
STATES OF JERSEY



COMMISSIONER FOR STANDARDS: A COMPLAINT AGAINST DEPUTY TOM BINET BY INNA GARDINER (ON BEHALF OF THE SCRUTINY LIAISON COMMITTEE)

**Presented to the States on 4th April 2025
by the Privileges and Procedures Committee**

STATES GREFFE

PAN-ISLAND COMMISSIONER FOR STANDARDS



Report by the Pan-Island Commissioner for Standards on a complaint
against Deputy Tom Binet by Inna Gardiner (on behalf of the Scrutiny Liaison
Committee)

Government of Jersey-Confidential



Summary

This report details my investigation following a complaint received from Deputy Inna Gardiner, acting on behalf of the Scrutiny Liaison Committee, against Deputy Tom Binet, Minister for Health and Social Services. The initial complaint was submitted on 17th July 2024, with a further detailed and clarified submission received on 3rd October 2024. The complaint alleges that Deputy Tom Binet breached the Ministerial Code of Conduct, specifically paragraphs 3, 5, 11, 12, 14, 16, and 17, when he asked Deputy Sir Philip Bailhache to meet with consultants working at the Jersey hospital to listen to their concerns and report back to him in summary.

I commenced my investigation on 3rd October 2024. During the course of my investigation, I considered the seven allegations presented. I interviewed Deputy Binet, Deputy Bailhache, two consultants who had met with Deputy Bailhache, as well as members of the hospital Executive Team and a Non-Executive Director of the Health and Care Services Advisory Board.

Several of the allegations pertained to paragraphs of the Code that I did not believe were relevant in the context of this complaint (Paragraphs 5, 11 and 14). Among those allegations that were engaged (Paragraphs 3, 12, 16 and 17), I determined that Deputy Binet undertook the work in good faith, genuinely believing he was acting appropriately and for good reason. He consulted with both the then acting Chief Executive of the States of Jersey and the Chief Minister for their advice prior to initiating the work. He was advised that the work did not breach the Ministerial Code of Conduct.

The work conducted did not have defined terms of reference, nor was there an agenda for the meetings as, according to Deputy Binet, they were characterised as “listening exercises.” Furthermore, Deputy Binet failed to inform the Chief Officer of this piece of work before it commenced, a mistake for which he apologised to the Chief Officer soon after the work commenced. Deputy Binet also confirmed that he did not share the contents of the summary provided by Deputy Bailhache beyond his Assistant Ministers and that all information related to this work is being held securely.

After a thorough review of all evidence related to this complaint, including written responses, documentary evidence, and my interviews, it is my view that Deputy Binet did not breach of paragraphs 3, 5, 11, 12, 14, 16, and 17 of the Ministerial Code of Conduct as alleged.

Introduction

1. I received a complaint from Deputy Inna Gardiner (on behalf of the Scrutiny Liaison Committee) on 17 July 2024¹ against Deputy Tom Binet, Minister for Health and Social Services. The complaint was further clarified and submitted on 3 October 2024.²
2. The complaint related to work carried out by Deputy Sir Phillip Bailhache at the request of Deputy Binet and involved meeting with consultants in the hospital and listening to their views and concerns.
3. The complaint alleges that through his actions in carrying out this work in the way that he did, Deputy Binet breached Paragraphs 3, 5, 11, 12, 14, 16 and 17 of the Ministerial Code of Conduct.³

Investigation

4. During my investigation, I carried out the following:
 - Reviewed the complaints and all evidence submitted
 - Requested and received written responses to the original complaint and revised complaint from Deputy Tom Binet, Minister for Health⁴
 - Reviewed Deputy Sir Philip Bailhache's summary
 - Interviewed Deputy Binet
 - Interviewed Deputy Bailhache
 - Interviewed Mr Chris Bown, Chief Officer, Health and Care Services
 - Interviewed clinicians within the Executive Team (n=2) (Dr A and Dr B)
 - Interviewed Ms Carolyn Downs, NED, Health and Care Services Advisory Board
 - Invited clinicians to interview who had met with Deputy Bailhache (n=4); 2 took part [Dr C and Dr D]
 - Telephone call with Tom Walker, then acting CEO States of Jersey

Background and Context

5. Upon taking up his role as Minister for Health in January 2024, to facilitate requests by clinicians to meet with him, Deputy Binet decided to carry out what he referred to as a "listening exercise". Deputy Binet asked Deputy Bailhache to meet with the clinicians on his behalf to gather information in relation to their concerns and to summarise his findings.

¹ Document 1

² Document 2

³ [The Codes of Conduct & Practice for Ministers and Assistant Ministers](#)

⁴ Document 3, 3a, 3b, 3c

Evidence

6. Deputy Binet explained that the intention of this piece of work was to listen to any concerns or ideas that hospital consultants may have had.

The purpose of the exercise was entirely to hear what they had to say, because I was aware that there was a build-up of concerns for a good number of them. Some of them I had spoken to actually on and off even before the election, some of it during my time as Infrastructure Minister, and certainly it became much more apparent when I took the job of Health Minister, then there was a lot more interest in speaking to me. [T Binet]

On the one hand, I wanted to understand all the mechanisms as best I could, all the various departments. It's quite a lot to take in, and because I was aware that within one section of that there was a degree of tension between consultants, clinicians, and the management, that's widely known to just about anybody that's close to the health service, and I wanted to get a picture. Bear in mind that I had more access to the management side of things, because that's my formal interactions with them, and I knew there was this body of people who were not particularly content at that point of time, and I just wanted to get a feel for what the issues were. That struck me as being a bit of a shortcut mechanism just to get a feel for it so that I could think, well, okay, these seem to be the issues. [T Binet]

7. Deputy Binet spoke with the Chief Minister and the CEO of the States of Jersey before the work commenced; both confirmed that the proposed work would not be in breach of the Ministerial Code of Conduct. Mr Walker confirmed that he did provide advice to Deputy Binet in relation to this, advising that he did not believe the proposed work was in contravention of the Ministerial Code of Conduct.
8. Deputy Binet asked Deputy Bailhache to assist with this work because he was busy and could not carry it out himself. Deputy Binet explained his reasoning:

I consulted with my Assistants and it was decided (for several reasons) that it might be desirable to ask Deputy Sir Philip Bailhache if he might oblige. At the time he was a backbencher with no particular or specific duties. More importantly, he was an experienced lawyer, a former Bailiff (head of the local Judiciary), a States Member of longstanding and a very widely respected person. [T Binet]

9. Deputy Binet stated that he considered this work, although informal in style, to be a serious piece of work:

Well, a serious piece of work as I consider just about everything you touch in health to be serious, because it all contributes towards good patient care, which really has to be surely at the centre of everything. [T Binet]

10. Deputy Binet failed to inform the Chief Officer, Mr Chris Bown, that he was intending on carrying out this work. He admits that was a failure on his part.

Yes. I don't know what gave rise to it, but he had heard from - by somebody else before I got to talk to him about it, and that was an oversight, and if I'm at fault for something, yes, I'm at fault for that. I should have had that conversation with him, yes. [T Binet]

11. The Chief Officer had heard about the piece of work being undertaken through a retired consultant who had himself been asked to meet with Deputy Bailhache. In explaining his

concern that he hadn't been informed or consulted in relation to this piece of work, Mr Bown said:

I was concerned about that...on a number of counts. One, that I hadn't been informed that this work was taking place, and whilst consultants are enormously important and very special, they are still members of my staff, and I felt that it would have been appropriate to do that. Secondly, the Minister and I and everyone else know that the relationship between managers and consultants is not a good one. It's highlighted and alluded to in Hugo Mascie-Taylor's report. It's pretty typical, although probably a bit more extreme to the many organisations in the last 30 years that I've been asked to go into a challenge where there is that relationship problem. I was slightly disappointed I didn't know about it because it is something that I have had some expertise in over the last 30 years, and I wasn't quite sure what Sir Philip's expertise was in this area. The third concern was that, from my experience, when looking at relationships between two groups of people, you actually interview and speak to the two groups, not just one part of that. That gave me some concern, as I found out it did with my leadership team, particularly the medical leadership, so the medical director, deputy medical director, chiefs of service, that they weren't being asked to tell their side of the story, whatever the story is.....I've never seen a process which only engages one, it's like doing mediation but with only one party. [Chief Officer]

12. The Chief Officer said that when he came back from leave (having heard about the piece of work being done while on leave), he arranged to meet with Deputy Binet who, at that point, offered an apology:

When I returned from leave, I met with Tom and with Chris Rondel, his private secretary, and expressed my concerns. It was a difficult meeting I think probably, not aggressive or rude, but difficult. The key thing that I wanted then at that point is to receive a copy of that report. Clearly, as chief officer, if there were issues that were being raised, particularly if there were serious concerns that I hadn't been aware of, and I was guessing, quite frankly, that many of the things that people would raise are already on my radar, but if there weren't, then I would need to take action. [C Bown]

When I had that meeting with him when I came back, I think he recognised that I wasn't angry, I was just disappointed. To be honest, with my experience, I would have thought I could have contributed to a more structured and appropriate piece of work, as I have done in other English NHS Trusts over the last 30 years. [Chief Officer]

13. The Chief Officer asked Deputy Binet to meet with the medical director and the four Chiefs of Service (all consultants), as they had not previously been asked to participate in Deputy Binet's piece of work. The Minister agreed and a meeting took place.
14. Deputy Bailhache explained that the process he followed in carrying out this work did not include terms of reference "in the strictest sense", but that he was clear on what Deputy Binet wanted him to do. Deputy Bailhache referred to it as more of an "oral terms of reference".
15. Deputy Bailhache explained the process he followed in setting up and meeting with consultants.

...it was all done privately, because there were sensitivities and the consultants didn't want people in general, and certainly managers of the hospital to know that they were seeing me at the Minister's request. So what I did in practise was, I think I was given the mobile telephone numbers of the consultants. I sent them a text message saying, would you like to see me? And I explained that the Minister had asked me to carry out this work. And invariably, they said, yes, they would. And we made arrangements on how they came. [P Bailhache]

And at the end of the day, about 30 or so, all told, came to see me. I drew up a summary report and gave it to the minister with the statements on the 27th of April this year.

[P Bailhache]

16. Deputy Binet stated that the substance and content of the meetings he had were nothing to do with performance concerns nor did they have any impact on ongoing GMC cases. Deputy Bailhache confirmed the same.

It had no impact, and there was not intended to be any impact because that wasn't the purpose of the exercise, and that wasn't even present in my mind when I asked for the job to be done. I can only assume that they're referring to a major inquiry about rheumatology, which was longstanding, ongoing. I was aware of it, familiar with it. I'd been briefed on it very regularly, as you can expect, something high profile like that, and I'd been in various discussions about it throughout the course of time. So the idea that I would set up an investigation to go and interfere with something of that regard, it's actually quite absurd. [T Binet]

No, nothing at all to do with performance concerns. And I certainly did not see any consultants whose affairs were subject to investigation by the royal body. [P Bailhache]

17. In assessing whether those who had meetings with Deputy Bailhache felt there was any harm caused to them in relation to this exercise, testimony from consultants I interviewed (these are represented as Dr C and Dr D for anonymity) who had met with Deputy Bailhache did not appear to highlight any concerns.

I thought this was just someone trying to help find out what the issues were, and is there any other way to solve them, rather than going through the usual very prolonged channels. [Dr D]

It wasn't to undermine the officers of HCS either. It was just a fact-finding mission, just to find out what my feeling was about ways that we could improve the working conditions and relationships. That's happened in other countries I've worked, so I don't see it as being excessive. [Dr C]

I just assumed it would all be collated into some useful document that would allow the Minister to gather as much information from a broader group of people as possible, for him to be able to do his job really. [Dr D]

Not that I can see, but I don't think any great benefit came from it either, to be honest. [Dr D]

Yes. The fact that the minister now holds a quarterly meeting with the consultant body and the officers of HCS, that's helped, certainly, in terms of trying to understand people's feelings about the future hospital, about assisted dying, about all of those hot topics, if you like. It certainly has made it easier for consultants and other staff members to have their voices heard, so I don't see it as being detrimental, no. [Dr C]

...it is deeply frustrating for those of us working in the hospital and in public service in general, to feel like we're in the middle of some sort of internecine warfare between various political groups.... they get to a point where they spend more time trying to take lumps out of each other than they do to actually do the job that they were put in place to do, and this sort of feels a bit more like that, which is disappointing. [Dr D]

18. In assessing whether the Chief Officer and his team felt there was any harm caused in relation to this piece of work, testimony was varied and thoughtful and included issues relating to failing to be informed about the work prior to its commencement, the impact it had around culture and trust especially in the context of recent senior staff departures and recent reports, the non-disclosure of the contents of the report and the seemingly biased nature of the work.

Also, of course, it was of concern to the leadership team, the chiefs of service, the medical director, what was going on. It became, paranoia is probably the wrong word, but concern about the purpose of that piece of work that was unclear, particularly as I was not allowed to see, or indeed anyone to see, the outcome of that report, that seemed particularly strange to me, and a bit of a waste of time. [Chief Officer]

We've been trying to encourage people to raise concerns through the right routes so they can be addressed by all our appropriate processes within the policies that we have, and within the policies of the government of Jersey. What happens a lot in Jersey is that, not just consultants, but lots of people will bypass those processes. They'll just go, 'I've got a problem. I'll go straight to a minister.' So by encouraging the consultants to do this, he was effectively undermining all those processes and leaving us as the executive group out of the loop, and not actually informing us saying, 'These issues have been raised with me.' He wasn't saying what issues were being raised, just that lots of people were really unhappy. You got the impression that he was going to personally intervene and mediate, and we'll all live happily ever after. [Chief Officer]

Even more concern really that the politicians, the Minister and his team would be aware of certain comments no doubt in that report, because I'm sure they saw it, and there was no opportunity to provide any factual information that would give a balanced position so it could influence the politicians in a biased way. So, I was concerned about that. I was also concerned because the leadership team, particularly the medical leadership, raised concerns about whether this was a fishing trip to find things against those leaders, and they weren't confident that that wasn't the case, particularly in the fact that they weren't being interviewed themselves as part of it. It's sort of a logical conclusion, and they saw it as bias.....So, whether there's any hidden harm because the content has influenced how politicians, or how those that have read it, think about individuals, I don't know. That's my biggest concern. I know, from experience, that some of the things that Tom Binet and his team have fed back to me that consultants have told them is nonsense and has no basis in fact whatsoever when I've investigated it, in fact almost exclusively no basis in fact. So, my worry is that there are other things in there where I've not had the opportunity to investigate. The reality is that sometimes facts don't really get in the way. [Chief Officer]

I was made aware of it by one of my consultant colleagues in the corridor who said, 'Did you know that Deputy Bailhache is talking to some of the consultants in the hospital about what they think about the hospital and how it is?..... I felt that all they needed to do was say, 'Would it be okay if we came and talked to some of your colleagues?' so that I was made aware of it, rather than making it look as though this was something that was being done as a subterfuge and that was really damaging [Dr A]

Well, I guess the environment in the hospital is quite difficult. There's a lot of change going on. There's multiple reports outlining that we need to have a change in culture, and that we need to engage more with our colleagues, and I felt that I'd worked very hard to build their trust and be able to enact change. There were still a few consultants who didn't want that because of their own agendas or they didn't see the point of management running the hospital.....So I then felt that somebody coming in and doing a survey of the consultants' views on the management system really undermined what I was trying to achieve, and really, I think it just fired up all those people who wanted an agenda to say, 'Well, obviously the management is useless. We've had to go to the politician to sort this out,' and it's really, really unhelpful. [Dr A]

It's just disappointing that the minister tends to go and get his opinions from everyone other than the leadership team, other than the executive team in HCS. He listens to people he knows personally, or has some sort of personal relationship with, who don't always have the helicopter view of the organisation. [Dr B]

He does genuinely want to make health and healthcare on the island better, but what he doesn't do is listen to the right people, or he only listens to people who he trusts and knows, often through social interaction rather than actually listening to alternative views from people he may not like.

They may have a legitimate reason for their view. If he can get beyond that, it would probably be hopeful.If there are concerns, absolutely investigate them, but investigate them in the right way through the right process with terms of reference and giving those people who you're getting an opinion on the right of reply. Certainly, we've had no right of reply. [Dr B]

I don't know what's in it [the report], and I don't know who was interviewed. That in itself causes harm, doesn't it, because it just undermines trust... You're wondering who said what about me and my executive colleagues, what are those concerns, who else knows about it? It doesn't create trust. [Dr B]

... a list of who he's spoken to would have helped because I can imagine there would be some of the consultants who would've loved to go and talk to him [the Minister] and get it off their chests, but that wouldn't be representative of all the consultants. So if you were going to do that sort of sampling, you must, to be fair, speak to a breadth of consultants, not just the same old people who make a lot of noise. [Dr A]

But in the context of an organisation that is under so much pressure and under so much scrutiny and trying to deliver care, that's the difference for me, is that the timing of it, and I think it was done knowing what the difficulties were, added to the pressure that it's caused.I think it was how it was done that I've got a real problem with, in the background of everybody's paranoid about is it me next, you know? [Dr A]

... so it was just the circumventing of what we'd worked really hard to put in place. That was the damage that was done. [Dr A]

19. Deputy Binet described the outcome of the work undertaken as positive.

So, overall, I'm pleased with the net result, and that net result didn't involve me sharing that with anybody. It was just a case of getting a picture of where we were and providing people with the trust and confidence that they could be more open about their views and their thoughts, and that somebody might listen to them. [T Binet]

I have spoken to almost all of them [those interviewed] since, and many of the issues referred to in the summary are now being discussed more openly as there appears to be a higher level of confidence that doing so will not have 'unfortunate' consequences. [T Binet]

I hope they felt that they could trust me to listen to what they had to say and hopefully try and find a middle line to resolve some of the quite complicated issues that seem to have evolved over the course of time. There's quite a lot of tension, I have to say. It wouldn't be going too far to say that there was actually some hostility on both sides. In a big organisation that's looking after people's healthcare, that's not a healthy situation, and for me to ignore that, I think would be far more untoward than anything I've done to try and put it straight. [T Binet]

A highlight for me, it was like pressing open a door with very rusty hinges to the great belief of the people who are sat behind it! That's the first thing that springs to mind, and it was just the beginning of an exercise to try and be open, transparent, collaborative, and trying to just do away with this polarity that seems to have evolved over the course of time. There was a lot of personal animosity, a lot of, yes, people not listening to each other. So, like I say, I genuinely feel that's starting to move forward, and like with all of these things, they gather pace, don't they? [T Binet]

20. Others I spoke with believed that little to nothing was accomplished through this piece of work and when asked if they believed any benefit had to come from the work, some of their views were as follows:

I can't see where that has occurred, how you could link those interviews or that listening event with any improvement. It may have, but I just cannot see how you'd draw that conclusion. [Chief Officer]

It's anecdotal, it's who you trust and who you don't trust, who you like and who you don't like. So, I think I would argue that communications were already developing prior to those interviews. Meetings with consultants were regular and my door was always open, people would pop in. I cannot personally see the link. [Chief Officer]

Other than creating a lot of disquiet, as I've said, and mistrust, no, I don't see any benefit. Do I think the relationship between consultants and executives have improved? Yes, I think they have, but that's got nothing to do with the report. A lot of that had to do with Chris Bown's approach and availability. We've worked very hard as an Executive to try and engage the consultants' body. We have our local negotiating committee, which meets regularly. There are forums for all levels of doctors that we attend. There's the Freedom to Speak Up going in. We've got a new Director of Workforce who's come in with new ideas. So there are lots of things happening, but this report just seemed to be some sort of secret investigation that there were lots of rumours about, lots of hearsay. Nobody really knew what the purpose of it was. It was not open and transparent. We now have a report sitting somewhere, presumably in Sir Philip Bailhache's study, gathering dust, which we all continue to wonder what it says. [Dr B]

Findings of Fact

21. In relation to the specific allegations of this complaint, I found the following facts established to the required standard of proof:
1. Soon after taking up his role as Minister for Health on 30th Jan 2024, Deputy Binet, in response to clinicians who wished to convey their thoughts to him, embarked on 'listening exercises' for consultants to convey their concerns and/or ideas to him.
 2. Due to time pressures, Deputy Binet requested the assistance of Deputy Bailhache on 9th February 2024, who agreed to undertake the work.
 3. Deputy Bailhache commenced meeting with consultants on 12th February 2024.
 4. Deputy Binet consulted with the acting Chief Executive of the States of Jersey and the Chief Minister prior to undertaking the work and was advised the work he was undertaking was not in breach of the Ministerial Code of Conduct.
 5. The Chief Officer was initially not made aware of this work being undertaken by Deputy Bailhache on behalf of Deputy Binet.
 6. A short time after Deputy Bailhache commenced this work, Deputy Binet apologised to the Chief Officer for the oversight on his part.
 7. The work carried out did not include formal terms of reference or agendas nor was there a civil servant present at any of the meetings.
 8. Deputy Bailhache took notes of each meeting; the majority were typed by Deputy Bailhache and sent to the participants for their approval.
 9. When Deputy Bailhache took up his role on the Health Scrutiny Panel, he informed the Chair, Deputy Doublet, of the work he was carrying out on behalf of Deputy Binet.

10. Deputy Bailhache concluded this work and provided a summary to Deputy Binet on 27th April 2024.
 11. The information provided by Deputy Bailhache to Deputy Binet included a folder containing individual written statements from various clinicians and a summary of consistent themes and comments derived from these statements. In total, 30 clinicians chose to share their thoughts and concerns with the Health Minister through Deputy Bailhache.
 12. Deputy Bailhache's summary was circulated solely to Deputy Binet and his Assistant Ministers. The acting Chief Executive of the States of Jersey advised that, before the summary could be disclosed any further, a formal process known as "Maxwellisation" would be needed to allow any individuals mentioned in the summary the opportunity to reply. After careful consideration, it was decided that the summary and the exercise would remain confidential.
 13. Deputy Binet was questioned in relation to this piece of work during the States Meeting on 21st May 2024.⁵
22. Deputy Binet was afforded an opportunity to challenge any of the above findings before I finalised my report. Deputy Binet challenged a number of my findings and some were accepted with amendments made.

Analysis

23. Allegation 1: Paragraph 3—Code of conduct for elected members

Paragraph 3

Executive Members must always uphold the highest standards of propriety in compliance with the 'Code of Conduct for Elected Members' ("the Members' Code") as outlined in the Standing Orders of the States Assembly.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest, or rules on freedom of information, data protection or confidentiality clearly demand.

⁵ [Hansard official-report-21st-may-2024](#)

“The decision to appoint Deputy Bailhache, as opposed to any of his three official Assistant Ministers (or any other States Member) to undertake the work identified by the Minister, does not appear to have been taken in line with the criteria for objectivity as outlined. It is further clouded by the absence of a transparent, due process for the commissioning of the work. The absence of a structured, proper, transparent process that should underpin such a serious piece of work (for example Terms of Reference, formal minutes of meetings, agendas, scoping of risk, data protection considerations etc) appears to contradict the openness expected of States Members.”

24. Deputy Binet consulted with the acting Chief Executive at the time, Mr Tom Walker, and the Chief Minister in relation to carrying out this piece of work, including seeking the assistance of Deputy Bailhache. Deputy Binet was provided assurance from them that it did not contravene the Ministerial Code of Conduct.
25. Deputy Binet appointed Deputy Bailhache because he felt Deputy Bailhache would be best placed to do the work for him; he believed Deputy Bailhache was a respected and trusted Member and had the capacity to carry out the work. He had previously carried out a piece of work for him when he was Infrastructure Minister.
26. The work lacked formal terms of reference and a formal agenda in relation to meetings. Both Deputy Binet and Deputy Bailhache contend that there was an informality to this work to facilitate open and candid discussions and that they were there to listen to concerns of the consultants. Therefore, they had no agenda but to listen. There appears to have been a sense that this less formal approach was conducive to the aim of listening to consultant’s concerns.
27. Minutes of the meetings were taken by Deputy Bailhache and most of those minutes were typed up by him and sent to participants for their approval.
28. Lack of openness in decision-making is characterised by secrecy, insufficient transparency, or a lack of public engagement. The work itself was not a secret; it was a decision Deputy Binet’s ministerial colleagues were aware of and one which he spoke to the acting Chief Executive and Chief Minister about. These were considered to be sensitive meetings. Those who participated were not there under duress, but rather because they wanted to raise concerns they had and impart information to the Health Minister. There is nothing in the Ministerial Code of Conduct that prevents Deputy Binet from deciding to gather information in this fashion. I do not believe that Deputy Binet breached the principle of “openness” in relation to the Ministerial Code when he chose to do this piece of work.
29. I do not believe Deputy Binet’s decision was influenced by personal biases, emotions, political motivations, or external pressures. The motivation for carrying out this work was, as the new Health Minister, to understand the issues facing consultants working in the hospital who were asking for him to hear them. Therefore, I do not believe that Deputy Binet’s decision to undertake this work lacked objectivity; the decision was made in good faith and was not a decision that breached Paragraph 3 of the Code.

30. Allegation 2: Paragraph 5—Working Relationships

Paragraph 5

‘Executive Members must ...

- treat all those with whom they come into contact with consideration, courtesy, and respect, ensuring that their working relationships are proper and appropriate; and
- maintain an appropriate division between their working relationships and their private and personal business, other public business, or roles....’

“The Minister’s approach to process and to working relationships in this case are contrary to Paragraph 5 (we would highlight ‘proper’ and ‘appropriate’ in particular). This includes the lack of due care and consideration given by him to the ‘Troy Rule’ and the disruption and strains this has caused to working relationships within Scrutiny and between Government and Scrutiny.”

31. The complainants contend that the "process" employed was neither proper nor appropriate, thereby constituting a breach of Paragraph 5, titled “Working Relationships.” This provision stipulates that "Executive Members must treat all those with whom they come into contact with consideration, courtesy, and respect, ensuring that their working relationships are proper and appropriate; ...and maintain an appropriate division between their working relationships and their private and personal business, other public business, or roles..." Upon reviewing the evidence, I am not satisfied, on balance, that Paragraph 5 is engaged in the context of the decision made to undertake this work. I do not believe it aligns with the spirit of Paragraph 5, and therefore, I find this provision inapplicable in this instance.

32. On the matter of the “Troy Rule”, the Chief Minister addressed this issue in his letter to the SLC on 29th April 2024.⁶ There is no evidence to suggest his understanding is incorrect on the matter.

“The ‘Troy Rule’ is embodied in Article 25A(1) of the States of Jersey Law 2005 and Standing Order 112A. Deputy Bailhache does not serve as a Minister or Assistant Minister and holds no executive role or powers. As such, there can be no question of this matter raising any issues in this regard”.

33. Allegation 3: Paragraph 11—Departmental Matters

Paragraph 11

Any concerns with regard to a department, such as its performance, should be raised with the responsible Executive Member(s) in the first instance, or if it is the Executive Member’s own department, with the Chief Officer or Chief Executive Officer. If required, the responsible Executive Member may arrange a meeting with the concerned party and the relevant Chief Officer and/or Chief Executive Officer.

“The Minister did not discuss this work with the Chief Officer or Chief Executive Officer in the first instance, nor were subsequent meetings with the concerned parties arranged as prescribed above.”

⁶ Document 3b

34. This Paragraph states that Ministers should raise any concerns they might have with the appropriate department. However, Deputy Binet wasn't raising concerns, he was trying to assess the concerns of consultants who wanted to speak with him. I do not believe Paragraph 11 of the Ministerial Code is engaged.

35. **Allegation 4: Paragraph 12—Employment Matters**

Paragraph 12

While an Executive Member is ultimately accountable for the policy and the delivery of services in their areas of responsibility, employment matters (as distinct from the organisation of government which is a matter for Executive Members), and associated functions are reserved for the States Employment Board and its delegates.

Where an Executive Member is concerned about the performance or conduct of an individual employee, they should refer the matter to either:

- the relevant Chief Officer;
- the Chief Executive Officer; or
- the Chair of the States Employment Board.

Executive Members may also report any concerns via the Government of Jersey's whistleblowing service

“It is known as part of the context for the work the Minister instigated that performance concerns form a key part of the issues at hand – including two serious individual cases that are subject to ongoing General Medical Council proceedings. In addition to inadequate consultation with the Chief Officer/Chief Executive Officer, the Minister's actions have been undertaken outside the proper jurisdiction of the States Employment Board.”

36. There is no evidence to suggest that the work carried out was prefaced on concerns Deputy Binet had with the performance of the Health and Social Services Department. Rather, Deputy Binet said he was aware of concerns relating to difficult relationship between the consultants and the Executive Team and this was a reason for wanting to better understand the situation through listening to the consultants. Deputy Binet stated that he did not carry out this work due to performance concerns nor did any of the interviews involve discussion of individual cases involving the GMC. Deputy Bailhache confirmed this at interview. It appears that those clinicians who took part did so to air their concerns, views and opinions to the Health Minister.
37. Deputy Binet asserts that he was initially approached by consultants who wished to speak with him and, as the work progressed, some consultants were approached by Deputy Bailhache after their name had been mentioned by others in the process.
38. Having viewed Deputy Bailhache's summary as part of my investigation, it was presented as a summary of the main views and opinions reported by those clinicians he had met with. I am satisfied that this piece of work did not aim to identify performance concerns. Therefore, there is no indication that the actions of Deputy Binet were somehow outside the proper jurisdiction of the States Employment Board.

39. As stated previously, Deputy Binet made an error when he failed to notify the Chief Officer prior to commencing this piece of work. This was a serious omission and one for which he apologised to the Chief Officer. I found no evidence to suggest he intentionally sought to withhold this information. In any event, I consider his apology an adequate response to his failure to inform the Chief Officer.
40. For the above reasons, I do not believe Deputy Binet breached Paragraph 12 of the Ministerial Code of Conduct.

41. **Allegation 5: Paragraph 14**

Paragraph 14

Executive Members must avoid providing direction in any individual or specific enforcement, compliance, or policing investigation undertaken by their departments, dealing only with matters of general policy, except where required to do so by virtue of their statutory obligations or other obligations imposed on them by their ministerial office

42. There is no evidence to suggest that Paragraph 14 is engaged in relation to this complaint.

43. **Allegation 6: Paragraph 16—Safeguarding and Vetting**

Paragraph 16

Executive Members, by virtue of their position and duties, routinely meet Islanders, including vulnerable members of the community. They must be accompanied by public servants wherever possible when on official business, and where practical, meet in a formal environment or facility to manage any safeguarding risks.

As an appropriate additional safeguarding measure, and to provide public assurance, Executive Members should undergo a criminal record check upon appointment, which shall be conducted through the process established by the States Greffe.

“In the context of the entirety of the matters, it appears clear that little if any regard was given by Deputy Binet to the welfare of public sector staff engaged in this process and necessary safeguarding measures. This includes in respect of risk management, data protection/processing considerations, impact on individual grievance or serious ongoing disciplinary processes, the role of the States Employment Board (and associated employee obligations), the need for a clear and accountable framework confirming what the process was for and how information would be used, managing the power imbalance between Members and staff and the emotional wellbeing of those involved.”

44. Deputy Bailhache was not accompanied by public servants for the meetings undertaken by him on behalf of Deputy Binet which, in my view, was unwise. I have no evidence to suggest that those who wanted to meet with Deputy Bailhache to express their concerns to the Minister were “vulnerable” in terms of the provisions of Paragraph 16. On balance, it is not a breach of Paragraph 16 of the Code as written.

45. Allegation 7: Paragraph 17—Use of Information and Resources for Official Purposes

Paragraph 17

Executive Members must only use information and resources obtained in the course of their ministerial responsibilities, and the resources available to them from ministerial departments, for the purposes of discharging their ministerial responsibilities, and not for any other responsibilities they hold.

Executive Members must return all information and devices obtained in the course of their ministerial office on ceasing to hold that office.

“The work undertaken by Deputy Bailhache for the Minister has generated testimony from public sector staff, some if not much of it likely to be highly sensitive, and a report authored by Deputy Bailhache. Due to the highly compromised nature of the work it is unclear how, if at all, that information can be used by the Minister for official purposes. There are serious concerns from a data perspective about how the information is stored, how it will be processed, and whether it will be subject to challenge/interest from other parties at a later date. This is highly unsatisfactory and a situation that was avoidable had the Minister acted in accordance with his responsibilities.”

46. I am informed by both Deputy Binet and Deputy Bailhache that all data is being kept secure. The information has not been shared inappropriately or outside of Deputy Binet and his Assistant Ministers. There is no evidence that Deputy Binet has used this information in an inappropriate way or that he has used the information for any purpose outside of his Ministerial role in breach of Paragraph 17 of the Ministerial Code.
47. It is important to highlight that the summary indicates in its opening paragraph that it reflects the views of the "medical side" and recommends that the conclusions be discussed with the Chief Officer and subsequently with the Executive Team. However, following the guidance of the then acting Chief Executive of the States of Jersey, a formal process known as "Maxwellisation" would have had to have been carried out before any further disclosure of the summary. This process is designed to give individuals mentioned in the summary the opportunity to respond. After careful consideration, it was ultimately decided that both the summary and the associated exercise would remain confidential.

Observations

48. Most individuals I interviewed expressed the belief that Deputy Binet's intentions were well-meaning; however, some felt that he naively overlooked the potential consequences of his approach.
49. I believe the approach taken by Deputy Binet was unorthodox. While such approaches can sometimes yield significant rewards by addressing specific needs, adapting to changing circumstances, and fostering innovation, it is essential to consider the consequences of employing this kind of approach. This consideration extends beyond simply assessing whether the proposed work aligns with the Ministerial Code of Conduct; it also involves evaluating the

overall impact of the work, particularly how it was to be carried out and its potential effects on staff. Furthermore, this undertaking was substantial, and proper planning could have facilitated greater learning if its summary findings could have been openly shared to provide valuable feedback and insights.

50. Interviews with the Chief Officer and other individuals revealed that the approach taken in this case led to the hospital Executive Team feeling undermined, ultimately causing unnecessary distraction, confusion, and mistrust. At a time when it would have arguably been more productive to collaborate with the Executive Team—who believed they were making progress—the Minister's decision left them feeling demoralised. While I recognise that undermining the Executive Team was not Deputy Binet's intention, it is possible that with greater thought and consideration, this particular outcome could have been avoided.

Conclusions

51. After careful analysis of the evidence, I do not believe Deputy Binet breached Paragraphs 3, 5, 11, 12, 14, 16 or 17 of Ministerial Code of Conduct.

14th February 2025

Dr Melissa McCullough

Pan Island Commissioner for Standards

Appendices Document List

Annex A

Document	Description
1	Complaint received on 17th July 2024
2	Revised complaint received on 3rd October 2024
3	Response received by T Binet
3a	Evidence from T Binet: Email exchange
3b	Evidence from T Binet: Letter from L Farnham to SLC 29th April 2024
3c	Evidence from T Binet: Letter from L Farnham to SLC 18th June 2024



| States Assembly

States Greffe

Dr Melissa McCullough
Pan Island Commissioner for Standards

BY EMAIL – commissioner@pi-cfs.org

25th July 2024

Referral of Complaint against the Minister for Health and Social Services

Dear Dr McCullough

The Scrutiny Liaison Committee (the Committee) is concerned by work that has been undertaken by a States Member, who is also a member of the Health and Social Services Scrutiny Panel, acting on behalf of Deputy Tom Binet in his capacity as the Minister for Health and Social Services (the Minister). To the best of our knowledge, this work has involved direct contact with States of Jersey employees and has allowed the member access to information which would otherwise have remained confidential within the boundaries of the Department of Health and Social Services.

Members of the Committee have been approached by fellow States Members, members of the public and States of Jersey employees regarding this matter and following Committee discussions, it has been agreed that this matter should be referred to the Commissioner for Standards to ascertain whether the Ministerial Code has been broken by the Minister.

We do not believe it is the role of Scrutiny to act as an investigator and therefore we respectfully ask that you consider if this could be considered a breach of the [Ministerial Code of Conduct](#) in particular, Items 3, 4, 5 and 6 (an excerpt of which has been appended to this letter). Of particular concern to the Committee is that the States Member has been placed in a position whereby, in its opinion, they have been provided access to confidential information that should fall under the responsibility of the Minister (and/or his Department) and should not be shared in the context that it appears to have been.

We have attached correspondence between the Committee and Privileges and Procedures and the Committee and the Chief Minister for further context. We would be grateful for your consideration of this matter. Should you require clarification or further information from us we would be very pleased to meet with you.

Yours sincerely,

Deputy Inna Gardiner
President, Scrutiny Liaison Committee

Connétable Shenton Stone
Chair, Privileges and Procedures Committee

BY EMAIL

4th June 2024

Clarification on the Troy Rule

Dear Connétable Shenton Stone,

The Scrutiny Liaison Committee (the Committee) is concerned that Deputy Sir Philip Bailhache, who is also a member of Scrutiny, has been acting on behalf of the Minister for Health and Community Services (HCS). To the best of our knowledge, this work has involved direct contact with States of Jersey employees and has allowed him access to information which would otherwise have remained confidential within the boundaries of the Department of HCS. We have written to the Chief Minister highlighting our concerns regarding this matter and have asked him to refer the matter to the Commissioner for Standards. We are also concerned that this situation could be in direct breach of the Troy Rule [States of Jersey Law at Article 25\(3\)^{\[1\]}](#).

Members of the Committee have been approached by members of the public and States of Jersey employees regarding this matter and following Committee discussions, it has been agreed that this matter should be investigated further to clarify if the Ministerial Code has been broken.

As you will be aware, questions have been raised at the last two States meetings regarding the work which has been undertaken by Deputy Bailhache (an excerpt of the relevant Hansard has been attached to this letter for ease). Although the Minister informed the Assembly that at the time of commencement of the work, Deputy Bailhache was not a member of the Panel, the Committee is aware that this work has continued beyond the Deputy's appointment to Scrutiny, notwithstanding a request for the work to be discontinued by the Health and Social Security Scrutiny Panel Chair who wrote to the Minister on 4th April 2024 that 'any work undertaken does need to be visible and transparent so that any conflicts can be effectively managed' and established 23rd April as a latest target date for the work to cease.

We wrote to the Chief Minister to ask if the work being undertaken on behalf of the Minister would be in breach of the Troy Rule, which provides that a maximum of 21 members form the Executive. The Chief Minister that *'The 'Troy Rule' is embodied in Article 25A(1) of the States of Jersey Law 2005 and Standing Order 112A. Deputy Bailhache does not serve as a Minister or Assistant Minister and holds no executive role or powers. As such, there can be no question of this matter raising any issues in this regard'*.^[2]

We are concerned that, should this line of work be encouraged or allowed to continue, there is a risk that the boundary between the Executive and non-Executive members will become blurred and that the important principle that the membership of Scrutiny should exceed the size of the

Executive will not be upheld, with the balance falling in favour of the Executive. We would be grateful for the views of PPC on this matter in relation to the potential breach of the Troy Rule, the ethics of the situation and whether consideration should be given to an amendment to Standing Orders / Code of conduct to clarify how any engagement of a non-Executive member undertaking work for the Executive should be managed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Inna', followed by a horizontal line.

Deputy Inna Gardiner
President, Scrutiny Liaison Committee

Excerpt from Hansard

16th April

7.7 Deputy K.L. Moore of St. Mary, St. Ouen and St. Peter:

Referring to an answer the Chief Minister gave to a question from Deputy Renouf, the Chief Minister described some of the work being undertaken by the Minister for Health and Social Services as turning over stones. I wonder if the Chief Minister could confirm to the Assembly that that also includes asking Back-Benchers to interview officials on behalf of the Ministers, and whether he considers that to be appropriate.

Deputy L.J. Farnham:

I do not seek to align the turning over of stones - I am sure Members will know what I mean by that phrase - to ... I do not relate that to any conversations or requests to States Members the Minister might have had with another Member of the Assembly. Whether it is appropriate, I am not sure of the work that has been requested. I am not sure if it has been carried out. I am not sure how it is being carried out, and I think each Member of this Assembly has a right to ask questions of States departments. I think it is a matter for the individual. Of course, we have work going on in the scrutiny function as well, and as long as everything can work collaboratively without conflict, then I do not see a problem. As I said, to reiterate, I am not ... I do not know the detail of what Deputy Moore is referring to.

21st May

3.12.2 Deputy J. Renouf:

Clearly Deputy Bailhache has been asked to do something. No one is questioning the right of a Minister to ask people to try and find out information but why did the Minister not, in this instance, use his civil servants to do the work or, failing that, ask one of his Assistant Ministers' team? Is it not the case that if the report or work or whatever it is had been commissioned through official channels, then it would have greater weight?

Deputy T. Binet:

The work related solely to taking a series of statements of people who wanted to speak to me. I only have a limited amount of hours in the day and it appeared that an awful lot of people wanted to make their points known to me. I thought it was appropriate to pick somebody like Deputy Bailhache who was independent of the Ministerial team and would be held in high regard for the purpose. I thought it was a good choice and it was a fairly simple request to undertake that particular piece of work.

3.12.3 Deputy J. Renouf:

Could the Minister clarify whether or not he spoke to his Chief Officer about this work before it was commissioned? Would he agree that the lack of formal commissioning,

terms of reference or oversight means that this was just an exercise in gathering gossip, and that is not necessarily going to be particularly helpful to draw conclusions?

Deputy T. Binet:

That is an interesting turn of phrase “gathering gossip”. In the end, 30 senior consultants have come forward to speak to me. I would venture to suggest that there is probably nobody in this Assembly that has not been treated by one of these people or certainly one of their family members. I think they are held in high regard and I think these people have got better things to do with their time than indulge in gossip.

3.12.4 Deputy H.L. Jeune:

Could the Minister please clarify if there were any written terms of reference for Deputy Bailhache to follow, including what follow up, how he will present his findings to the Minister and, if not, why not?

Deputy T. Binet:

No, there were no formal written terms of reference because it was a simple request to take some statements. In the end it ran into a larger piece of work than I was expecting because more people wanted to speak to me than I had thought in the first instance. I did ask if Deputy Bailhache would be kind enough to just summarise his findings for me for convenience.

3.12.5 Deputy H.L. Jeune:

Is the Minister aware that he was asking Deputy Bailhache to tread in the very sensitive matters of employment relating to employer/employee relations and this could compromise discussions going on elsewhere of which Deputy Bailhache may not have been aware?

Deputy T. Binet:

No, this was simply an exercise in conveying messages from people to me because of the volume of work that I have and the fact that I was unable to do it. It involved no more than taking statements from people for that to be passed on to me.

3.12.6 Deputy M. Tadier:

It is strange to say that Deputy Bailhache is not doing any Ministerial work because of course he is not a Minister, therefore, he cannot be doing any Ministerial work, so the question still needs to be answered: why is a member of the Health Scrutiny Panel doing departmental work for the Minister for Health and Social Services?

Deputy T. Binet:

At the time of commencement, Deputy Bailhache was not a member of the Panel.

3.12.7 Deputy M. Tadier:

There is a wider problem here, and I am wondering if the Minister sees it as a conflict of interest which I think so many other Members do, hence why this question seems to have been lodged, that, if you are not a member of the Executive it is very strange to be

asking somebody to act effectively as a private secretary for you, which might be the case in other Parliaments, when the Minister has his own fairly large Ministerial team to do that work and also civil servants to do that. Would the Minister agree to publish the nature of the work that is being done and also ask for that work to cease immediately so that this Assembly is not brought into disrepute?

Deputy T. Binet:

I do not think for a moment that this Assembly has been brought into disrepute. I think there were 4 or 5 requests there and I may need to be reminded of them. I will start with the last one first because I can still remember it. The work has been concluded. I will make a further statement insofar as I spoke to the chair of the Scrutiny Committee and we had an exchange of emails. I explained the nature of the work and I received on 4th April an email stating the following: "Given the fact that this work was already undertaken before the Panel was formed, we discussed the timings around when it could be concluded. I am content to give a reasonable timeframe for the work to conclude and for any conflicts to then be avoided." On that basis, we continued. I have to say, if the work was to be discontinued that was a matter for the chair of the Scrutiny Panel, between the chair and Deputy Bailhache.

3.12.8 Deputy P.M. Bailhache:

Would the Minister agree that very heavy weather is being made of this issue and that in a collegiate and co-operative Assembly any Backbench Member is free to offer assistance to any Minister without attracting carping criticism from other Members?

Deputy T. Binet:

I wholeheartedly agree with that statement.

The Bailiff:

Assumingly no supplementary, Deputy Bailhache? **[Laughter]**

3.12.9 Deputy L.M.C. Doublet:

Can the Minister please confirm that I had asked for the work to be stopped as soon as I was aware of the full nature of the work? I asked for this in a telephone conversation where I explained to the Minister the Troy Rule. I followed this up with an email where I once again explained the Troy Rule. I also requested that the work should be made fully transparent. Can the Minister confirm this, please?

Deputy T. Binet:

I cannot confirm the latter because that was not where the conversation ended. I am certainly happy to publish the email exchanged between us. Sorry, there was another part to the question which I have forgotten, but I am certainly happy to make the email exchanged public.

3.12.10 Deputy L.M.C. Doublet:

The Minister did not hear part of my question. What I had asked was: can the Minister confirm that when I asked for the work to stop that I also asked for it to be made fully transparent?

Deputy T. Binet:

As far as the transparency is concerned, I think everything is contained in this email exchange. When people approach me to talk privately about their concerns, I certainly do not expect Members of this Assembly to ask for that to be made public. It would be similar in another way to asking the Speak Up Guardian to make public all the comments that have been made to the Speak Up Guardian. I think that is totally out of order, if I may say so.

The Bailiff:

Minister, I do not think the Deputy was asking for you to publish the responses, unless I have misunderstood the position, it was to publish her view of what was going on and that she asked for full transparency. Was that not your question, Deputy?

[11:15]

Deputy L.M.C. Doublet:

I can clarify. In my letter I asked for the terms of reference, membership, agendas, minutes and reports of any work undertaken in a similar way to the Policy Development Board and indeed the Women's Health Strategy Group, which is also under the Minister for Health and Social Services.

Deputy T. Binet:

There were not any minutes or agendas. They were not formal meetings, as such. It was simply Deputy Bailhache listening to people's concerns, putting them on paper, and then handing them to me for my attention. There is a pretty serious problem in H.C.S. that I am trying to address and it is strange that Members in the Assembly seem to want to focus unnecessarily on a very simple process rather than being concerned about the issues that I am trying to resolve.

3.12.11 Deputy I. Gardiner:

Nobody is questioning that a Member of the Assembly can do work, the question is why this has not been made in the proper way, requesting if Deputy Bailhache can undertake specific work with the terms of reference for the Minister and explaining the reasons why the Minister cannot use the 3 Assistant Ministers, why the Minister cannot use Speak Up Guardian, why the Minister does not use the Health Board that needs to listen to the concerns and why that Deputy Bailhache was the only Member of the States who could listen to the employees which the States Employment Board is available for?

Deputy T. Binet:

I think I counted 7 points there; I have got a very bad memory, I cannot remember them all. I will ...

The Bailiff:

Well I think you can summarise them: why did you not ask for a number of other people?

Deputy T. Binet:

I will start with the Speak Up Guardian. Could we not assume that these 30 people that have passed on their thoughts to me are intelligent people? If they thought it was appropriate to use the Speak Up Guardian I suggest they would have done; there must have been reasons why they did not. I was not aware of a formal process for asking for this sort of what I would consider to be relatively minor work to be undertaken. It is simply conveying people's thoughts to me. As I say, if there is a process, I am not aware of it.

Deputy L.M.C. Doublet:

The Minister may be inadvertently misleading the Assembly because I made it very clear in my email to him what the process would be.

The Bailiff:

I am sorry, you will have to take this up outside of the Assembly at this point. We have reached the end of the ... you have a supplemental question you are entitled to, Deputy Gardiner, I think.

3.12.12 Deputy I. Gardiner:

The Minister did not respond why his 3 Assistant Ministers could not ... just a minute, can I finish the question, please? Why 3 Assistant Ministers could not undertake this work and why the Health Board could not undertake this work.

Deputy T. Binet:

I will take them in reverse order. The Health Board could not undertake this work because, as an elected representative, we do live in a democracy and people have got a right to speak to me. I did start to speak to some of these consultants myself and I quickly realised that I would not have the time, so there we are. In terms of why not the Assistant Ministers, I wanted to keep this work separate from the team so that I could not be accused of meddling in any way and I thought that Deputy Bailhache was an appropriate appointment for this purpose. I make no apology for this either because it is an important piece of work and I want it to be done properly.

3.12.13 Deputy G.P. Southern:

What I think I have heard is that the Minister is unaware of any mechanism by which he can legitimately consult with his consultants which operate the health service in the

hospital in particular, is that the case? Is there no mechanism by which the Minister can consult with his consultants?

Deputy T. Binet:

The question is: am I free to do what I have done and I believe that I was.

The Bailiff:

Well, the question is: is there a mechanism in place for consultation with the consultants?

Deputy T. Binet:

I am certainly not ... I did make that statement before, I am not aware of one.

^[1] The restriction that is commonly known as the "Troy Rule" is translated in the through a restriction which states that the total number of members in the Executive, namely the Chief Minister, Ministers and Assistant Ministers cannot exceed 23 individuals.

^[2] Letter from Chief Minister to Scrutiny Liaison Committee 29.04.24

Deputy Lyndon Farnham
Chief Minister

BY EMAIL

4th June 2024

STATES MEMBER INTERVIEWING STATES OF JERSEY EMPLOYEES

Dear Deputy Farnham,

Further to our recent correspondence regarding the Minister for Health and Community Services (HCS) and Deputy Bailhache and the recent questions in the Assembly, members of the public have approached the Scrutiny Chair which have caused the Scrutiny Liaison Committee (the Committee) further concern, particularly the fact that the Deputy has been in communication with States of Jersey employees.

In your correspondence to us dated 29th April 2024, you informed us that *The 'Troy Rule' is embodied in Article 25A(1) of the States of Jersey Law 2005 and Standing Order 112A. Deputy Bailhache does not serve as a Minister or Assistant Minister and holds no executive role or powers. As such, there can be no question of this matter raising any issues in this regard.*^[1] Whilst this may very well be the case, we believe that this matter might require further guidance and have asked PPC to comment.

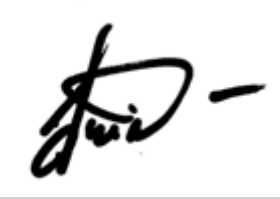
To the best of our knowledge, the Minister for HCS asked Deputy Bailhache to hold interviews with States of Jersey employees on his behalf both past and present, who are (or were) employed by the Department of Health and Community Services. We are not aware if those interviewed were contacted by the Minister directly (as the Minister claimed in answer to oral questions on April 30th) or were approached by Deputy Bailhache. It is also our understanding that these interviews might relate to an ongoing case following a review by the General Medical Council (GMC), which raises further questions about the appropriateness of the Minister and Deputy Bailhache's actions.

The Committee is not aware under what terms the Minister for HCS asked Deputy Bailhache to act, what were the terms of reference for this engagement and the expected outcome/deliverables. In addition, we are not aware how objectives were presented to the employees prior to interview, how the information was collated, how it was intended to be used, and what will happen to the collated information at the end of this process. We are also concerned about the basis for these interviews and if the employees have been given the opportunity to review any information prior to it being 'used or submitted' and, if they are fully aware of potential consequences these may have, should the ongoing situation with the GMC escalate.

Members of the Committee have been approached by the public and States of Jersey employees regarding this matter and following Committee discussions, it has been agreed that this matter

should be investigated further as the issues raised are serious and there are a number of significant unanswered questions. We do not believe it is the role of Scrutiny to act as an investigator and therefore we respectfully ask that you consider referring this matter to the Commissioner for Standards as we believe that there may have been a breach of the [Ministerial Code of Conduct](#) in particular, Items 3, 4, 5 and 6. We believe that referring this matter to an independent party may show transparency and help clarify these areas of concern for both members of the public and the employees involved.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Inna', followed by a horizontal line.

Deputy Inna Gardiner
President, Scrutiny Liaison Committee

[\[1\]](#) Letter from Chief Minister to Scrutiny Liaison Committee – 29.04.24

.

Ministerial Code of Conduct

Articles 3, 4, 5 and 6

3. Working relationships

Ministers and Assistant Ministers should act professionally at all times when working in an official capacity. They should treat all those with whom they come into contact with consideration, courtesy, and respect, ensuring that their working relationships are proper and appropriate. They should promote an environment that excludes bullying and discrimination and supports the open expression of views by everyone they work with. Ministers and Assistant Ministers have a duty to give fair consideration and weight to the advice of officers, upholding their political impartiality and not asking them to act in a way which would conflict with their responsibilities or obligations. In turn, officers have a duty to show the same consideration to Ministers and Assistant Ministers, recognising the authority of the ministerial office. The Chief Minister, with the support of the Chief Executive, will put in place arrangements to support Ministers and Assistant Ministers in the promotion of positive working relationships on an ongoing basis.

4. Avoiding Conflict of Interest

Ministers and Assistant Ministers must identify and actively address any actual or perceived conflict of interest between their ministerial responsibilities and their private interests, or any other public role they hold, including their role as a constituency representative, ensuring that any conflict does not compromise their judgement, the conduct of government, or place themselves under an improper obligation.

Where a conflict or perceived conflict relates to the Minister's portfolio, the Minister or Assistant Ministers should be guided by the general principle that they should either dispose of the interest giving rise to the conflict, or take alternative steps to manage the conflict, which can include transferring a ministerial responsibility to another Minister, or in relation to a more minor matter, a delegation to an Assistant Minister. In some cases, it may not be possible to devise a mechanism to avoid such an actual or perceived conflict of interest, for example, due to the significance and nature of the conflict, and in any such case, the Chief Minister must be consulted, and it may be necessary for the Minister to cease to hold ministerial office. Where the conflict relates to a matter outside of a Minister's area of responsibility, but the Minister or Assistant Minister is part of a wider discussion at the Council of Ministers, or in other ministerial meetings, they should declare this at the earliest opportunity, the declaration should be recorded, and the Minister or Assistant Minister would generally be asked to recuse themselves from any discussions. In considering the above, the extent of the conflict, whether it is a conflict generally held by many people, and how direct or substantial it is to the interests of the Minister or Assistant Minister, should be considered. A perceived conflict of interest should generally be treated as seriously as an actual conflict, and Ministers are expected to err on the side of caution in the wider interests of the government and maintaining public confidence.

5. Ministerial Responsibilities and Constituency Matters

Ministers should ensure that the decisions they take as Ministers are separate from activities they undertake as elected representatives of an individual district or parish on behalf of parishioners and constituents. Ministers are free to make their views known about constituency matters to the responsible Minister, by correspondence or by personal interview, provided they make clear that they are acting as their constituents' representative and not as a Minister. In acting for constituents, Ministers should also be mindful of the policy positions of their ministerial colleagues and the Council, acting professionally and proportionately. Ministers must take particular care to avoid any conflict of interest if they have to take decisions which impact principally on the district or parish they represent, and should seek to arrange their responsibilities so as to avoid perceived conflicts of interest, for example by delegating those decisions where possible. Where a function has been delegated to an Assistant Minister, the same principles apply.

6. Individual Investigations

Ministers and Assistant Ministers should avoid providing direction in any individual or specific enforcement, compliance, or policing investigation undertaken by their Departments, dealing only with matters of general policy, except where required to do so by virtue of their statutory obligations or other obligations imposed on them by their office. A similar approach should be adopted in relation to staffing and employment concerns and investigations. While the Minister is ultimately accountable for policy and the delivery of services in their areas of responsibility, employment matters are reserved for the States Employment Board and its delegates. Accordingly, where a Minister is concerned about the performance or conduct of an individual employee, they should refer the matter to the relevant Director General, or otherwise the Chief Executive Officer, or the Chair of the States Employment Board, as they feel most appropriate.



| States Assembly

States Greffe

Dr Melissa McCullough
Pan Island Commissioner for Standards

BY EMAIL – commissioner@pi-cfs.org

3rd October 2024

Follow up - Referral of Complaint against the Minister for Health and Social Services

Dear Dr McCullough

Further to the meeting between yourself, the Vice-President of the Committee, Deputy Helen Miles, and I held on 17th September, we would like to take this opportunity to provide additional information and clarification of the initial referral of this matter outlined to you in our letter dated 17th July 2024. We trust this will be helpful in informing your preliminary assessment of the matter.

Mindful of both the Code of Conduct for Elected Members (Schedule 3 Standing Orders of the States of Jersey) and the recent publication of a revised Code of Conduct and Practice for Ministers and Assistant Ministers (R.31/2024) since the formation of the current Council of Ministers, we contend that Deputy Tom Binet has specifically breached those Codes as follows:

Code of Conduct for Elected Members

- Paragraph 3 – **Personal conduct**

'Elected members should observe the following general principles of conduct for holders of public office ...

Objectivity *Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.*

Openness *Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.'*

The decision to appoint Deputy Bailhache, as opposed to any of his three official Assistant Ministers (or any other States Member) to undertake the work identified by the Minister, does not appear to have been taken in line with the criteria for objectivity as outlined. It is further clouded by the absence of a transparent, due process for the commissioning of the work. It is noted that the Minister previously 'commissioned' Deputy Bailhache to undertake similar work for him in regard to historic foreshore issues – please see appended for information.

We are informed by the Chair of the Health and Social Services Scrutiny Panel that an employee with a direct interest in the area being investigated by the Minister through Deputy Bailhache, approached her to relay that they were not afforded the same opportunity as certain others to provide a submission, also counter to the objectivity provisions of the Code of Conduct above.

As illustrated throughout the Hansard extracts appended to our letter dated 17th July, the absence of a structured, proper, transparent process that should underpin such a serious piece of work

(for example Terms of Reference, formal minutes of meetings, agendas, scoping of risk, data protection considerations etc) appears to contradict the openness expected of States Members.

Code of Conduct and Practice for Ministers and Assistant Ministers

- Paragraph 3 - **Code of Conduct for Elected Members**

'Executive Members must always uphold the highest standards of propriety in compliance with the 'Code of Conduct for Elected Members' ("the Members' Code") as outlined in the Standing Orders of the States Assembly.'

Please see above.

- Paragraph 5 - **Working Relationships**

'Executive Members must ...

- treat all those with whom they come into contact with consideration, courtesy, and respect, ensuring that their working relationships are proper and appropriate; and*
- maintain an appropriate division between their working relationships and their private and personal business, other public business, or roles....'*

As shown in questions from States Members to the Minister for Health and Social Services in the Hansard extract – see for example the questions from Deputy Tadier –, there is significant concern that the Minister's approach to process and to working relationships in this case are contrary to the above provisions (we would highlight 'proper' and 'appropriate' in particular). This includes the lack of due care and consideration given by him to the 'Troy Rule' and the disruption and strains this has caused to working relationships within Scrutiny and between Government and Scrutiny.

- Paragraph 11 - **Departmental Matters**

'Any concerns with regard to a department, such as its performance, should be raised with the responsible Executive Member(s) in the first instance, or if it is the Executive Member's own department, with the Chief Officer or Chief Executive Officer. If required, the responsible Executive Member may arrange a meeting with the concerned party and the relevant Chief Officer and/or Chief Executive Officer...'

It is our understanding that the Minister did not discuss this work with the Chief Officer or Chief Executive Officer in the first instance, nor were subsequent meetings with the concerned parties arranged as prescribed above.

- Paragraph 12 - **Employment Matters**

'While an Executive Member is ultimately accountable for the policy and the delivery of services in their areas of responsibility, employment matters (as distinct from the organisation of government which is a matter for Executive Members), and associated functions are reserved for the States Employment Board and its delegates....

Where an Executive Member is concerned about the performance or conduct of an individual employee, they should refer the matter to either:

- the relevant Chief Officer;*
- the Chief Executive Officer; or*
- the Chair of the States Employment Board.*

Executive Members may also report any concerns via the Government of Jersey's whistleblowing service.'

It is known as part of the context for the work the Minister instigated that performance concerns form a key part of the issues at hand – including two serious individual cases that are subject to ongoing General Medical Council proceedings. In addition to inadequate consultation with the Chief Officer/Chief Executive Officer, the Minister's actions have been undertaken outside the proper jurisdiction of the the States Employment Board.

- **Paragraph 14 - Individual Investigations**

'Executive Members must avoid providing direction in any individual or specific enforcement, compliance, or policing investigation undertaken by their departments, dealing only with matters of general policy, except where required to do so by virtue of their statutory obligations or other obligations imposed on them by their ministerial office.'

See paragraph 12.

- **Paragraph 16 - Safeguarding and Vetting**

'Executive Members, by virtue of their position and duties, routinely meet Islanders, including vulnerable members of the community. They must be accompanied by public servants wherever possible when on official business, and where practical, meet in a formal environment or facility to manage any safeguarding risks. As an appropriate additional safeguarding measure, and to provide public assurance, Executive Members should undergo a criminal record check upon appointment, which shall be conducted through the process established by the States Greffe.'

In the context of the entirety of the matters raised above, it appears clear that little if any regard was given by Deputy Binet to the welfare of public sector staff engaged in this process and necessary safeguarding measures. This includes in respect of risk management, data protection/processing considerations, impact on individual grievance or serious ongoing disciplinary processes, the role of the States Employment Board (and associated employee obligations), the need for a clear and accountable framework confirming what the process was for and how information would be used, managing the power imbalance between Members and staff and the emotional wellbeing of those involved.

- **Paragraph 17 - Use of Information and Resources for Official Purposes**

Executive Members must only use information and resources obtained in the course of their ministerial responsibilities, and the resources available to them from ministerial departments, for the purposes of discharging their ministerial responsibilities, and not for any other responsibilities they hold. Executive Members must return all information and devices obtained in the course of their ministerial office on ceasing to hold that office.

The work undertaken by Deputy Bailhache for the Minister has generated testimony from public sector staff, some if not much of it likely to be highly sensitive, and a report authored by Deputy Bailhache. Due to the highly compromised nature of the work it is unclear how, if at all, that information can be used by the Minister for official purposes. There are serious concerns from a data perspective about how the information is stored, how it will be processed, and whether it will be subject to challenge/interest from other parties at a later date. This is highly unsatisfactory and a situation that was avoidable had the Minister acted in accordance with his responsibilities.

Should you require further clarification or information we would be pleased to meet with you again.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Inna' followed by a stylized flourish and a horizontal line.

Deputy Inna Gardiner
President, Scrutiny Liaison Committee

CC Deputy Helen Miles
Vice-President, Scrutiny Liaison Committee

Dr Melissa McCullough

Pan Island Commissioner for Standards

BY EMAIL – commissioner@pi-cfs.org

4th July 2024

Response to Complaint against the Minister for Health and Social Services

Dear Dr McCullough

I write in response to the complaint lodged on 25th July by the President of the Scrutiny Liaison Committee, Deputy Inna Gardiner, alleging possible breaches of the Ministerial Code of Conduct by me, Deputy Tom Binet, in my capacity as Minister for Health and Social Services.

Whilst the claim is most unwelcome, especially as I do not believe the Code to have been broken, it nonetheless comes as no surprise, as I shall seek to explain.

I first came to the post of Minister for Health towards the end of January, following a successful vote of no confidence in the previous government, lodged by me on the 2nd of January this year.

Whilst I have no background in medicine, or healthcare, I was, at that time, aware that Jersey's health system was not in particularly good shape (Financial, governance and staffing problems, to name but a few) – hence the desire to take on the role.

With Jersey being a relatively small place, and being of an age where I see more of GP's and Clinicians for my own purposes than hitherto, in addition to having engaged with many more in recent years (through assisting my (now sadly departed) parents, I was also very aware of tensions between Health and Community Services (HCS) and local GP's (Primary Care) and HCS and the Charitable Sector. Even more worryingly, between the Management and the Clinicians/Consultants within HCS.

And it is to the latter problem that I believe this complaint relates.

Shortly after my appointment, I was informed by one of my Assistant Minister's that a longstanding and well-respected local Consultant (for convenience, Dr A) had some major concerns and would like the opportunity to speak to me.

As I do with almost every request of such kind, I agreed and duly met with the individual.

The meeting took place in the company of one of my Assistant Ministers, Deputy Rose Binet (my sister, incidentally), during the course of which two of the Consultant's nursing colleagues joined the meeting to express concerns of their own relating to this area of work. Again, the principal one being the very poor relationship between many Consultants and Managers. Clearly all was not well.

The meeting went on for some two hours and was followed a short while later by another long meeting with him (attended by me alone), for reasons which may become apparent (in the event further investigation is required).

During the course of both meetings I was informed that there were others in similar positions who wished to convey their concerns to me. Once again, I was not surprised, as I had recently undergone several minor procedures in another department and the Clinician in this area had taken the occasion to relay many concerns to me, in some detail. This had been possible given that I sometimes take the last appointment of the day, for the sake of convenience.

As explained, similar issues had been raised with me, sometime before my meeting with Dr A, by other senior Consultants that I had encountered whilst assisting with the care of my late parents. In addition, issues had also been raised with all three Assistant Ministers.

From the time of my appointment, I had regular access to the Senior Management Team and here, too, it was apparent that there was a distinctly unhealthy relationship between the two parties, to the extent that I was concerned that patients might not be receiving the level of service that an otherwise contented (and correspondingly efficient) service would provide.

I should mention here that, should any of the senior team, or anyone in the management structure have wished to speak to me privately, they would also have been most welcome.

In addition to the Health role, my responsibility as Minister also includes political responsibility for the ongoing new hospital project. These two issues, combined with some additional work relating to my role as Deputy Chief Minister, leaves me with very little time. So I decided it may be easier to ask someone to listen to those Consultants (and anyone else in the service that may have wanted to express their thoughts and concerns), take notes, and provide them to me and our small Ministerial Team as a collective work, along with a summary of any common or key points.

With that in mind, I consulted with my Assistants and it was decided (for several reasons) that it might be desirable to ask Deputy Sir Philip Bailhache if he might oblige. At the time he was a backbencher with no particular or specific duties. More importantly, he was an experienced lawyer, a former Bailiff (head of the local Judiciary), a States Member of longstanding and a very widely respected person.

Accordingly, I contacted him, explained the situation and asked him if he would be prepared to undertake the task. And he was.

At the time (and as it remained) the request was very simple – to listen to any Consultant (or Health worker) who wished their views to be expressed to me, take notes, and pass them on once the task was complete.

As one might imagine, I had not particularly expected this course of action to result in a formal complaint, but now that it has, a few of the following background points may be helpful in determining whether a breach of the Ministerial Code has been committed –

- Firstly, the term ‘interview’ has been used by the Complainant to describe what I had requested. To me, that suggests I had a series of particular questions to be asked of them. That was not the purpose of the exercise and the fact is, I did not. The exercise was principally to listen, though, of course, it may, at times, have taken a conversational form.

- Also, I should be clear that I did not provide a written terms of reference. This was not an omission with sinister intent; I simply wanted someone trusted to listen to others as I had done, initially, to one specific Consultant.
- As I do on a very regular basis, I checked with the Ministerial Office, at a very early stage, whether this course of action would breach the Ministerial Code in any way and I was told that, so long as the remit was as described, no breach would occur.
- I also made a point of informing the Chief Minister of the matter, along with the Chief Executive officer of the States of Jersey. The latter confirmed his understanding of the intention, advised me to keep the Ministerial Office informed of any developments or changes. He also asked me to be careful to ensure that I remained within the Ministerial Code of Conduct, which I believe I have done.
- My reason for checking was that I am acutely aware that my role does not include the ability to interfere with employment matters. Here I had no wish, or intention, to interfere in any way. I simply wanted to gain an understanding of the key issues; issues that could be having an impact on patient comfort and safety; on efficiency and value for money; or be destined to have an impact on the development of, or even the ability to develop, a new health strategy. All, in my view, matters of considerable importance.
- By way of background, and though it may prove of very little consequence, I did serve for approximately five years on Jersey's Employment Forum from the time of its inception and have many years of direct employment experience. My mention of that is solely to demonstrate that I am quite familiar with working practices and requirements, and the need for appropriate boundaries, be they in a straightforward commercial setting, or that of a Government.
- I also informed the Chief Officer of Health and Community Services, but much to my embarrassment, not until a short time after the process commenced. An error for which I apologised.
- Other than to gather background information for the sake of better understanding the situation, there was no commencing agenda and no fixed plan as to what might be done with the information once it was collated. Our small team had agreed to read it on completion then, depending on the content, decide how best to use the information (if, indeed, at all) in order to further the cause of resolving a matter that, very evidently, was frustrating the smooth running of the service, holding back its ongoing development and complicating the business of developing an inclusive future strategy; something that cannot be undertaken in a hostile environment.
- My recognition of this issue was no secret, nor was it necessarily intended to be. Indeed, I referred to it (albeit briefly) in a short speech I delivered at a public meeting at the beginning of July.

At this point I would like to address the claim that this work *'has allowed the member (Deputy Bailhache) access to information which would otherwise have remained confidential within the boundaries of the Department of Health and Social Services'*.

In response, I can only say that I have no idea what that information might be. I have seen nothing that could not have been revealed to Deputy Bailhache, independently, in his

capacity as a Member of the States, regardless of whether he was intending to convey it to me at a later stage.

Here I will address the Complainant's specific reference to the points in the Code which, it is suggested, I may have breached – Articles 3, 4, 5 & 6.

3. Working relationships

Ministers and Assistant Ministers should act professionally at all times when working in an official capacity. They should treat all those with whom they come into contact with consideration, courtesy, and respect, ensuring that their working relationships are proper and appropriate. They should promote an environment that excludes bullying and discrimination and supports the open expression of views by everyone they work with. Ministers and Assistant Ministers have a duty to give fair consideration and weight to the advice of officers, upholding their political impartiality and not asking them to act in a way which would conflict with their responsibilities or obligations. In turn, officers have a duty to show the same consideration to Ministers and Assistant Ministers, recognising the authority of the ministerial office. The Chief Minister, with the support of the Chief Executive, will put in place arrangements to support Ministers and Assistant Ministers in the promotion of positive working relationships on an ongoing basis.

- I firmly believe that all parties involved in this process have been treated professionally, with consideration, courtesy and respect. No bullying has taken place. No officers were asked to undertake the work done by Deputy Bailhache (notwithstanding that a prominent Member of the Complainants Scrutiny Panel actually suggested they should) as I believe that to have done so would have been in breach of the Code. If I understand correctly, our obligation to officers is – “to uphold their political impartiality and not ask them to act in a way which would conflict with their responsibilities or obligations”. The Consultants involved wished their thoughts to be conveyed to an elected representative (as is their democratic right), and that is what occurred.

4. Avoiding Conflict of Interest

Ministers and Assistant Ministers must identify and actively address any actual or perceived conflict of interest between their ministerial responsibilities and their private interests, or any other public role they hold, including their role as a constituency representative, ensuring that any conflict does not compromise their judgement, the conduct of government, or place themselves under an improper obligation. Where a conflict or perceived conflict relates to the Minister's portfolio, the Minister or Assistant Ministers should be guided by the general principle that they should either dispose of the interest giving rise to the conflict, or take alternative steps to manage the conflict, which can include transferring a ministerial responsibility to another Minister, or in relation to a more minor matter, a delegation to an Assistant Minister. In some cases, it may not be possible to devise a mechanism to avoid such an actual or perceived conflict of interest,

for example, due to the significance and nature of the conflict, and in any such case, the Chief Minister must be consulted, and it may be necessary for the Minister to cease to hold ministerial office. Where the conflict relates to a matter outside of a Minister's area of responsibility, but the Minister or Assistant Minister is part of a wider discussion at the Council of Ministers, or in other ministerial meetings, they should declare this at the earliest opportunity, the declaration should be recorded, and the Minister or Assistant Minister would generally be asked to recuse themselves from any discussions. In considering the above, the extent of the conflict, whether it is a conflict generally held by many people, and how direct or substantial it is to the interests of the Minister or Assistant Minister, should be considered. A perceived conflict of interest should generally be treated as seriously as an actual conflict, and Ministers are expected to err on the side of caution in the wider interests of the government and maintaining public confidence.

- Whilst not formally trained in this area, I am unable to identify any conflict of interest, either actual, or perceived. I have no personal interest, neither does the work undertaken conflict with any constituency matter. I have been open about the nature of the work from the outset and the fact that this has not been taken at face value by the Complainant and her associates (see later section on false suppositions regarding matters concerning the GMC) is not something within my control.

5. Ministerial Responsibilities and Constituency Matters

Ministers should ensure that the decisions they take as Ministers are separate from activities they undertake as elected representatives of an individual district or parish on behalf of parishioners and constituents. Ministers are free to make their views known about constituency matters to the responsible Minister, by correspondence or by personal interview, provided they make clear that they are acting as their constituents' representative and not as a Minister. In acting for constituents, Ministers should also be mindful of the policy positions of their ministerial colleagues and the Council, acting professionally and proportionately. Ministers must take particular care to avoid any conflict of interest if they have to take decisions which impact principally on the district or parish they represent, and should seek to arrange their responsibilities so as to avoid perceived conflicts of interest, for example by delegating those decisions where possible. Where a function has been delegated to an Assistant Minister, the same principles apply.

- Here again, I am unable to attach or connect this matter with any Parochial or Constituency matter, save, possibly, for the GMC issue raised, tentatively, and entirely without foundation, by the Complainant in her letter of June 4th to the Chief Minister.

6. Individual Investigations

Ministers and Assistant Ministers should avoid providing direction in any individual or specific enforcement, compliance, or policing investigation undertaken by their Departments, dealing only with matters of general policy, except where required to do so by virtue of their statutory obligations or other obligations imposed on them by their office.

A similar approach should be adopted in relation to staffing and employment concerns and investigations. While the Minister is ultimately accountable for policy and the delivery of services in their areas of responsibility, employment matters are reserved for the States Employment Board and its delegates. Accordingly, where a Minister is concerned about the performance or conduct of an individual employee, they should refer the matter to the relevant Director General, or otherwise the Chief Executive Officer, or the Chair of the States Employment Board, as they feel most appropriate.

- The work undertaken by Deputy Bailhache was not an 'Investigation'. It was a means by which individuals could exercise their democratic right to convey their concerns and/or ideas, to an elected representative.
- Since assuming office I have made every effort to be available, personally, and this opportunity has been availed by dozens of people from many different areas. In this instance, with my workload almost getting the better of me, I simply requested the assistance of someone who I knew would be trusted by those involved.
- I must stress that no 'direction' was provided in any individual or specific enforcement, compliance, or policing investigation.
- As the Minister concerned, I had no prior agenda, other than to listen to those who wished to impart their thoughts to me. I was not seeking evidence of poor performance or conduct of any specific individual and if any of those who chose to impart their concerns had, or have, chosen to reveal their own thoughts on such matters, I have understood, from the outset, that such issues would be matters to be dealt with by others.
- In many instances, the information conveyed to me, via Deputy Bailhache, had also been conveyed to others; some to States Members, some simply to members of the public.

GMC Issue, raised with the Chief Minister, by the Complainant.

In that letter of the 4th June, the Complainant states the following –

"It is also our understanding that these interviews might relate to an ongoing case following a review by the General Medical Council (GMC), which raises further questions about the appropriateness of the Minister and Deputy Bailhache's actions."

I stand to be corrected, but I believe this may be the issue upon which the Complainant is relying to secure a successful outcome to her complaint. Firstly, and as previously stated, the exercise was not intended to take the form of an interview. Secondly, and perhaps more importantly, there is no foundation to the claim.

I have heard from several sources that the complainant, and several of her direct associates, have suggested that a number of the Consultants are personal friends of mine, that I socialise with them, and am actively operating in support of a particular individual who has been involved in a high profile case involving the GMC. None of this is true.

What is true is that the department of a local Consultant has been reviewed by a Royal College and numerous deficiencies have been identified. Much public emphasis has been placed on the individual concerned but little, if any, mention has been made by HCS of the deficiencies in the governance and safeguarding arrangements that should have been (but were not) in place to prevent them. Or the fact that, if they had been, the problems now identified would have dealt with at a much earlier stage.

I readily accept that I have been quite vocal on this issue, but on virtually every occasion upon which I have made mention of it, I have been at pains to first explain that I am not seeking to excuse the individual concerned and I would not take issue with the findings relating to their practices. I have simply expressed the view that all parties involved should recognise their shortcomings, as appropriate.

I stand by this assertion, but that, in no way, suggests that I have initiated a process that could, in any way, be described as 'inappropriate'. With this in mind, I am curious to know how the Complainant has reached an 'understanding' to that effect. Perhaps it would have been helpful if evidence had been presented.

Request for the work to be discontinued –

In her letter of 4th June to the Chair of the Privileges and Procedures Committee, the Complainant states the following -

'Although the Minister informed the Assembly that at the time of commencement of the work, Deputy Bailhache was not a member of the Panel, the Committee is aware that this work has continued beyond the Deputy's appointment to Scrutiny, notwithstanding a request for the work to be discontinued by the Health and Social Security Scrutiny Panel Chair who wrote to the Minister on 4th April 2024 that 'any work undertaken does need to be visible and transparent so that any conflicts can be effectively managed' and established 23rd April as a latest target date for the work to cease.'

I have attached a copy of the full email exchange between the Chair of the HCS Scrutiny Panel and me which I believe to be self-explanatory. I would be happy to provide further explanation if required.

Additional information.

Over the course of the past couple of months I have been pressed hard to reveal all manner of details about this relatively straightforward matter. One such question related to the method of referral of Consultants to Deputy Bailhache.

Whilst I don't think it to be of any relevance, I can confirm that the arrangement was pretty informal. I mentioned a couple of names that had been given to me by the initial Consultant and I explained that I felt sure most of those would probably have an additional name to add to the list. And I believe that is how the process ran.

Being a relatively small hospital, in a small island, most Consultants know that Deputy Bailhache was available to them and I believe reference may actually have been made to it at one of the two Medical Staff Committee meetings that I attended (that's a forum where, more

recently, my attendance appears to have emboldened Consultants to speak more openly about their concerns).

It is perhaps also worth mentioning at this point, that towards the end of the process (with confidence in speaking out much higher as result of it), I was asked to host a specific meeting to which eight of them turned up in person and two attended online. Here, much of what was conveyed to Deputy Bailhache was repeated to me directly.

Another obvious question that may be asked at this time is one that has already been asked of me in the States Assembly; why did those who chose to reveal their thoughts to Deputy Bailhache not simply convey them to the recently appointed 'Speak-up guardian'? It's a fair question, but knowing the current situation as I do, one with a very straightforward answer.

In a large organisation, when someone relatively junior has a complaint, the matter does not generally have to be escalated to the most senior level. As will be appreciated, Consultants operate at a senior level, so it is feared by many of them that any criticism which may relate to senior management would end up in the hands of the very people charged with dealing with the complaint. That is not my assumption; the issue has been raised with me by a number of Consultants.

I should also make it clear that, to my mind, there is a distinction between listening to people and drawing conclusions. It is my firm belief that the Complainant and her colleagues have assumed (or have wanted to assume) that I have approached my work with preconceived ideas and have set about justifying them by way of encouraging certain individuals to provide me with the evidence that I am thought to have wanted.

I may, of course, be wrong, but this same group of former Ministers (who lost their position following a vote of no confidence (initiated by me), in January), seem intent on discrediting me in any way possible; this complaint being the latest in a series of approaches. If mention of such matters is inappropriate, I apologise, but that is certainly my impression.

Finally, and in summary –

This was a very straightforward exercise.

It involved a States Member being requested to take statements from (mainly) disenchanted Consultants at the local hospital who wished their feelings to be made known to me in my capacity as Health Minister.

The request was made due to me having a heavy workload and being unable to spare the time required.

The work commenced some time before that Member became involved in the Scrutiny process.

On becoming involved, I am led to believe that the Deputy concerned informed the Chair of the Scrutiny Panel of the work being undertaken.

I was contacted by the Chair (by telephone, if my memory serves me correctly) and I explained the nature of the work, clearly.

I then received a letter from the Chair providing a date by which the work should conclude if the Deputy was to continue on the Panel.

I accepted the suggestion of a date for cessation but questioned the requirement for 'complete transparency' as I did not believe it to have been at all appropriate.

Much of the work had been completed prior to the Deputy's involvement with the Panel and it ceased on or before the date suggested.

A short time later the issue became very political and was raised several times in the Assembly.

The comments papers and summary were sent to me, in print, by Deputy Bailhache, sometime after the requested date of cessation (I have no note of the precise date).

The summary has been read by me and my Assistant Ministers. I am the only one to have read the individual comments papers.

We took advice (on the appropriateness of a limited sharing of the information) from the acting CEO of the States of Jersey (Tom Walker at that time) and it was explained that if it were to be shared anywhere beyond the immediate Ministerial Team it would need to be 'Maxwellised' (a term which, it was explained, would require a formal process to provide public evidence of opposing views to those that may have been expressed).

On balance, it was decided that the purpose of the exercise had been completed and all the views expressed would remain entirely confidential.

As noted, I am advised on Code compliance on an ongoing basis by members of the Ministerial Support Team.

I hope all of the above is helpful. I apologise if it is slightly lacking in formal structure but I was keen to get the information back to you as soon as possible in order to (hopefully) remove this extra pressure.

I'm very happy to speak over the phone, or Teams, at short notice, if that would be helpful.

With kind regards

Tom

Attachments –

- Email Exchange with Chair of HCS Scrutiny Panel.
- Letter from Chief Minister to Chair of Scrutiny Liaison Panel (29-04-24)
- Further letter from Chief Minister to Chair of Scrutiny Liaison Panel (18-06-24)

Fw: Health Panel meeting on 23rd April

Tom Binet <T.Binet@gov.je>

Tue 06/08/2024 11:04

To: Christopher Rondel <C.Rondel@gov.je>; Sophie Maguire <S.Maguire1@gov.je>

Cc: Tom Binet <T.Binet@gov.je>

For reference

From: Louise Doublet <L.Doublet@gov.je>

Sent: 30 April 2024 13:27

To: All States Members (including ex officio members) <AllStatesMembers-includingexofficiomemebser@gov.je>

Subject: Fwd: Health Panel meeting on 23rd April

Dear Colleagues

For full transparency please find below the email chain referred to by the Minister and myself during question time today.

Kind regards

Louise

Sent from [Outlook for Android](#)

From: Louise Doublet <L.Doublet@gov.je>

Sent: Wednesday, April 24, 2024 10:56:47 am

To: Tom Binet <T.Binet@gov.je>

Cc: Rose Binet <R.Binet@gov.je>; Barbara Ward <B.Ward@gov.je>; Andy Howell <A.Howell@gov.je>; Paul Bradbury <P.Bradbury@gov.je>; Christopher Rondel <C.Rondel@gov.je>; Inna Gardiner <I.Gardiner@gov.je>; Helen Miles <H.Miles@gov.je>; Hilary Jeune <H.Jeune@gov.je>; Catherine Curtis <C.Curtis@gov.je>; Montfort Tadier <M.Tadier@gov.je>; Tim Oldham <T.Oldham@gov.je>

Subject: Re: Health Panel meeting on 23rd April

Dear Tom

Thank you for your email.

To further clarify, my request for the work to cease/conclude did not in any way infer my approval of the work being carried out.

Kind regards

Louise

Sent from [Outlook for Android](#)

From: Tom Binet <T.Binet@gov.je>

Sent: Tuesday, April 23, 2024 10:14:59 PM

To: Louise Doublet <L.Doublet@gov.je>

Cc: Rose Binet <R.Binet@gov.je>; Barbara Ward <B.Ward@gov.je>; Andy Howell <A.Howell@gov.je>; Paul Bradbury <P.Bradbury@gov.je>; Christopher Rondel <C.Rondel@gov.je>

Subject: Re: Health Panel meeting on 23rd April

Good evening, Louise, and thank you for your email

I must confess to be somewhat taken aback, given your comments in your email of 4th April, as follows -

'Given the fact that this work was already underway before the panel was formed, we discussed the timings around when it would be concluded. I am content to give a reasonable timeframe for the work to conclude and for any conflicts to then be avoided'.

From this, I drew the conclusion that you recognised that the work was already well underway (almost halfway, I believe) and that your agreement to set a time limit was confirmation that you were happy for it to continue.

As you can imagine, whilst I am perfectly happy to open and transparent about the nature of the work (as I have been with you from the time that the work started to overlap with Deputy Bailhache's presence on your Panel), it would be highly inappropriate to reveal, publicly, concerns that have been expressed to me on a strictly private and confidential basis.

I may be incorrect, but it was, and remains my belief that all the people who have chosen to speak to me, or offer statements for my attention, have a right to provide details of their private thoughts and experiences in the strictest confidence. Deputy Bailhache was simply asked to take the statements for me, and (as I usually do in such circumstances), I checked the Code of Conduct with members of the Ministerial Assistance Team before the process commenced.

Should those involved not be free to share any concerns they may have, with their relevant Minister, in confidence? Am I to believe that the speak up guardian has taken the place of our democratic right to speak to our elected representatives, privately?

I, too, am concerned.

With all of the above in mind, I will be taking formal advice tomorrow and will respond fully, once this has been received.

Best regards

Tom

From: Louise Doublet <L.Doublet@gov.je>

Sent: 23 April 2024 17:09

To: Tom Binet <T.Binet@gov.je>

Subject: RE: Health Panel meeting on 23rd April

Dear Tom

Thank you for your response on this matter.

To be clear, I had not permitted this work. I was also not aware of the full extent of the work.

As I had notified you, the matter was discussed at the Health Panel meeting and at SLC today (23rd April). I made Deputy Bailhache aware of the concerns raised by SLC and the fact that it was being discussed. SLC are discussing next steps with the Greffe.

In terms of transparency, I would expect all of the work being undertaken by Deputy Bailhache as your delegate to be published. I am concerned to hear that existing mechanisms to allow staff to speak up/raise concerns have been bypassed

in favour of the approach you describe.

Thank you for keeping me updated.

Kind regards

Louise

Deputy for St Saviour

Chair of the Health and Social Security Scrutiny Panel

Member of the Scrutiny Liason Committee

Member of the Commonwealth Parliamentary Executive Committee (Jersey Branch)

Member of the States Assembly Diversity Forum

Member of the States Assembly Privileges and Procedures Committee

.....



States Assembly - Jersey Elected Parliament

Morier House | Halkett Place | St. Helier | Jersey | JE1 1DD



+44 (0) 7797766784



[Statesassembly.gov.je](https://statesassembly.gov.je)

.....



States of Jersey
States Assembly

Please note: I value and respect flexible working arrangements. Although I have sent this at a time that is convenient for me, it is not my expectation that you read, respond, or follow up on this email outside your hours of work.

Your Privacy

I confirm that I am registered as a 'Data Controller' under the Data Protection (Jersey) Law 2018 (the law) and that I will take care to protect your data. For further information about how I may use and store your data, you can request a copy of my Privacy Statement.

Any information and files/attachments transmitted with this email may be confidential and intended solely for the use of the individual or entity to whom they are addressed. If this message has been sent to you in error, you must not copy, distribute or disclose of the information it contains. Please notify me immediately and delete the message from your system.

From: Tom Binet <T.Binet@gov.je>

Sent: Saturday, April 6, 2024 1:19 PM

To: Louise Doublet <L.Doublet@gov.je>

Subject: Re: Health Panel meeting on 23rd April

Good morning, Louise

Many thanks for writing to me on this matter

As explained, Deputy agreed to undertake some work for my, prior to his election to the Scrutiny Panel.

Given my time constraints, the nature of the work was simply for him to make notes/take statements from various people within the health service who (for various reasons) had wanted to speak to, or raise concerns with me, rather than use the existing speak up service provided.

I am grateful to you for allowing Sir Philip until the 23rd April to complete the work, but I am happy to say that it was all but completed when we spoke, save for him writing up a summary of his findings. In closing, could I please just check what you mean in saying that 'any work undertaken does need to be visible and transparent'. Does this mean transparency about the purpose of the work being undertaken, or would you be looking for the work itself being made public?

Whilst not ideal, the former is understandable. However, the latter would cause me to breach all the confidences that were promised to those who approached me.

I look forward to hearing from you

With kind regards

Tom

From: Louise Doublet <L.Doublet@gov.je>

Sent: 04 April 2024 12:20

To: Tom Binet <T.Binet@gov.je>

Cc: Christopher Rondel <C.Rondel@gov.je>; Sammy McKee <S.McKee@gov.je>

Subject: Health Panel meeting on 23rd April

Dear Tom

I hope you are well. It was good to have you in for the hearing yesterday, thanks for your time, and also for taking the time to give the panel some details on the situation with the Health Board Chair. We will be discussing the resignation of the Chair at our next meeting and may seek further information from you which I'm sure you will be pleased to provide. My focus remains principally on your policies as Minister.

I'm writing with regards to our telephone conversation last week where we discussed a member of my panel who was doing some work for you as Minister. Thank you for sharing details of this work, I appreciate this. As I mentioned then, concerns have been raised with me about the compatibility of this work with also working as part of a scrutiny panel. I have taken advice and it has been confirmed to me that any work undertaken does need to be visible and transparent so that any conflicts can be effectively managed. This is due to the important democratic principle underpinning our Parliament whereby there is a separation between the non-executive/ scrutiny and the executive – indeed this is formalised in the Troy Rule.

Whilst I do not, as Panel Chair, intend to completely prevent panel members from interacting with Ministers outside of the scrutiny function – there are principles that must be followed if any such work is to take place.

The first is openness and transparency. In the same way as Policy Development Boards published their terms of reference, membership, agendas, minutes and reports – this should be the standard for any such work undertaken on a similar basis by scrutiny members.

The second follows from this clarity of what work is being undertaken, and means that a panel member would be expected to recuse themselves from any scrutiny of the area they are working on with the Minister.

Given the fact that this work was already underway before the panel was formed, we discussed the timings around when it would be concluded. I am content to give a reasonable timeframe for the work to conclude and for any conflicts to then be avoided.

Our next panel meeting is on the 23rd April and the matter will be discussed then. I would like to retain Sir Philip as a panel member due to his significant expertise, so it is my sincere hope that his work for you would be concluded by that date.

Kind regards

Louise

Chief Minister



Deputy Inna Gardiner
Chair
Scrutiny Liaison Committee
By email

29th April 2024

Dear Deputy Gardiner,

Health and Social Services – Role of Scrutiny Panel Member in Executive work

Thank you for your letter of 25th April. I am grateful to you for seeking clarification in respect of this matter.

I am committed, as I have always been, to ensuring that we utilise the skills and expertise of as many States Members as possible as we address the various challenges that Jersey faces. This is an objective which is shared across the Government, and we will work closely with colleagues as far as is possible. I believe this was an expectation of the Assembly when we were appointed in January and, as you will know, it has also been an ambition of previous governments.

Since coming to office, the Health Minister has become aware of significant concerns among a large number of consultants who are engaged by the Health Department.

The Minister wanted these concerns to be independently considered and, accordingly, asked Deputy Bailhache – as a respected and highly experienced States Member – to support him. Deputy Bailhache engaged with those consultants who wished to meet him in order to listen, hear their concerns, and report these in a consolidated and impartial manner to the Health Ministerial team.

As far as the Health Minister and I are aware, Deputy Bailhache informed the Health and Social Security Scrutiny Panel of this work. The Assistant Ministers to the Health Minister were also all aware.

The 'Troy Rule' is embodied in Article 25A(1) of the States of Jersey Law 2005 and Standing Order 112A. Deputy Bailhache does not serve as a Minister or Assistant Minister and holds no executive role or powers. As such, there can be no question of this matter raising any issues in this regard.

I understand that the Chair of the Health Panel has indicated to the Health Minister that she was content for Deputy Bailhache to conclude this work in a reasonable timeframe, and I can confirm that the work has now concluded. Should the Committee have further questions that specifically relate to the work undertaken, I'm sure the Minister would be pleased to engage with you.

I have discussed your correspondence with the Health Minister, and he is aware of this response.

Yours sincerely,

Deputy Lyndon Farnham
Chief Minister

Government of Jersey | 19-21 Broad Street | St Helier | Jersey | JE2 3RR

CC: Connétable Karen Shenton-Stone, Chair, Privileges and Procedures Committee

Chief Minister



Deputy Inna Gardiner,
President, Scrutiny Liaison Committee

By email

/8 June 2024

Dear President

Thank you for your letter dated 4th June 2024.

While I understand that Panels need to manage potential conflicts of interest, I believe that elected Members should have the freedom to discharge their roles as they see fit in the interests of their constituents, while applying appropriate standards.

I consider that it is reasonable for a States Member to have discussions with government employees and, where appropriate, for those discussions to be reported to the relevant Minister, provided that this is done with the consent of the employees at all stages.

Your letter raises a number of further questions which, to be answered in full, would need to be addressed to the Minister. From the information I have, and having received assurances from the Minister and Deputy Bailhache, this matter does not seem to sufficiently merit a referral by myself to the Commissioner for Standards on the grounds referenced in your final paragraph.

I would much prefer that the Minister focus on his crucial work of improving our health service – for which he is accountable and must answer to the Assembly and Scrutiny, serving so long as he holds the confidence of Members.

If the Committee wish to refer this matter you are, of course, free to do so. The Commissioner can also, in any event, investigate a matter of their own volition should that be considered necessary.

Thank you once again for your letter.

Yours sincerely

*With kind regards**Lyndon*

Deputy Lyndon Farnham
Chief Minister

19-21 Broad Street | St Helier | Jersey | JE2 3RR