



## **Procureur du Bien Public**

*(Guidance for Procureurs – issued by the Comité des Connétables 14 Feb. 2022)*

### **The Overarching Principles:**

#### **Responsibility for the Property of the Parish**

Oath of office:

Code of 1771

SERMENT DES PROCUREURS DE PAROISSE

*VOUS jurez et promettez par la foi et serment que vous devez à Dieu, que vous exercerez la charge de Procureur du bien public de la Paroisse de.....; que vous le conserverez et augmenterez comme le votre, et mieux s'il vous est possible; que vous vous réglerez par le bon conseil et avis des Principaux et Officiers, et des Chefs de Famille de ladite Paroisse; et ferez généralement tous autres devoirs qui dépendent de ladite charge.*

Code of 1771 (translated laws)

OATH OF THE PARISH PROCUREURS<sup>10</sup>

You swear and promise by the faith and oath that you owe to God that you will discharge the office of Procureur du Bien Public of the Parish of .....; that you will conserve and augment the property of the Parish as you would your own, and more so if you are able; that you will in the execution of your duties take heed of the advice and counsel of the Principals and Officers and Chefs de Famille<sup>11</sup> of the said Parish; and that you will generally discharge all other duties appertaining to the said office.

<sup>10</sup> Procureur du Bien Public translates into English, technically, as 'Trustee of public property'.

<sup>11</sup> Paterfamilias, or head of a family or household: the term is no longer of any practical significance in this context.

#### **Independence of Judgment**

*The Connétable and the Procureurs du Bien Public should work closely together on behalf of the parish. They need to work harmoniously in its interest. But working harmoniously does not involve a lack of challenge to what has been done. The relationship will work harmoniously and thus to the benefit of the Parish when each respect the obligations of the other without either surrendering their own performance. It is vital that the Procureurs du Bien Public act independently from the Connétables. They should not approve payments or any other transaction merely because the Connétables ask them to do so. This is a difficult area given any personal loyalties and/or fear of giving offence; but it is nevertheless very important. It is also important that the Connétables respect the independence of his or her Procureurs. (Commissioner Sir William Bailhache, In the Matter of the Connétable and Procureurs du Bien Public of the Parish of St John [2021]JRC091)*

### **Description of the role:**

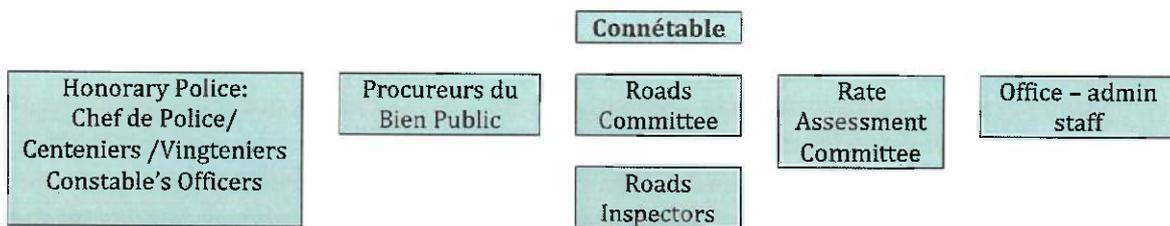
There are two Procureurs du Bien Public in each Parish. They are public officials who have a fiduciary duty in respect of parish property. The role is –

*To represent the Parish in looking after the property of the Parish.<sup>i</sup>*

In essence, a person elected to the office of Procureur du Bien Public must, as a bare minimum, look after the property of the Parish with the same high standard of care with which they would look after their own property.

### **Parish structure and position of Procureur:**

A Parish is to be treated as a corporation having legal entity with perpetual succession, separate from its Parishioners<sup>ii</sup>.



### **Responsibility in respect of property:**

1. Movable property - responsibility in relation to Parish finances:
  - a. ensure that the generality of the funds voted by the Parish Assembly are correctly spent/allocated;
  - b. report to the Principals<sup>1</sup> and Officers of the Parish in relation to any matter concerning the application of the income of the Parish in respect of which the principals and officers should be made aware; and
  - c. as well as the Connétable, represent the Parish in respect of any other contracts or agreements approved by the Parish Assembly.
2. Immovable property - maintain an oversight of Parish assets including land, buildings and any other property:
  - a. report to the Principals and Officers of the Parish in respect of any matter concerning the public property of the Parish which they should be made aware of;
  - b. as well as the Connétable, represent the Parish in respect of property transactions (sales and leases) of the Parish; and
  - c. as well as the Connétable, represent the Parish in respect of any other contracts or agreements approved by the Parish Assembly.
3. Parish-specific bodies/trusts<sup>iii</sup> may specify:

<sup>1</sup> The word “*principals*” for this purpose now effectively means persons who are entitled to vote at a Parish Assembly – see Rates (Jersey) Law 2005, Article 23. See also *Loi (1804) au sujet des Assemblées Paroissiales*: Article 1.

- a. that the “Procureur du Bien Public” is a standing member of the body/trust; and
- b. the specific duties and responsibilities relating to the body/trust.

**Duties of the Procureur:**

1. Meet regularly with the Connétable. The Procureurs will work closely with the Connétable on behalf of and for the betterment of the Parish. However, the Procureurs must always act independently from the Connétable. The Connétable must respect the independence of his or her Procureurs.
2. To attend Parish Assemblies, including Ecclesiastical Assemblies, to learn of the Assembly’s wishes and to report on any matter about which its members should be aware.
3. A fiduciary duty to ensure that the Parish Assembly is presented with audited accounts and estimates of funds required by the parish for the financial year (see Article 21(1) of the Rates (Jersey) Law 2005):
  - a. Through the course of each financial year, the Procureurs have an obligation to ensure that the Parish assets are applied in accordance with the wishes of the Parish Assembly. In certain cases there may be some variances, however these must be considered against the legitimate expectations of ratepayers when the Parish budget was settled.
  - b. The Procureurs have an obligation to challenge the Connétable when it is appropriate to do so, in the same way that a finance director might expect to challenge the managing director, or an audit committee of directors might expect to challenge the finance director.
  - c. In order to do their job of safeguarding Parish assets, the Procureurs are responsible for ensuring that proper accounting records are kept, including a record of the decision-making process for significant decisions and a record of transactions with related parties in order to manage conflicts of interest which may arise in the application of Parish funds. Each Parish will determine and adopt an appropriate process having regard to its requirements.
  - d. The Connétable is responsible for assessing the Parish’s ability to continue as a going concern. The auditors are entitled to have this established to their satisfaction before concluding their audit. That audit is important for ratepayers in the Parish, and they will look to the Procureurs du Bien Public to ensure that the Connétable’s judgment and assessment is scrutinised and challenged where necessary so that, if there is a problem, it can be brought to the attention of the Parish Assembly.
  - e. The Procureur has to answer questions from ratepayers when called upon to do so.
4. Carry out the lawful instructions/decisions of the Parish Assembly or officers in relation to the use and application of funds and resources, even if disagreeing with their wisdom<sup>iv</sup> and, having taken advice if necessary from the Parish’s own lawyers or, in appropriate cases from the Attorney General, seek the guidance of the Royal Court on the meaning or legality of any such instructions.

5. To attend:
  - a. The Visite Royale (held every 6 years) and
  - b. Rectorat meetings (the committee with a delegated responsibility consisting of the Rector and Churchwardens, the Connétable and Procureurs du Bien Public, chaired by the Rector)

And may, by invitation, attend the Visites du Branchage (held twice a year).
6. Discharge certain functions of the Connétable in accordance with the Connétables (Miscellaneous Provisions) (Jersey) Law 2012, while the Connétable is unable to do so or there is an absence or gap in office<sup>v</sup>. In addition to statutory duties such as Parish Assemblies and monthly Honorary Police meetings, this may include representing the Connétable at various civil and municipal occasions or presentations.
7. To be strictly impartial and objective and to avoid any conflict that might arise where parochial matters clash with personal, business or any other associated interests.
8. Have a knowledge and understanding of the Public Records (Jersey) Law 2002, the Freedom of Information (Jersey) Law 2011 and the Data Protection (Jersey) Law 2018 and how they apply to the information held by the Parish. Opportunities for refresher training in relation to these laws may be available upon enquiry.

**Skills and experience desired:**

Those elected as Procureurs du Bien Public, occupying as they do an important position of public trust, will need to demonstrate that they understand their duty to maintain, augment where appropriate, and properly manage public property. This includes:

- have a high level of integrity (candidates will be expected to consent to a criminal record check) and good standing in the Parish;
- have a good understanding of accounting and budgeting processes;
- have management and interpersonal skills;
- have the ability to use good judgment and reason; and
- enjoy the utmost confidence of the electors of the Parish.

**Election of Procureurs du Bien Public:**

1. The election is governed by the Elections (Jersey) Law 2002 and the Procureurs du Bien Public (Terms of Office) (Jersey) Law 2013;
  - a. candidates must be proposed and seconded by 10 electors;
  - b. if there are more candidates than vacancies a ballot is held on the date set by the Royal Court and polling stations are open from 8 a.m. to 8 p.m.;
  - c. all other arrangements relating to the election are covered by the section on the Elections (Jersey) Law 2002.
2. The Procureurs are elected for a period of three years<sup>vi</sup>. One Procureur is elected every 18 months (in March and September of the relevant years) thus ensuring a Parish should never be without a Procureur du Bien Public of some experience at any one time.

3. A person must be resident in the parish or, for St Helier, qualify in accordance with the Parish of St Helier (Qualifications for Office) (Jersey) Law 1976. See Procureur du Bien Public of St Peter [2008] JRC073<sup>vii</sup>.
4. The offices of Procureur du Bien Public and member of the Roads Committee are incompatible<sup>viii</sup>. The Procureur du Bien Public should be independent and therefore it would not be appropriate for him/her to serve on other bodies which receive funds from the Parish.

### **Standards in PARISH service:**

The Parish seeks to provide the highest standard of service to all its parishioners.

We ask all our elected officers to be guided by this Standards in PARISH Service as you undertake your duties.

**POLITE** – we will be polite and courteous to all.

**ACCOUNTABLE** – we will make choices and decisions on merit recognising that we are accountable to the parishioners/those who have elected us.

**RESPONSIBLE** – we will act responsibly and not behave in a way which is likely to bring discredit upon the Parish. We will treat information with respect as we are aware of the consequences of breaching confidentiality and we will take care of Parish property.

**IMPARTIAL** – we will be impartial in decision-making treating everyone fairly and with respect and avoiding all forms of unlawful discrimination.

**SERVE** – we will always serve in the public interest and declare any private interests relating to our public duties so we avoid potential conflicts.

**HONEST** – we will act with integrity and be open and honest in all our dealings.

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### **FOOTNOTES**

<sup>i</sup> In *Re Grouville (Procureur du Bien Public) (1970) JJ 1451*. The Royal Court said -

*“We conceive that the Procureur du Bien Public is not strictly a trustee, but is the procurator or proxy of the Parish, and that his principal duty is to represent the Parish in looking after the property of the Parish.*

*The Procureur has a duty to report to the Principals and Officers of the Parish any matter concerning the public property of the Parish, or the application of the income of the Parish, about which the principals and officers should be made aware.”*

<sup>ii</sup> Parish of St. Helier-v- Manning (1982) JJ 183

The legal status of a Parish. A Parish is to be treated as a corporation having legal entity with perpetual succession, separate from its Parishioners. The Parish owns all public by-roads within its boundaries. The bye-roads are administered by the Roads Committee as agent of the Parish. Individual electors of the Parish have no legal or equitable interest or possession.

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A Parish may show ownership of a road by possession quadragenaire if it has laid and maintained tar macadam and taken legal action against encroachment by others. Possession is not lost merely by giving permission for temporary parking of vehicles.

iii In re Don Benest (1989) JLR 330

*Gift of land by will to the Connétable and Procureurs du Bien Public "for and on behalf of the 'pauvres honteux'" of the Parish of St. Clement. A valid trust was created and, although the Connétable and Procureurs owed fiduciary duties to the Parish and the ratepayers and one of these duties was to provide for the relief of the poor, the testatrix was not thereby prevented from imposing upon the Connétable and the Procureurs a more specific duty towards the pauvres honteux.*

iv In re Grouville (Procureurs du Bien Public) (1970) JJ 1451

They have a duty to represent the Parish in the care of Parish property and must carry out duly considered instructions of the Parish Assembly or officers even if they disagree with their wisdom. They may seek guidance of the Royal Court on the meaning or legality of any such instructions.

v The senior Procureur du Bien Public deputises for the Connétable in accordance with Article 5 of the Connétables (Miscellaneous Provisions) (Jersey) Law 2012 and will therefore be expected to acquire the necessary knowledge and abilities to properly perform the duties required. This occurs in the event of the Connétable –

- (a) being unable to discharge the functions of office for any reason including illness or injury;
- (b) being absent from Jersey except where the absence is for 7 days or less and the Connétable informs either or both of the Procureurs du Bien Public of the parish that the Connétable will discharge the functions of office during that period of absence; or
- (c) no longer holding office for any reason pending that office being filled.

Note that there are certain limitations to this deputising set out in the 2012 law. The Procureur du Bien Public may not undertake the following "functions of the Connétable" or "function of office" -

- (a) attending the States Assembly as a member of the States of Jersey;
- (b) acting as a member of the Supervisory Committee within the meaning of the Rates (Jersey) Law 2005
- (c) acting as a member of the Comité des Connétables; and
- (d) anything incidental to any of the above functions.

And in relation to the Chef de Police of the Parish the Procureur du Bien Public –

- may only appoint a person to the office of Chef de Police after consultation with the Attorney General; and
- may only remove a person from the office of the Chef de Police with the consent of the Attorney General.

vi *Loi (1804) au sujet des Assemblées Paroissiales*: Article 6.

vii Procureur du Bien Public of St Peter [2008] JRC073

One of the Procureurs du Bien Public, with an outstanding record of honorary service to the parish of St Peter, had ceased to reside in St Peter, having moved to live in another parish some months ago. Nevertheless, his period of office as Procureur having just expired, he was re-elected unopposed to the office of Procureur at an Assembly of the electors of the parish. The Court ruled that "*the customary law of this island continues to require that, in order to be eligible for election to the office of Procureur in a parish, a person must be resident in that parish at the time of his or her election and swearing in.*"

viii Royal Court ruling (1970 in re: Baudains)