



States of Alderney

Presidents Office

The States of Alderney Code of Conduct for States Members

Code of Conduct Panel

In the matter of 2 complaints in connection with an alleged breach of Data Protection legislation, by disclosing personal data without the consent of the data subject, and a failure to self-report under paragraph 11.2 of the Code

Against: Boyd Kelly, States Member

Panel: Roy Burke (Chair), Barbara Benfield, Pete Allen (Members)

Also in attendance: Kevin Gentle

Date of Complaint: 15 May 2021 (Helen McGregor, Alderney Bird Observatory)

Date of Decision: 22 June 2021

DECISION

- 1 This is a decision in respect of a complaint under the States of Alderney Code of Conduct for States Members by the Chairman of the Alderney Bird Observatory, Miss Helen McGregor. The complaint is in two parts: (i) paragraphs 6.4, 9.1 and 9.3 and (ii) paragraph 11.2.
- 2 In essence the complainant alleges that personal information had been inappropriately shared by Mr Kelly thereby breaching the Code of Conduct by disclosing confidential information (para 6.4) and in so doing had failed to meet the requirements set out in the Code to respect confidentiality and conduct himself properly (paras 9.1, 9.3).
- 3 The complainant also alleges that Mr Kelly was aware of the alleged breach of data protection legislation and should have reported himself to the President and the Greffier in accordance with Paragraph 11.2 of the Code.

Consideration

- 4 On 21 May 2021 copies of all documents provided to the Panel were sent to Mr Kelly. Mr Kelly was invited to comment or adduce documents of his own. Mr Kelly replied on 24 May.

5 On 8 June the hearing Panel held a preliminary meeting to consider the documents provide by Mr Kelly and the complainant and to consider the next steps. At this preliminary hearing the panel first considered the allegations in respect of paragraphs 6.4, 9.1 and 9.3 of the Code, that in preparing a submission for the States Meeting of 17 March 2021 the personal details of a member of the public were published without their knowledge. The Panel Members considered all the evidence submitted, and concluded that while there was indeed a breach of the code (Section 6.4), given the circumstances the breach was of a minor nature and as such a caution was offered under Section 13.2.3 (ii). The Panel accept that there were a range of mitigating factors to take into account when considering this matter, not least the on-going pandemic restrictions resulting in significantly reduced administrative support, and the fact that Mr Kelly and those charged with administration have accepted that there was a failure of communication. The GSC had accepted the recommendations of officers in respect of the future treatment of the Alderney Bird Observatory, and Mr Kelly had assumed that the associated actions would have been completed by the time the billet submission was prepared. Mr Kelly said that he was unaware that they had not and there had been no communication with officers in the interim. There was, however, no evidence of any checks made on the progress of the recommendations of GSC before the Billet paper was submitted and subsequently published. It was accepted by the Panel that there was no malicious intent on Mr Kelly's part or of others working for the States, and that the incident came about as a result of administrative errors. The Panel have concluded that, in the light of all the evidence, a caution should be offered.

6 The Panel also concluded that the protection of Section 48 (B) of the Government of Alderney Law is not extended to Code of Conduct hearings. Issues relating the Data Protection legislation are not a matter for this Panel.

7 Mr Kelly has accepted the caution.

8 As to the second issue, failure to self-report, the Panel notes that section 11.2 of the Code of Conduct states that where a Member is aware that she/he may have breached the Code of Conduct she/he should report her/himself to the President and Greffier so that a Conduct Review Panel may be convened to consider the breach. The Code refers to such a matter as a "serious breach". On 22 June 2021 the Panel convened a hearing to consider that matter further. Mr Kelly attended with Kevin Gentle acting as observer.

9 Mr Kelly was invited to make comment. He said that he denied the allegation that he had failed to self-report as he had been unaware that he had or may have breached the Code. He said that he had assumed that GSC's recommendations had been actioned and that any failure in the process was because of the actions or inaction of others. The Deputy Chief Executive (Interim) had accepted that he had not kept Mr Kelly informed of his actions. Mr Kelly also

said that there had been no notification from the Data Protection Office of any investigation. He also adduced evidence that he had been informed by a member of staff at the States of Alderney that there was no on-going investigation into data protection breaches. He said that no other member of the States of Alderney had suggested that he should be reported for a breach of the Code of Conduct. He said that all these matters were known to the States and to the Law Officers in Guernsey, yet no-one suggested he should be reported for an alleged breach. Mr Kelly did however accept that on 12 May 2021 he had read an article in the Guernsey Press which suggested that there had been complaint to the Data Protection Office, he therefore checked with the relevant authorities to find that there had indeed been a complaint. When asked why he did not report himself at this point Mr Kelly said that he did not know the substance of the complaint and therefore did not report himself.

- 10 Mr Kelly and Mr Gentle left the hearing and the Panel then considered the evidence.
- 11 It is clear to the Panel that personal data had been revealed in the March Billet and that the source of the disclosure was the submission prepared by Mr Kelly. It is also accepted by the Panel that the administrative process was deficient in that there were no checks and balances in place to ensure that the contents of any submission were checked before publication. Mr Kelly has said that he regrets that the data subject was not properly informed of decisions before publication, and has offered an apology to the Directors of the Alderney Bird Observatory. The Panel is of the view that the wording of the Code of Conduct means that, even if a member does not believe he has breached the Code, if s/he becomes aware that there may have been breach s/he should report her/himself to the President and Greffier. We accept that while there is considerable confusion around what happened in March as far as data protection investigations are concerned, there should have been no such confusion in May. Although a Code of Conduct complaint was made on 15 May, it would have been prudent for Mr Kelly to report himself at this time, although the Code is silent on whether it is necessary to do so when a formal complaint is made. Indeed if it was necessary, all members should refer themselves on receipt of a formal complaint, which is clearly impractical.
- 12 Having found that Mr Kelly was in breach of the Code of Conduct the unanimous decision of the panel is that there is significant mitigation in this case and that a caution is sufficient.

Roy Burke
Pete Allen
Barbara Benfield