



# **Jersey Data Protection Authority Corporate Governance Protocol**

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### **Introduction**

This Protocol sets out the internal Corporate Governance arrangements for the Jersey Data Protection Authority (the Authority). The Authority adopted these arrangements on [29 October 2018] and will review them after 12 months and then on a regular basis.

The Authority is a statutory body created under the Data Protection Authority (Jersey) Law 2018 (DPAL), which sets out its responsibilities. Articles 2-4 set out the establishment and constitution. Articles 5 and 6 deal with the appointment of the Information Commissioner (the Commissioner) and the Commissioner's power to discharge functions of the Authority. Articles 9 and 10 set out the proceedings of the Authority and the ability to delegate functions to Authority employees. Part 2 in its entirety sets out the functions of the Authority, including the powers to issue guidance, opinions and public statements. Schedule 6 sets out various provisions about how the Authority must, or may, conduct itself. Part 4 deals with the enforcement powers of the Authority, investigatory powers, determinations, sanctions and administrative fines.

The DPAL is the ultimate instrument for corporate governance and this Protocol takes effect subject to its provisions. This Protocol provides maximum clarity about the role and authority of participants and their inter-relationships. The Protocol incorporates many of the provisions of the DPAL in more accessible language. It also elaborates on many of the provisions, especially where a discretion is available to the Authority.

## The Authority

The Authority consists of up to nine voting members including the Chairman. The Data Protection Authority (Jersey) Law 2018 states;

<sup>1</sup>The Authority consists of –

- (a) the Chairman;
- (b) no fewer than 3 and no more than 8 other voting members; and
- (c) the Commissioner as an *ex officio* and non-voting member.

The Authority, through the Board, carries the ultimate responsibility for the discharge of the responsibilities under the DPAL. The Authority is the guardian of independence, sets the organisation's strategic direction, holds the Commissioner to account and provides the Commissioner with advice, support and encouragement. It ensures that the Jersey Office of the Information Commissioner (JOIC) provides value for money and complies with appropriate policies and procedures with respect to human resources, financial and asset management, and procurement. This includes formal approval of any single item of expenditure in excess of ten percent of the operating budget for JOIC. With a balance of expertise in data protection, governance, and local knowledge of Jersey Government and industry, the Authority provides strategic guidance to JOIC with respect to fulfilling its mandate effectively and efficiently.

The Authority has the authority to appoint (or re-appoint) the Commissioner or remove the Commissioner from office.

The Authority has very limited operational responsibilities and these do not include day-to-day operations, individual casework or most enforcement decisions. The Board has the ability to delegate functions to JOIC.

The Data Protection Authority (Jersey) Law 2018 states;<sup>2</sup>

The delegation of any functions under this Article –

- (a) does not prevent the performance of those functions by the Authority; and
- (b) may be amended or revoked by the Authority

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<sup>1</sup> <https://www.jerseylaw.je/laws/enacted/Pages/L-04-2018.aspx>

<sup>2</sup> <https://www.jerseylaw.je/laws/enacted/Pages/L-04-2018.aspx>

## **Reserved Functions**

Under the DPAL the Authority cannot delegate the following functions:

- this power of delegation;
- the function of reviewing any of its decisions;
- the issuing of a public statement under Article 14 of the DPAL;
- the making of an order to pay an administrative fine;
- the preparation of the Annual Report.

By a Board Resolution of 7 January 2019, the Authority delegated all its functions to the Commissioner, in accordance with Article 10, except 'Reserved Functions'. In performing the 'Reserved Functions' the Board will have the assistance of JOIC. For example, JOIC will identify cases to bring to the Board for consideration for issuing a fine or publicising the outcome, using the criteria stipulated in article 26(2) of the DPAL. JOIC will conduct the investigation and determine whether a contravention has occurred that might meet the criteria for a fine, or otherwise warrant publication. The decision whether to impose a fine and the value of the fine will be solely the responsibility of the Board. The Board will also determine whether publicising details of the case would be in the public interest, in accordance with Article 14 of the DPAL. JOIC will also provide the Board with the information necessary for the preparation of the Annual Report. The Board will decide the information to be included in the Annual Report and will provide a copy to the Minister.

## **The Commissioner**

The Commissioner holds office for a fixed term, which the Authority may renew. He is a non-voting member of the Authority and normally attends all meetings of the Authority.

His specific responsibilities include:

- acting as Chief Executive of the Authority, providing leadership to ensure its effective and efficient management;
- managing the staff of the Authority and all day-to-day operations of the Authority;
- ensuring propriety of all expenditure;
- ensuring that each year the expenditure of the Authority does not exceed the financial resources available to it; and
- acting as the principal public face of the organisation.

The DPAL identifies all of the statutory powers and functions of the Authority. It also permits the Authority to delegate those powers and functions, except for those functions identified as 'Reserved Functions'. The Authority has by resolution of 7 January 2019, delegated all

powers, except for Reserved Functions and the authority to approve expenditure in excess of ten percent of the annual budget, in accordance with Article 10 of the DPAL.

## **The Staff**

The Authority employs members of staff but the Commissioner recruits and manages them. The Commissioner will consult the Chair of the Authority before proceeding with the following actions:

- recruitment of a Deputy Commissioner;
- significant changes to staff terms and conditions, salaries or pension arrangements
- significant disciplinary action; or
- dismissal of any member of staff.

The Deputy Commissioner may exercise any of the Commissioner's functions. In accordance with the written Notice of Delegation dated 29 October 2018. The Deputy Commissioner normally attends all meetings of the Authority.

The Authority may delegate any function to any employee in accordance with the DPAL.

## **Proceedings of the Authority's Board**

In accordance with the DPAL, the Board resolved on 7 January 2019 to meet four times a year. The Board will establish an annual schedule of meetings. In the event a quorum is not possible, the Chair may decide to postpone a meeting or, if urgent business requires it, consider and take decisions by e-mail or tele-conferencing or by circulation of papers.

A quorum requires the nearest whole number of voting members above one-half of the number of voting members for the time being in office<sup>3</sup>. [Article 9.4a] For example, if there are six voting members, quorum shall be four. DPAL provides that all formal decisions require a majority vote. The Commissioner does not have a vote. In the first instance, the person presiding over the meeting does not have a vote.

The person presiding usually will be the Chair. However, in the absence of the Chair, the voting members will elect one of themselves to preside. In the event of a tie, the Chair, or other person presiding, has a casting vote.

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<sup>3</sup> <https://www.jerseylaw.je/laws/enacted/Pages/L-04-2018.aspx>

Members of the Authority will receive an agenda and supporting papers at least one clear week in advance of the meeting. JOIC will make special arrangements for papers containing personal data, enforcement or other sensitive information.

Generally, matters requiring substantial decisions should appear on the agenda along with short papers, including the necessary information upon which to base a decision.

At each regular meeting of the Board, the Commissioner will normally provide a written or oral report on current and prospective activities and issues, and a written report with management accounts and business plan to summarise both the budgetary and operational performance situation.

The DPAL requires the Board to keep proper minutes.

The DPAL permits the Authority to transact business by circulation of papers and a written resolution, approved by a majority of voting members. This is as valid as if passed at a meeting.

The Board will publish minutes of its meetings and Board member's remuneration.

## **Communication**

Board members are expected to communicate in a clear, collegial and constructive manner, perform their duties and attend to the business of the Authority in a timely fashion, and refrain from discussing the business and affairs of the Authority outside of board meetings and communications, unless agreed by the Board.

## **Relationship with the States and Government of Jersey**

Although the Government of Jersey provides funding to the Authority, in accordance with the DPAL, it is important that the Authority is, in appearance and reality, an independent regulator capable of holding both the States and Government of Jersey to account. A separate Memorandum of Understanding will set out the relationship between the Authority and the Minister.

## **Conduct of Members**

Members of the Authority will act in accordance with the 'Principles of Public Life' [formerly known as the Nolan Principles], which are set out below, and should be able to demonstrate their ability to meet these Principles:

### **1. Selflessness**

Board members should act solely in terms of the public interest.

### **2. Integrity**

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

### **3. Objectivity**

Board members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **4. Accountability**

Board members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **5. Openness**

Board members should act and take decisions in an open and transparent manner. Information should be disclosed to the public unless there are clear and lawful reasons for not disclosing it.

### **6. Honesty**

Board members should be truthful.

### **7. Leadership**

Board members exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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