that he should now raise an issue about it having been defeated in that election. Deputy Oliver told the Panel that she had also discussed the matter with other Deputies (outside of the DPA) who thought that the more restrictive view of the Rules of Procedure taken by His Majesty's Procureur and the Bailiff was unjustified. Deputy Oliver told the Panel that she was also of the view that the Bailiff's view was not definitive as whilst the Bailiff is the Presiding Officer of the Chamber the Bailiff has no role in supervising the work of the Committees. The email from the Bailiff was not shared with the other members of the DPA at that time pending a response to Deputy Oliver's email of 16 February to the Bailiff.

Deputy Oliver also contacted the acting Principal Officer of the States Assembly & Constitution Committee ("**SACC**") (the committee responsible for development and implementation of policies relating to, inter alia, the procedures and practices of the

committees of the States) for her considered view. On 9 March 2023 she advised Deputy Oliver as follows:

"As you know, the method of election of Vice-Presidents is covered in "Rules relating to committees of the States", specifically Rules 43 and 44. Such elections are entirely within the gift of the Committee concerned and do not require the permission or approval of the States of Deliberation. The result of any such election is communicated to the Presiding Officer but he has no power of veto, as such elections are a function of government.

"Changing the Vice-President mid-term without a vacancy arising is, as you have discovered, problematic because the Rules are silent on this. I know that differing opinions have been put forward but it would seem logical that if Committees can elect Vice-Presidents then any changes to the office-holders are also within their gift and do not require an approach to the States or to the Presiding Officer. This is different to seeking to remove a Member from a Committee because those Members are elected to Committees by the States and therefore it follows that only the States can remove them.

"Therefore, I cannot see how the approach you have taken could be said to have disregarded any Rules and seems to be a pragmatic approach to the situation in which you found yourselves. I understand that the Deputy Bailiff may be of a similar opinion."

It was also at the beginning of March that enquiries from the media were being made. The Panel have been provided with the media releases produced throughout this period.

On 15 March 2023 the DPA agreed to hold an extraordinary meeting to resolve the question of whether Deputy Taylor or Deputy Dyke was Vice-President of the DPA. The earliest available date for that meeting was on 27 March 2023.

On 16 March 2023 a reply was sent on behalf of the Bailiff to Deputy Oliver's email of 16 February 2023 querying the Bailiff's advice of 31 January 2023. This reply explained that the Blue Book had not been changed because the Bailiff had formed the view that there was no vacancy in office and so the purported election of Deputy Dyke was a nullity. That reply also

indicated that as a result of media enquiries made to his office the Bailiff would be responding to them confirming that it was his view that Deputy Taylor remained the Vice-President of the DPA. This information was shared with the DPA on 17 March 2023.

On 27 March 2023 the DPA held the extraordinary meeting to discuss the election on 18 January 2023. Deputy Meerveld, President of SACC and the acting Principal Officer of SACC had been invited to attend the meeting despite the opposition of Deputy Taylor. Whilst making it clear that SACC could not intervene in the affairs of the DPA, Deputy Meerveld expressed the view on behalf of the political members of SACC that the Rules of Procedure should allow a Committee to change its Vice-President and that this was something SACC would be looking at.

His Majesty's Procureur also attended the meeting, remotely, and acknowledged that the Rules of Procedure simply did not address the present circumstances where a Committee wanted to change the Vice-President but did not want to go as far as expelling them from the Committee itself. She re-iterated her earlier advice that the only ways for a Committee to change its Vice-President, in accordance with the Rules of Procedure as currently drafted, were for the Vice-President to be removed from the Committee completely in accordance with Rule 37(8), for the President to resign, or for the Vice-President to resign. This was acknowledged as being a stricter interpretation of the Rules than the contrary views which had been expressed by others and on which Deputy Oliver and the DPA had relied at the time of the election on 18 January 2023. This was acknowledged to be unfortunate and His Majesty's Procureur stated several times during the course of the meeting her opinion that all those expressing the contrary view and those relying on that contrary view had been acting in good faith.

Deputy Oliver then said to the meeting that had she been told this at the outset she would not have initiated the process on 18 January 2023. The DPA then agreed that in light of everything that they had heard they would confirm that Deputy Taylor remained in office as Vice-President.

As is evident from the foregoing, the interpretation of the Rules of Procedure on this very point is a matter on which well-informed minds have differed. There is, in the Panel's view, no question of anyone concerned acting other than in good faith. In the meeting with the Panel Deputy Taylor conceded that armed with the information available to Deputy Oliver at

the time of the election on 18 January 2023 she had proceeded in good faith. Accordingly, the Panel dismisses the complaint regarding the breach of Paragraph 1 of the Code of Conduct.

It was, in the Panel's view, legitimate for Deputy Oliver to seek to replace Deputy Taylor with a Vice-President that she considered to be more supportive of her within what was, at the time, Deputy Oliver's understanding of the Rules of Procedure. It is clear, particularly from the oral submissions of both Deputies, that relations between them were difficult. The Panel therefore rejects the complaint regarding breach of Paragraphs 3, 6 (Selflessness) and 9 of the Code of Conduct in this regard.

The Panel saw nothing to suggest that Deputy Oliver had actively manipulated committee media releases as suggested by Deputy Taylor. The media releases were approved by the DPA and reflected the then understanding of those that prepared them. The Panel rejects the allegations made that Deputy Oliver had breached Paragraphs 6 (Accountability) of the Code of Conduct in this regard.

Deputy Taylor took exception to Deputy Oliver declining to disclose the initial email from His Majesty's Procureur and the Bailiff until the Bailiff had responded to Deputy Oliver's email of 16 February 2023. Deputy Taylor invited the Panel to draw inferences that the only reason the information was shared was because the Bailiff had indicated that he would share his opinion with the media. Deputy Oliver explained that she had not shared the opinions expressed by His Majesty's Procureur and the Bailiff as she had questioned their opinions with the Bailiff and was awaiting his reply. As soon as she had that reply the information was shared.

Undoubtedly the views initially expressed by His Majesty's Procureur and the Bailiff would have been unwelcome to Deputy Oliver. The Panel were surprised as to Deputy Oliver's seemingly dismissive reaction to the views expressed by both the senior legal adviser to the States and the Presiding Officer (and, moreover, the Bailiwick's most senior judge) but when the confirmation from the Bailiff was received it was shared. The relevant information was before the DPA when it met to reconsider the matter on 27 March 2023 and reinstated Deputy Taylor. The Panel did not consider that Deputy Oliver's failure to share the views of His Majesty's Procureur or the Bailiff earlier to amount to a breach of Paragraph 6 (Openness or Leadership) of the Code of Conduct as alleged.

The Panel was told that Deputy Oliver had been asked by another Deputy on the DPA on 9 March 2023 whether the Bailiff had accepted the vote on 18 January 2023. Deputy Oliver had apparently replied saying that there was "*no dispute, the committee voted and as far as concerned [sic] it's finished. John Dyke is VP.*" This was after Deputy Oliver knew that both His Majesty's Procureur and the Bailiff had expressed a different opinion. Deputy Oliver explained that she replied in this way as she understood that the views expressed by His Majesty's Procureur and the Bailiff were not definitive. Whilst again expressing some surprise as to the fact that Deputy Oliver did not afford the views that both had expressed with greater weight the Panel did not consider that Deputy Oliver intended to mislead her colleagues on the DPA.

Deputy Taylor considers that the failure of Deputy Oliver to discuss with him her desire to replace him as Vice-President prior to 18 January 2023 showed a lack of courtesy toward him. It certainly surprised the Panel that something as important had not been the subject of direct (and likely frank) communication prior to the matter being raised in Committee. However, it does appear that there has been poor communication between both Deputies long before the 18 January 2023 meeting. Deputy Oliver told the Panel that she did try to raise the issue with Deputy Taylor but only after the agenda for the 18 January 2023 meeting had been published. Both Deputies attributed responsibility for this failure to communicate with each other to the other having failed to return telephone calls or WhatsApp messages. Replacing Deputy Taylor was always likely to be a contentious step and not having first discussed matters with Deputy Taylor seems to the Panel to have been a wasted opportunity but does not amount to a breach of Paragraph 9 of the Code of Conduct.

Deputy Taylor criticises Deputy Oliver for the sloppy manner in which advice was sought and for disregarding the advice of His Majesty's Procureur and views of the Bailiff. With the benefit of hindsight, given the contentious nature of what was being proposed, seeking a formal written opinion from the Law Officers as opposed to a brief and informal conversation may have been prudent (and was accepted by Deputy Oliver in her written submission) but when the initial email from the Parliamentary Team was received Deputy Oliver had no reason to question that opinion.

Clearly this was an embarrassing episode for the DPA and the States and whilst matters could have been handled more astutely we do not consider that Deputy Oliver's conduct amounts to a breach of any part of the Code of Conduct.

In essence the Rules of Procedure were (and remain) unclear as to how to proceed in these somewhat unusual circumstances and in good faith Deputy Oliver took action which she believed was legitimate in reliance upon guidance from credible, and sensible, sources. The Panel notes that this is something SACC will consider further.

signed

The Very Rev'd J. Guille

signed

Advocate R. Clark

signed

Dame M. Perkins

Dated 14th June, 2023