

# **CODE OF CONDUCT FOR MEMBERS OF CHIEF PLEAS OF SARK**

## **PART I: Purpose and Scope of the Code**

1. The purpose of the Code of Conduct is to assist Members of the Chief Pleas of Sark [hereinafter referred to as “Members”] in the discharge of their obligations to Chief Pleas, their constituents and the public. All Members are required to comply with the provisions of this code in all aspects of their public life. Whilst it does not seek to regulate what Members do in their purely private and personal lives they must, however, be aware that some private and personal matters may impinge on their public roles. The Code upholds Members’ right to freedom of expression.
2. The obligations set out in this Code are in addition to those which apply to all Members by virtue of the ‘Chief Pleas of Sark Rules of Procedure’ and ‘The Constitution and Operation of Chief Pleas Committees’.

## **Public Duty**

3. Members, before entering office, take an oath or affirm allegiance to be faithful and bear true allegiance to His Majesty The King, his heirs and successors, according to law.
4. The primary duties of Members are to act in the public interest and 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. The Code imposes ethical standards upon Members rather than service or performance standards.
5. Members have a duty to respect the rule of law and the administration of justice. In this context “law” includes such international law and treaty obligations as are for the time being applicable.
6. Members must give due priority to attendance at Meetings of the Chief Pleas of Sark and should be present in the chamber when the Chief Pleas of Sark are meeting except with reasonable excuse.

## **Principles of Conduct**

7. Members shall observe the following general principles of conduct for holders of public office:

**1.1 Selflessness:** Members must take decisions and act solely in terms of the public interest.

**1.2 Integrity:** Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**1.3 Objectivity:** In carrying out public business, including making public appointments awarding contracts, or recommending individuals for rewards and benefits, Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**1.4 Accountability:** Members are accountable for their decisions and actions to the Chief Pleas of Sark and the public and must submit themselves to whatever scrutiny is appropriate to their office to ensure this.

**1.5 Openness:** Members must act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**1.6 Honesty:** Members have a duty to be truthful.

**1.7 Leadership:** Members must exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

## **The Principles in Practice**

### ***Conflict between Public and Private Interest***

8. 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.

### ***Members' Conduct***

9. 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 Chief Pleas of Sark and never undertake any action which would bring the Chief Pleas of Sark, or its Members generally, into disrepute.
10. 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. 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.
11. Members must not engage in unwanted behaviour, harassment, bullying or discrimination.

### ***Relationship with the Civil Service***

12. 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 familiarise 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.

### ***Possible Inducements, including Gifts and Hospitality***

13. The acceptance by a Member of a bribe, including any fee, compensation or reward, to influence his or her conduct as a Member, in connection with the promotion of, or opposition to, any matter submitted or intended to be submitted to the Chief Pleas of Sark, or any Committee of the Chief Pleas of Sark, and any trading in influence to secure undue advantage is contrary to law.

14. The acceptance of hospitality may be acceptable in appropriate circumstances as a means of effecting the Chief Pleas of Sark's business. However, Members shall not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver. In receiving any gift or hospitality Members should consider subjectively whether they would be prepared to justify acceptance to the public.
15. Members must comply with the requirements of the Rules of Procedure of the Chief Pleas of Sark concerning declarations of interests in respect of gifts and hospitality. Any money or tangible gifts received by a Member which are required to be declared must not be retained but must be transferred or delivered into the ownership of the Chief Pleas of Sark.

#### ***Use of Chief Pleas of Sark Facilities***

16. To avoid misrepresentation of the Chief Pleas of Sark and to avoid the improper use of Chief Pleas of Sark's assets, Members must not use any goods, services or facilities provided for the functioning of government:
  - a) for private purposes; or
  - b) except where generally available in accordance with published arrangements to all Members.

#### ***Register and Declaration of Members' Interests***

17. Members must fulfil conscientiously the requirements of the Rules of Procedure of the Chief Pleas of Sark in respect of the registration of interests in the Register of Members' Interests and must always draw attention to any relevant and material interest in any proceedings of the Chief Pleas of Sark, or its Committees.
18. A Member shall not knowingly or recklessly make a false statement in a Declaration of Unspent Convictions.
19. In any activities with, or on behalf of, any organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with the Speaker of Chief Pleas, Law Officers, Members and officials.

#### ***Payments from Third Parties***

20. Members must not accept, from a third party, any payment or gift in respect of their participation in any proceedings of the Chief Pleas of Sark, or its Committees.

#### ***Confidential Information***

21. Members must bear in mind that confidential information which they receive in the course of their duties may only be used in connection with those duties, and that such information must never be used for the purpose of financial gain or otherwise in their own personal interest or that of their families, friends, business associates or any voluntary or charitable organisation with which they are involved.
22. For the avoidance of doubt the 'confidential information' referred to in the previous section includes, but is not limited to, Committee minutes and other papers circulated to members thereof. The content of such minutes and other papers is not to be

disclosed to any third party other than by resolution of the Committee concerned.

23. In addition, Members shall not disclose publicly, or to any third party, personal information about named individuals which they receive in the course of their duties, unless it is both lawful and clearly in the wider public interest to do so. Members must, at all times, have regard to all relevant data protection, human rights and other legislation when dealing with confidential information and must be aware of the consequences of breaching confidentiality.
24. For the avoidance of doubt, all correspondence, howsoever received, between a Committee and a Member of the Chief Pleas of Sark shall be treated as confidential unless expressed otherwise and shall not be disclosed to any third party, whether within the Chief Pleas of Sark or outside, in whole or in part, by any means, without the express consent of the author of that correspondence.
25. Members shall not disclose details in relation to a Code of Conduct investigation except when authorised by law or by the investigatory authority. Information on complaints against Members for alleged breaches of the Code of Conduct is considered confidential information and should remain confidential from the point of submission until the complaint has been finally determined.

*Note: The obligations under section 23 not to disclose personal information publicly or to any third party, and under section 24 to treat correspondence as confidential and not to disclose correspondence to any third party, shall be treated as not having been breached or disregarded where the disclosure or treating takes place in accordance with arrangements approved for the operation and management of a private office or administrative scheme under section 26.*

### **Members Operating a Private Office or Administrative Scheme**

26. The senior Civil Servant may from time to time approve arrangements for the operation and management of any private office or administrative scheme that are proposed by any Member and are intended for the purpose of enabling that Member to deal with correspondence and information relating to the affairs or business of the Chief Pleas of Sark or any committee of the Chief Pleas of Sark.

### **Part II: Complaints to the Commissioner for Standards**

27. Any person may complain to the Commissioner for Standards (the Commissioner) that a Member has breached the Code of Conduct relating to Part I matters.
28. The conduct of Members during Meetings of the Chief Pleas of Sark is normally dealt with by the Speaker of Chief Pleas (known also as the Presiding Officer in this document) through application of the Rules of Procedure relating to maintaining order during proceedings. If, in the course of dealing with such a matter, the Speaker of Chief Pleas considers that the conduct requires further or fuller investigation, they may also refer the matter to the Commissioner for Standards.
29. Should a Member wish to raise a complaint about the conduct of the Speaker of Chief Pleas during a meeting of Chief Pleas, they may do so through by the normal means to the Commissioner for Standards.
30. Complaints, whether from Members or from members of the public, alleging that the conduct of a Member is in breach of the Code of Conduct set out in Part I must be addressed in writing to the Commissioner.
31. In the interests of natural justice, a complaint submitted to the Commissioner must remain confidential from the point of submission until the complaint has been determined, unless disclosure is authorised.
32. Whilst a complaint will normally be submitted by a third party, the Commissioner may initiate an investigation if they believe that a breach of the Code may have occurred. A Member can also request that their own behaviour is investigated by the Commissioner to establish if a breach of the Code has taken place.
33. Members must not make frivolous, vexatious or manifestly unfounded complaints to the Commissioner for Standards and where the Commissioner is of opinion that a complaint is frivolous, vexatious or manifestly unfounded, the Commissioner shall not initiate an investigation into the complaint.
34. Immediately upon receipt of a complaint, or notification that the Commissioner is initiating an investigation, the Commissioner shall notify the Member concerned that a complaint has been made and the nature of the complaint.
35. All Members are required to co-operate fully and promptly with the Commissioner during any consideration and/ or investigation, even if the Member concerned considers that the alleged breach is unsubstantiated. Failure to co-operate in any investigation will, in itself, be regarded as a breach of the Code.

36. If the Commissioner, in the course of the investigation, has cause to believe that a criminal offence may have been committed, he or she shall immediately suspend the proceedings and forthwith refer the matter to the Police. The investigation shall not be resumed until either judicial proceedings have been concluded or the Police have certified to the Commissioner that they have no further interest in the matter.
37. The Commissioner may decide to agree remedial action with the Member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the Member concerned. Remedial action involves “putting the record straight”, for instance by making an amendment to the Register of Interests. The Member will normally be expected to make a formal apology, either in writing or by means of a formal statement to the Chief Pleas of Sark.
38. If the Commissioner and Member agree remedial action, the Commissioner will make a report of the matter and remedial action to the Greffier for forwarding to the Policy & Finance Committee, which will place the report for information before the Chief Pleas of Sark at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. The Commissioner will inform the complainant of the action taken in response to the complaint.
39. Where the Commissioner finds that a complaint has been substantiated but is of the view that the breach of conduct was of a minor nature he or she will normally dispose of the matter by cautioning the Member concerned. A report of the Commissioner’s decision in such cases shall be sent to the Greffier for forwarding to the Policy & Finance Committee, which will place the report for information before the Chief Pleas of Sark at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. The Commissioner will inform the complainant of the action taken in response to the complaint.
40. Where the Commissioner finds that a complaint has been substantiated and is of the opinion that the Member should be formally reprimanded, suspended, removed from a particular office or expelled, or, where a Member refuses to accept a caution in the circumstances set out in the previous section, he or she shall report their findings to the Greffier for forwarding to the Policy & Finance Committee which will submit the report - with the Commissioner’s recommendations - to the Presiding Officer for inclusion in the next Chief Pleas of Sark’s meeting agenda for debate at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. Notwithstanding a Member’s refusal to accept a caution, the Chief Pleas of Sark may resolve that the Member be cautioned. The Commissioner will inform the complainant of the action taken in response to the complaint.
41. There is a right of appeal against a decision of the Commissioner for Standards in accordance with the provisions of The Reform (Sark) Law, 2008 and the mechanism established by the Commissioner for Standards thereunder.
42. For the avoidance of doubt, mediation between the complainant and the accused Member is not permitted in the processing of complaints made pursuant to this Code of Conduct.

## **Definitions**

43. In this Code:

- “Members of the Chief Pleas of Sark” and “Members” means the Seigneur and Speaker of Chief Pleas (and any deputies thereof), and Conseillers.
- “Bullying” means offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone, whether through persistent behaviour or a single grossly unacceptable act;
- “Discrimination” includes behaviour that discriminates against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, political opinion and language preference;
- “Harassment” means unwanted conduct which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual and includes sexual harassment;
- “Unwanted behaviour” means behaviour which is not encouraged or reciprocated by the recipient, regardless of whether it was meant to cause offence, and whether it is repeated or an isolated incident.

44. In interpreting and applying the definitions of "bullying", harassment", "discrimination" and "unwanted behaviour":

1. The intention of the person complained about is irrelevant;
2. The test is whether a reasonable and impartial person would consider the conduct would fall within one of the definitions having regard to the context of the behaviour complained about; and
3. The respective rights under the Human Rights (Bailiwick of Guernsey) Law, 2000 of both the person complained about and the person subject to the conduct in question must be respected.

45. The disciplines and standards of behaviour prescribed are also applicable in the context of electronic communications.

## **Annex 1**

### **COMMISSIONER FOR STANDARDS**

**Commissioner for Standards:** Dr Melissa McCullough

**Address:**  
Commissioner for Standards  
c/o Committee Office  
La Chasse Murette Sark  
GY10 1SE

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## COMMISSIONER FOR STANDARDS - STATEMENT FOR SARK

1. The Commissioner for Standards ("the Commissioner") investigates complaints of alleged breaches of the Code of Conduct for Members of the Chief Pleas of Sark ("the Code"). The Commissioner considers complaints made by third parties and can also initiate her own investigation if she believes that, at a relevant time, a breach of the Code may have occurred. A Member of the Chief Pleas of Sark ("Member") can also request that their own behaviour is investigated by the Commissioner to establish whether there has been a breach of the Code.

### Complaints

2. Whether the complainant is a member of the public or a Member of the Chief Pleas, they may wish to consider whether it might first be useful, if appropriate, to try to resolve their complaint informally.
3. Any complaint alleging that a Member of the Chief Pleas has breached the Code must be made in writing to the Commissioner via one of the following means:
  1. By email: [commissioner@pi-cfs.org](mailto:commissioner@pi-cfs.org)
  2. Online via the website: <https://pi-cfs.org/>
  3. By Post to: Commissioner for Standards, c/o Committee Office, La Chasse Murette, Sark, GY10 1SE
4. In order for a complaint to be considered it should:
  - a. be made in writing;
  - b. state the name of the complainant;
  - c. state the email, telephone and postal address of the complainant (unless the complainant is a current Member);
  - d. name the person who is the subject of the complaint;
  - e. state the acts or omissions of the Member complained of which are alleged to have breached the Code;
  - f. state the relevant provision or provisions of the Code which each act or omission is alleged to have breached;
  - g. in relation to each act or omission complained of, be substantiated by sufficient evidence that there is a *prima facie* case that a breach of the Code has occurred and that the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process; and
  - h. relate to alleged conduct which falls within the scope of the Code.

5. The Commissioner has the discretion to consider a complaint even where c, e, f or g in the above criteria haven't been met.

### **Preliminary Assessment**

6. The Commissioner will conduct a preliminary assessment of all complaints. The Commissioner cannot consider complaints that fall outside the scope of the Code or complaints which she deems frivolous or vexatious. She will not consider complaints that substantially repeat allegations which have already been the subject of consideration (unless there is fresh evidence in their support).
7. The Commissioner will not consider anonymous complaints<sup>1</sup> or complaints where the complainant is not prepared to have their name and complaint disclosed to the Member complained about. The complainant's details will be included in all correspondence including any report submitted to the Policy & Finance Committee or Chief Pleas with the exception of complaints that relate to unacceptable behaviours (see 10 below).
8. Matters falling within the Commissioner's remit include:
  - a. failure to adhere to the requirements of the Code;
  - b. failure to register relevant interests;
  - c. failure to declare relevant interests in the course of parliamentary business including committee proceedings;
  - d. unacceptable behaviour including bullying, harassment, sexual harassment, intimidation and victimisation.
9. Matters not falling within the Commissioner's remit include:
  - a. policy matters or a members' political views or opinions;
  - b. service or performance standards or outcomes received (other than in exceptional circumstances);
  - c. a complaint from a person who is not a Member of Chief Pleas regarding words spoken by, or actions of, a Member during a meeting of the Chief Pleas;
  - d. a complaint about a former Member of Chief Pleas (unless in relation to sections 22, 23 and 24 (confidential information)).

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<sup>1</sup> The Commissioner is statutorily barred from investigating anonymous complaints. Notwithstanding this exclusion, the Commissioner may consider anonymous complaints where they provide corroborating evidence for admissible complaints.

## **Complaints Relating to Unacceptable Behaviour**

10. Unacceptable behaviour can be defined as any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all circumstances and in particular the complainant's perception, it should reasonably be considered as having that effect.
11. Complaints relating to bullying, harassment, sexual harassment, intimidation and victimisation are intended to address such behaviour or conduct whether it occurs in person or remotely, for example by email, phone, text or through social media. Such behaviour or conduct may occur in a single and isolated serious incident or in multiple incidents occurring over a period of time.
12. Members have a right to freedom of expression and this includes disagreements on issues and policy which are a normal part of the political process.
13. Due to the sensitive nature of complaints concerning unacceptable behaviour, the Commissioner will not normally disclose the complainant's name or details in the final report of any such investigation, unless the complainant has expressly agreed to such disclosure.
14. The Commissioner encourages anyone who believes they have experienced unacceptable behaviour to consider using an informal approach to resolve the matter in the first instance. However, this is not a prerequisite for submitting a formal complaint.

## **Discontinuation of a Complaint**

15. The Commissioner may discontinue consideration of a complaint if at any time she is satisfied that:
  - a. the complaint is frivolous or vexatious or otherwise an abuse of the complaints process;
  - b. the complainant has, without reasonable excuse, failed to co-operate with the Commissioner;
  - c. the alleged conduct is not sufficiently serious to justify further consideration;
  - d. the complainant no longer wishes to bring the complaint;
  - e. the complaint would more appropriately be investigated by the police or other public body;
  - f. it is not in the public interest to proceed with the consideration of the complaint; or
  - g. any Member, in respect of whom she is considering a complaint, no longer holds office as a Member of Chief Pleas (unless in relation to sections 22, 23 and 24 (confidential information)).

## **Investigation: Procedural Safeguards**

16. The Commissioner determines the procedure and timing of any investigation.
17. The Commissioner will make arrangements to facilitate any complainant who is not able to submit their complaint in writing, for example due to disability or language difficulties.
18. Confidentiality is essential for all parties involved in the complaints process. This includes not only the person making the complaint but also the individual against whom the allegation has been made. Given their public roles, Members may be particularly concerned about unproven allegations being disclosed or repeated publicly before a full investigation has taken place. In the interests of fairness, any complaint submitted to the Commissioner must remain private and confidential from the point of submission until the matter has been fully determined, unless disclosure is expressly authorised. For example, disclosure may be necessary if the complainant is a Member who must declare an interest, such as having submitted a complaint to the Commissioner.
19. Information collated in relation to complaints will be held and managed in accordance with the [Data Protection \(Bailiwick of Guernsey\) Law, 2017, as amended](#) and Data Protection principles.
20. The police and other agencies investigate allegations of criminal misconduct and the Commissioner will not investigate any related allegation of a breach of the Code while the police or other agency is conducting its own investigation. The same suspension of investigation applies while related proceedings (for instance any action for defamation) are before a court of law.
21. Where during an investigation the Commissioner decides that the conduct of a Member of Chief Pleas should be investigated by the police or other public body or agency, the Commissioner may liaise with the police or such other public body or agency as they deem appropriate.
22. In investigating and adjudicating allegations of non-compliance with the Code, the Commissioner shall act in accordance with the principles of natural justice and fairness.
23. Proceedings are not adversarial, but inquisitorial in nature. The Commissioner is an independent and impartial investigator appointed by Chief Pleas, whose task is to establish the facts of a case. She reports these, along with her conclusions as to whether or not there has been a breach of the Code and her recommendations, to the Greffier.
24. The Commissioner's conclusions and recommendations are binding.
25. Members are expected to co-operate with any investigation into their conduct; requested written evidence must be in their own name and letters sent on their behalf by legal advisers or others may be disregarded. Members may be accompanied to any meeting or interview by a colleague, friend or legal adviser.

However, every effort is made to keep proceedings informal and there is no expectation that they should be so accompanied. If a Member chooses to bring a colleague, friend or adviser, they are free to consult him or her off the record, but they will be expected to answer for themselves (and not through the friend or adviser) any questions put to them.

26. The complainant has no formal *locus* once an investigation is under way and has no right to be called as a witness. The complainant is expected to co-operate with any investigation and to answer any questions and supply all evidence in his or her possession when asked to do so.
27. Members accused of misconduct have no entitlement to cross-examine complainants, though they are given an opportunity to review and challenge the Commissioner's findings of fact prior to finalising her report.
28. The civil standard of proof is adopted at all stages in the investigation process by the Commissioner. Therefore, in order to find against a Member, the Commissioner needs to be satisfied that the allegation is proven on the balance of probabilities, that is, "more likely than not".

### **Confidentiality**

29. From the point that the Commissioner receives a complaint, all evidence and correspondence relating directly to the inquiry must remain confidential unless and until it is published by the Greffier.

### **Investigations: General Procedure**

30. On receipt of a complaint, the Commissioner will write to the complainant at the earliest opportunity to acknowledge receipt of their complaint. At the same time, she will send a copy to the Greffier and will inform the Member concerned of the complaint and provide a copy of the complaint and any evidence offered in support of it. At the same time she will often invite the Member to respond in writing with a full and accurate account of the matters in question.
31. Following her preliminary assessment, the Commissioner will inform both the complainant and the Member concerned whether or not she will investigate the complaint. If she has decided that the complaint does not merit investigation, she will provide the complainant and the Member concerned with a brief explanation of her reason(s) for dismissing the complaint. This will be copied to the Greffier who will retain the copy in confidence for the length of the Members' service and five years thereafter.
32. Where the Commissioner finds that a complaint has been substantiated but is of the view that the breach of conduct was of a minor nature, she will normally dispose of the matter by cautioning the Member concerned. A report of the Commissioner's decision in such cases shall be sent to the Greffier for forwarding to the Policy & Finance Committee, which will place the report for information before the Chief Pleas of Sark at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. The Commissioner will inform the complainant of the

action taken in response to the complaint.

33. Alternatively, the Commissioner may decide to agree remedial action with the Member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the Member concerned. Remedial action involves “putting the record straight”, for instance by making an amendment to the Register of Interests of Members. The Member will normally be expected to make a formal apology, either in writing or by means of a formal statement to Chief Pleas. If the Commissioner and Member agree remedial action, the Commissioner will make a report of the matter and remedial action to the Greffier for forwarding to the Policy & Finance Committee, which will place the report for information before the Chief Pleas of Sark at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. The Commissioner will inform the complainant of the action taken in response to the complaint.
34. If remedial action is not considered appropriate by the Commissioner in the circumstances, and the Member’s response is not sufficient to enable the Commissioner either to dismiss the complaint or agree remedial action, the Commissioner may pursue an investigation. This can include seeking further information, either from the Member concerned or others, including the original complainant, third parties, or public or private bodies. Such information may be sought in writing or the Commissioner may decide to interview witnesses either informally or by means of formal oral evidence. The Commissioner holds her meetings with witnesses in private. In the case of informal interviews, a note will be made of the meeting and all parties to the interview will subsequently be asked to confirm its accuracy. In the case of formal oral evidence, a recording and full transcript will be made. All interviewees will be sent a formal transcript and will be provided 14 calendar days for review.
35. The Commissioner has the power under 'Part 3, paragraph 11 of the Third Schedule to The Reform (Sark) (Amendment) Law, 2025 to summons people to appear and to provide documents.
36. Part 3, paragraphs 12 to 16 of the Third Schedule to The Reform (Sark) (Amendment) Law, 2025 sets out the criminal offences and related penalties arising from any failure to assist the Commissioner in the discharge of her functions. In particular, it should be noted that any person who, without reasonable excuse, refuses to comply with a requirement of the Commissioner, or gives false or misleading information to the Commissioner or otherwise interferes with witnesses, or obstructs the Commissioner or destroys documents, is liable to prosecution.
37. Part 4 sets out the relevant personal and professional privilege protections which apply.

### **Assessing the evidence**

38. If the Commissioner’s investigation has uncovered material evidence that is at variance with the Member’s version of events, she will put this to the Member, who will have the chance to challenge it.

39. Before finalising her report, the Commissioner will share with the Member a draft of her findings of fact and provide the Member with an opportunity to comment. The Commissioner may also share with the complainant a draft of her findings of fact on a confidential basis, where the Commissioner considers it is appropriate in the circumstances to do so. All parties are provided 14 calendar days to make any challenges.
40. If, having considered the Member's comments, the Commissioner considers that there remain significant contested issues of fact, she will prepare her own account of the facts of the case, while drawing attention to those points which are contested.
41. The Commissioner reports their findings to the Greffier in the following form:
  - a. a summary of the initial complaint and of the relevant elements of the Code;
  - b. a brief account of the key facts in the case, with reference to evidence as appropriate, and with any contested points of fact highlighted;
  - c. their findings with reasons as to whether or not the Code has been breached and any relevant evidence, written and oral;
  - d. a recommendation as to what action, if any, should be taken.
42. The Commissioner shall report their findings to the Greffier for forwarding to the Policy & Finance Committee which will submit the report - with the Commissioner's recommendations - to the Presiding Officer for inclusion in the next Chief Pleas of Sark's meeting agenda for debate at its next statutory meeting, or if a statutory meeting is six or more weeks away will make a request for an extraordinary meeting to be called sooner. The Commissioner will inform the complainant of the action taken in response to the complaint.

### **Right to appeal the decision of the Commissioner**

43. An appeal against a decision by the Commissioner can be made either by the complainant or the respondent to the Greffier who will allocate the appeal to one of the available Appeals Commissioners ("AC").
44. The role of the AC is to review the decisions taken by the Commissioner. The AC does not re-investigate the allegations during an appeal, nor does he/she take fresh decisions on the basis of the investigation.
45. To submit an appeal, it must be:
  - a. made in writing
  - b. submitted by the complainant or respondent, not by an adviser or supporter
  - c. submitted within 20 working days of being notified of the Commissioner's decision<sup>2</sup>
  - d. set out which of the below grounds apply
46. An appeal can be brought under one or more of the following grounds:

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<sup>2</sup> The deadline may be extended if there are mitigating circumstances. A request for an extension should be done as early as possible and before the appeal deadline. Any request should clearly state the mitigating circumstances and, where appropriate, provide evidence of such circumstances. Any request for an extension to the deadline must be made by the complainant or respondent, not by an adviser or supporter, and there is no guarantee the extension will be approved.

- a. there was a material error in the relevant investigation by the Commissioner that affected the decision,
  - b. the decision was unreasonable,
  - c. the process followed by the Commissioner in reaching the decision was flawed,
  - d. credible new evidence has become available which, if accepted, would have a real prospect of affecting the decision,
  - e. in the case of a decision to impose a sanction, the sanction imposed was disproportionate, or
  - f. there is another compelling reason to allow an appeal to be made.
47. An appeal submission should include as much detail as necessary to consider the appeal and to understand the nature of the issues being raised.<sup>3</sup>
48. Where an appeal is wholly or partly on the grounds of credible fresh evidence, that evidence should be included in the appeal submission or by way of a summary.
49. The AC will:
- a. consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and whether there is any substance to the grounds;
  - b. consider whether to disclose an appeal submission to the other party. This will normally only be if the AC wishes to request further information from them or to ask them to respond to a specific point;
  - c. consider the substantive appeal and reach a conclusion on the merits. The AC may request additional evidence but will not conduct a re-hearing of the case.
50. The AC will normally decide the appeal based on written submissions. Exceptionally, the AC may decide that it should hold an oral hearing with one or both of the parties (separately), but only if there is a specific reason for doing so.
51. The AC will apply the civil standard of proof, the balance of probabilities, as applied by the Commissioner.
52. The AC will make a decision on the appeal and say whether or not the complaint has been upheld. Depending on the outcome, the AC may then need to go on to consider the question of sanction. The AC can uphold, reduce or increase the sanction. In cases where the complaint has not been upheld, no sanction will be imposed.
53. The AC will report their findings to the Greffier. The Greffier will notify the complainant and the Member and at the same time will send the report to Policy & Finance Committee for them to forward to the Chief Pleas of Sark. The AC's report will be handled in the same manner as a report from the Commissioner.
54. The AC may, exceptionally, require or recommend that the complaint is re-

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<sup>3</sup> The AC may or may not ask for more information. Insufficient supporting information in an appeal submission may reduce the likelihood that the AC will decide that there is any substance to the grounds raised.



investigated taking into account its decision.

55. The decision of the AC is final and cannot be appealed.

*28th August 2025*

*Dr Melissa McCullough  
Commissioner for Standards*