

## ST HELENA



### APPENDIX I PROCEDURE OF THE INVESTIGATIVE COMMISSION PURSUANT TO THE CODE OF CONDUCT FOR MEMBERS OF LEGISLATIVE COUNCIL

#### **Role**

1. The role of the Investigative Commission is to investigate complaints made against members of the Legislative Council. Any complaint made in writing must be investigated by the Investigative Commission. Unless the complaint is found to be frivolous or vexatious or is withdrawn, the Investigative Commission must, at the end of any investigation, conclude whether the conduct of the Member has fallen below the standard set out by the Code of Conduct or not and the reasons for arriving at such conclusion.

#### **Composition of the Investigative Commission**

2. Section 7.1 of the Code provides that the Clerk of Councils must maintain a list called the Panel of Investigators. Persons of good standing in the community may be invited to have their names added to the Panel of Investigators.
3. The persons whose names are added to the Panel of Investigators must be non-partisan and have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to perform this role.

#### **Procedure to empanel the Investigative Commission**

4. Whenever a complaint is received, the Speaker must as soon as reasonably practicable refer the complaint to the Deputy Speaker and two members of the Panel of Investigators whose availability the Clerk of Councils will ascertain in advance. If the Deputy Speaker is unavailable or is herself / himself the subject of the investigation, then the Speaker must appoint an Elected Member and two members of the Panel of Investigators. The Elected Member will be the Chair.

5. In the event that the complaint is in relation to the Speaker, then the Deputy Speaker must as soon as reasonably practicable appoint an Elected Member to chair the investigation together with two members of the Panel of Investigators.
6. The Speaker (or the Deputy Speaker if the complaint is in relation to the Speaker) selects the two members of the Panel of Investigators. The Speaker should consider the following when inviting a member of the Panel of Investigators to join an Investigative Commission:
  - a. The availability of the Investigator - from the time the investigation begins until the time when the investigation is likely to finish. The Speaker should make all necessary questions to ensure that the Investigator, once appointed, will be able to work on the investigation and not withdraw due to travelling, medical reasons, work demands, etc.
  - b. The degree of acquaintance between the Investigator and the Member of the Legislative Council who is to be investigated. The integrity of the investigation relies on the neutrality of the Investigative Commission. The Speaker should be satisfied, through appropriate questions asked to the Investigators, that the Investigators will not be prevented from investigating the complaint fairly and impartially.
  - c. Any other interests that may taint the investigation of being partial or unfair.

### **Appointment of the Investigative Commission**

7. Once the Speaker is satisfied with the selection of the Investigator, then the Speaker appoints the Investigators and the Deputy Speaker as the Investigative Commission in relation to the complaint against the Member of the Legislative Council.
8. The Deputy Speaker, or, in an investigation involving the Speaker or the Deputy Speaker, the Member of the Legislative Council standing in for the Deputy Speaker, shall be the Chair of the Commission and take the lead in the investigation.

### **Procedure of the Investigation**

9. It is only at the point when the Investigative Commission is appointed that the Speaker provides the complaint to the members of the Investigative Commission. It is also at this time that the Speaker provides a copy of the complaint to the Member complained about and notice that an investigation is underway and that the Deputy Speaker will contact the Member in due course. The Speaker will also notify the complainant and the Member complained about of the composition of the Investigative Commission and hear any objection that the Member might wish to raise as to the membership of the Commission; and that the Chair will contact them in due course.

10. The Speaker should advise the Member that he or she should not discuss the complaint with the complainant or any other person cited in the complaint and supporting papers; except that the Member should discuss this with the Investigative Commission. The advice of the Speaker must be very clear - the investigation is now under the jurisdiction of the Investigative Commission and any actions taken by the Member may prejudice the investigation.
11. The Code provides that the Member subject to an investigation must:
  - a. treat any complaint as if sub judice;
  - b. cooperate with and assist the Investigative Commission.
12. The Investigative Commission must first consider whether the complaint is frivolous or vexatious. If it is satisfied that the complaint is frivolous or vexatious, it shall provide brief reasons for its conclusion and shall decline to investigate it further.
13. Save where the Investigative Commission has found the complaint to be frivolous or vexatious, it has 30 days from the date of its appointment to investigate and report. The Investigative Commission must organise their schedule of work to meet the deadline (see paragraphs 13 and 14). The Commission must also identify at this early stage what are the sections of the Code of Conduct that the complainant alleges the Member has breached.
14. All evidence heard by the Commission must be recorded. The Investigative Commission may meet with the complainant to seek any clarification in respect of the complaint. A Member of the Investigative Commission must make a note of the content of discussions and decisions of the Commission.
15. The Investigative Commission must meet with the Member complained about and:
  - a. Put the allegations to the Member;
  - b. Unless there is a good reason otherwise, provide the Member with a copy of any evidence;
  - c. Make a record of the Member's responses;
  - d. Make further questions as necessary to confirm:
    - i. What the member is denying;
    - ii. What the member is accepting;
  - e. Interview any witness identified by the Member;
  - f. Use the Code of Conduct as the yardstick to find whether a breach has taken place or not.
16. The Commission must use its best endeavours to interview any witnesses mentioned in the complaint following a similar process.

### **Outcome of the Investigation**

17. The Investigative Commission may determine, even at an earlier stage, that:
  - a. that the complaint is frivolous or vexatious and decline to investigate it further; or
  - b. That there is a breach of the code; or
  - c. That there is not a breach of the code.
  
18. Save where the complaint has been found to be frivolous or vexatious, at the conclusion of their investigation, the Commission must provide a report to the Speaker and send a copy to the Member complained about and to the complainant. Except in the event that the complaint is in relation to the Speaker, in which case the Commission must send the report to the Deputy Speaker, to the Speaker and the complainant.
  
19. The report must state the nature of the complaint, summarise the evidence received in relation thereto and record the conclusion. The report must give reasons; this means, that whatever the outcome of the investigation, [a], [b] or [c] the Commission must say in their report how they came to their conclusion, what evidence they relied to make their findings and if they had two contradictory pieces of evidence in relation to the same fact, which one they relied on (the one that to them was the true account) and why. The Investigative Commission must clearly state in their report whether or not the Member investigated has breached the Code, and if yes, what sections.
  
20. The report must be tabled at the next formal meeting of the Legislative Council as a sessional paper.
  
21. The complaint may be withdrawn at any time before the report is tabled and no further action shall be taken in the investigation and no report shall be tabled.
  
22. If the Commission finds that there is a breach of the Code, then the Commission, having previously consulted with the Speaker, may impose on the Member any of the sanctions under section 7.2 of the Code of Conduct.
  
23. If the Investigative Commission thinks that there are reasonable grounds to believe that an offence has been committed, it should immediately refer the complaint to the Police and suspend the investigation under the Code of Conduct pending the outcome of the Police investigation. The Commission may wish to seek advice from the Attorney General or another legal officer.

### **Time limits**

24. The Code of Conduct states that the Investigative Commission must conduct the investigation within the agreed timescale, which will be 30 days of the Commission being constituted unless the Speaker (or Deputy Speaker as the case may be), has agreed a different timescale; if the Investigative Commission considers a longer timescale necessary, it should seek to agree an appropriate timescale with the Speaker. The Speaker

(or Deputy Speaker as the case may be), may, in his discretion, agree the timescale and/or extend a previously agreed deadline having considered all the circumstances.

### **Remuneration and tenure**

25. The remuneration of the Members of the Investigative Commission, other than the Elected Member part of it, shall be of £35 per meeting per person to a maximum of £140 per investigation and mileage at the rate of £0.60 per mile.
26. Once appointed by the Speaker (or Deputy Speaker as the case may be), the Investigative Commission shall not be removed except for proven misbehaviour or on other reasonable grounds.

### **Appeal**

27. The findings of the Investigative Commission shall not be disturbed save in accordance with this paragraph. The complainant or the Member may appeal the decision but no appeal will be entertained if received after 14 days of the receipt of the decision of the Investigative Commission by the Member complained about. Proof of the decision sent by email shall be sufficient evidence of receipt. In the event of an appeal by the Member, then the sanction imposed by the First Investigative Commission will be suspended until the appeal is dealt with. The person wishing to appeal must clearly set out the grounds of the appeal, in particular what is challenged about the reasoning of the First Investigative Commission. The Speaker (or the Deputy Speaker as the case may be) must appoint a Second Investigative Commission (whose members were not in the First Investigative Commission) to carry out an investigation only of those grounds of appeal. The findings of this second Investigative Commission shall be final.

### **Miscellaneous**

28. The Investigative Commission may approach the Speaker (or Deputy Speaker as the case may be), for advice on any matters that are not set out in this procedure. If consultation is necessary, the Investigative Commission must state in the final report the question put to the Speaker, the answer the Speaker provided and the course of action undertaken by the Investigative Commission.

Approved by the Legislative Council on the      day of      2018 to replace all previous versions of the procedure.