



# ACC

ANTI-CORRUPTION  
COMMISSION

## Annual Report

1 July 2016 – 30 June 2017

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## **Statement from the Chairman**

The revision of the Anti-Corruption law in 2016 brought with it significant changes to the composition and structure of the Anti-Corruption Commission. These revisions sought to strengthen the independence of the Commission and its ability to conduct investigations in accordance with its remit.

Whilst additional resources were provided to the Commission in 2016 by the Cayman Islands Government, the complaints and resulting investigations undertaken continue to increase in complexity, size and length. In addition, the formal separation of the Commission's investigators from that of the Royal Cayman Islands Police Service ("the RCIPS") has brought with it a requirement for the Commission to explore avenues of cooperation, securing of resources and assistance, and other investigatory and administrative tools.

The Commission would like to take this opportunity to thank former Minister Archer, the Office of the Attorney General, the Deputy Director of Public Prosecutions, the Commissioner of Police and members of the RCIPS, and the Financial Reporting Authority for all of their assistance over the past year. As the Commission continues to work towards its continuing goal of fighting corruption with just, fair and effective investigations, it hopes to strengthen these and other relations in the community.

I wish to thank my fellow Commissioners, the Commission's manager, Ms Deborah Bodden, its investigators and other staff of the Commission's Secretariat for their hard work during the past year. For 2017/18 I can only promise more of the same.

**Richard Coles**

**Chairman, Anti-Corruption Commission**

## **Section One – The Anti-Corruption Commission (the “Commission”)**

### **1.1 Role**

The Commission was created under the Anti-Corruption Law, 2008 which came into effect on 1 January 2010. The Commission is responsible for the administration of the law, now the Anti-Corruption Law (2016 Revision).

### **1.2 The Anti-Corruption Law (2016 Revision) (the “Law”)**

The Law gives effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and to the United Nations Convention Against Corruption. The Law covers a broad range of local corruption offences by public officials, private individuals and entities. It extends to bribery of foreign public officials outside the Cayman Islands. Offences under the Law are extraditable.

### **1.3 Mission Statement**

The mission of the Commission is "To enhance the stability, prosperity and reputation of the Cayman Islands by sustaining the confidence and trust of the community in the integrity and good governance of its government and public institutions through fighting corruption with just, fair and effective investigations."

### **1.4 Commission Members**

The Commission consists of five persons who, in the opinion of the Governor, are of high integrity and are able to exercise competence, diligence and sound judgement in fulfilling their responsibilities under the Law. Members must be residents of the Islands and may include:

- (i) retired judges of the Grand Court or the Court of Appeal;
- (ii) retired police officers;
- (iii) retired justices of the peace or magistrates;
- (iv) chartered or certified accountants;
- (v) attorneys-at-law of ten or more years call or retired attorneys-at-law; and
- (vi) such other persons as the Governor considers qualified to be appointed.

No persons may be appointed to hold office as a member of the Commission if he is a public officer or such other category of person as may be prescribed by Order of the Governor. The names of all members of the Commission are gazetted at the time of appointment and the Governor after consultation with the Attorney General may at any time revoke the membership of a member.

The following persons were appointed to the Commission on 15 August 2016:-

- Richard Coles (Chairman) - two year term
- W. Norman Bodden, OBE - two year term
- Sophia-Ann Harris (née Solomon) - three year term
- Kadi Pentney (née Merren) - three year term

- Timothy Ridley, OBE - two year term

Member's biographies are set out in Appendix I.

### **1.5 Principal powers, duties and functions**

The Commission is responsible for the administration of the Law and shall:

- receive, consider and investigate reports to the Commission of corruption offences as set out in the Law;
- receive and (including from overseas anti-corruption agencies) request, analyse and disseminate disclosures of information concerning corruption offences, or suspected offences; or required by any law in order to counter corruption; and
- detect and investigate suspected corruption offences, attempts to commit an offence, or conspiracies to commit an offence.

### **1.6 Additional powers, duties and functions**

- Arrest any person who has committed or is suspected of having committed a corruption offence;
- Obtain evidence by search warrants with court approval;
- Freeze assets and confiscate proceeds of corruption offences with court approval;
- Refer the results of its investigations to the Director of Public Prosecutions for disposition where it appears an offence has been committed;
- Assist with overseas investigations;
- Enter into assistance arrangements with overseas anti-corruption agencies with the consent of the Attorney General;
- Enter into assistance arrangements with any local law enforcement authority, for the discharge of performance of its powers, duties and functions;
- Advise the Governor on the Commission's work; and
- Submit an annual report to the Governor.

### **1.7 Control, Oversight, and Policy Directions**

The Governor has broad powers of oversight over the work of the Commission and may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions. To date, the Governor has not issued any such directions. The Commission may, after consultation with the Director of Public Prosecutions, issue guidelines setting out:

- the forms and procedures for making a report of a corruption offence; and
- the operational procedures in connection with disclosures made to the Commission.

To date, the Commission has issued the form for making a report and is preparing a detailed policy and procedures manual.

## **Section Two – Breaches of the Law**

### **2.1 General Overview**

The Commission receives reports of alleged breaches under the Law through direct communication to the Commission; requests for mutual assistance from overseas; and those reported to other law enforcement agencies. In each case, the allegation is fully recorded and a decision taken as to what, if any, further investigation or action is appropriate. Each allegation is assessed on its own merits. No prosecution is undertaken without the express authority of the Director of Public Prosecutions in accordance with the Law.

### **2.2 Corruption Offences in the Cayman Islands**

Corruption can be described as abusing a position of trust to gain an undue advantage, e.g. where decisions are not taken for public benefit, but rather to serve private interests.

Examples of corrupt behaviour are:

- A Public Officer (PO) or Member of the Legislative Assembly (MLA) uses, or tries to use, knowledge, power or resources which they have gained as a result of their position for personal gain or for the advantage of others ;
- A PO or MLA uses, or attempts to use, their position to interfere with justice, to commit an offence or to prevent an offence being detected or punished;
- A PO or MLA acts dishonestly or unfairly, or breaches the trust of the public or abuses their office;
- A member of the public influences, or tries to influence, a PO, MLA or foreign PO or foreign equivalent of an MLA to use his or her position in a way that is dishonest, unfair or breaches public trust.

### **2.3 Offences under the Law**

The principal offences are set out in Appendix II.

## Section Three – Reporting Corruption

### 3.1 Making a Report

Anyone who reasonably believes or suspects that there has been an act of corruption in breach of the Law should complete and submit a report in the Reporting Form to the Commission. Reports should be made as soon as reasonably practicable after becoming aware of the conduct in question.

### 3.2 Duty to Report

Individuals should be aware of the principles that guide the performance of public officers in the conduct of their duties. Public officers may incur criminal liability for corruption as follows:

- **Those directly involved:** An individual who is directly involved in committing a corruption offence in accordance with the Law may be liable for the offence.
- **Those indirectly involved:** An individual may be liable for a corruption offence where he/she is indirectly involved in committing the offence.
- **Failure to act:** An individual may be liable for a corruption offence even where he/she was not directly involved in committing the offence, but was wilfully blind to it.
- **Aiding and abetting:** An individual may also be liable for aiding and abetting where he has aided or assisted in the committing of the offence.

### 3.3 Submission of Reports

Reports should be submitted to the Commission via the Commission's manager (the 'Manager'):-

Phone: 1-345-244-3685

Fax: 1-345-945-8649

Website: [www.anticorruptioncommission.ky](http://www.anticorruptioncommission.ky)

E-mail: [info@anticorruptioncommission.ky](mailto:info@anticorruptioncommission.ky); [deborah.bodden@gov.ky](mailto:deborah.bodden@gov.ky);

Mailing Address: P.O. Box 391 KY1-1106

Physical Address: 2<sup>nd</sup> Floor Artemis House, #67 Fort Street

Should any member of the Commission receive a report it will be forwarded forthwith to the Manager.

Members of the public making reports are encouraged to use the Reporting Form whenever possible. The Manager or any member of the Commission, receiving a verbal report by telephone call or otherwise should also complete the Reporting Form for submission to the Commission.

### 3.4 Confidentiality

The Commission will keep confidential any information that it receives or acquires during the course of its work or duties except in the exercise of the Commission's functions. It will ensure that it deals with information appropriately and uses it only for the proper purposes of the Commission.

### **3.5 Conflicts of Interest**

The work of the Commission will not be compromised or affected by any personal interest of Members or staff. The public interest comes first on all such occasions. Conflicts of interest, or the perception that they have arisen or may arise, can do great damage to the reputation of the Commission and its staff. Members and staff will declare to the Commission any conflicts or potential conflicts of interest immediately. The Commission has appropriate procedures for dealing with any such conflicts.

In the event of any conflict of interest or perceived conflict of interest, the relevant Member or staff will recuse himself from all consideration of the matter in question and shall not be entitled to any information regarding the disposition of the matter by the Commission.

### **3.6 Protection of Witnesses**

The Commission will make every effort to protect the identity of those providing that information. The Commission will encourage a caller, if the information is to be taken in a live situation, to identify his or her self as it may be necessary in the future to seek additional information or clarification of information received. This information also allows the Commission to be able to provide the person with updates on the investigation, if appropriate. The information reported in a live situation will also be submitted to the Commission in the Reporting Form.

### **3.7 Records**

The Commission will keep records of all aspects of the investigation. These records will be kept confidential, except when otherwise required by law.

### **3.8 Referral to the Director of Public Prosecutions**

The Commission will refer the results of its investigations to the Director of Public Prosecutions for disposition (such as prosecution) where it appears an offence under the Law has been committed.

**★ Confidential Reporting Line ★**

**+1 (345) 328-4388**



## Section Four – 2016-2017 Corruption Statistics

The Commission has a duty to safeguard the confidentiality and integrity of information, to respect the rights of individuals and not to prejudice investigations/proceedings. These must be balanced against the duty to be open and transparent wherever reasonably possible.

The policy of the Commission is compliant with the recommendations of the Leveson Inquiry.

It is the policy of the Commission not to release the names of persons who are arrested, unless there are exceptional circumstances, e.g.:-

- threat to life;
- prevention or detection of crime; or
- a matter of significant public interest.

At the time of arrest, the Commission will normally provide the following non-identifiable information about persons arrested:-

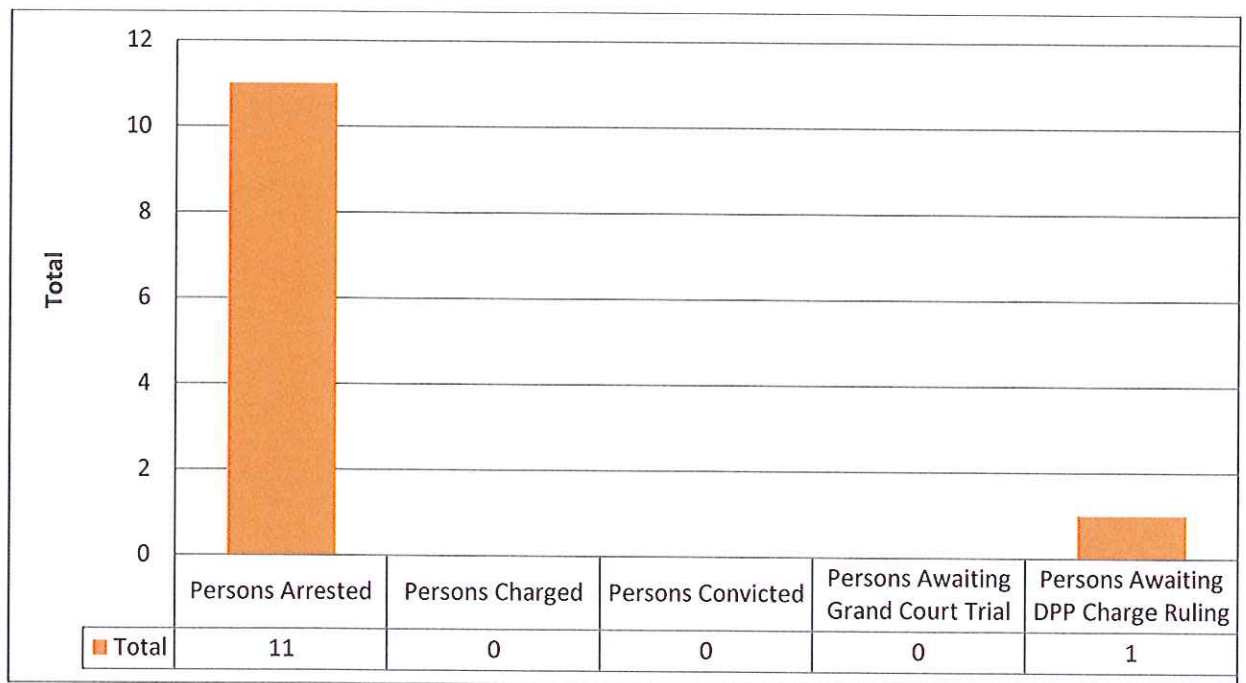
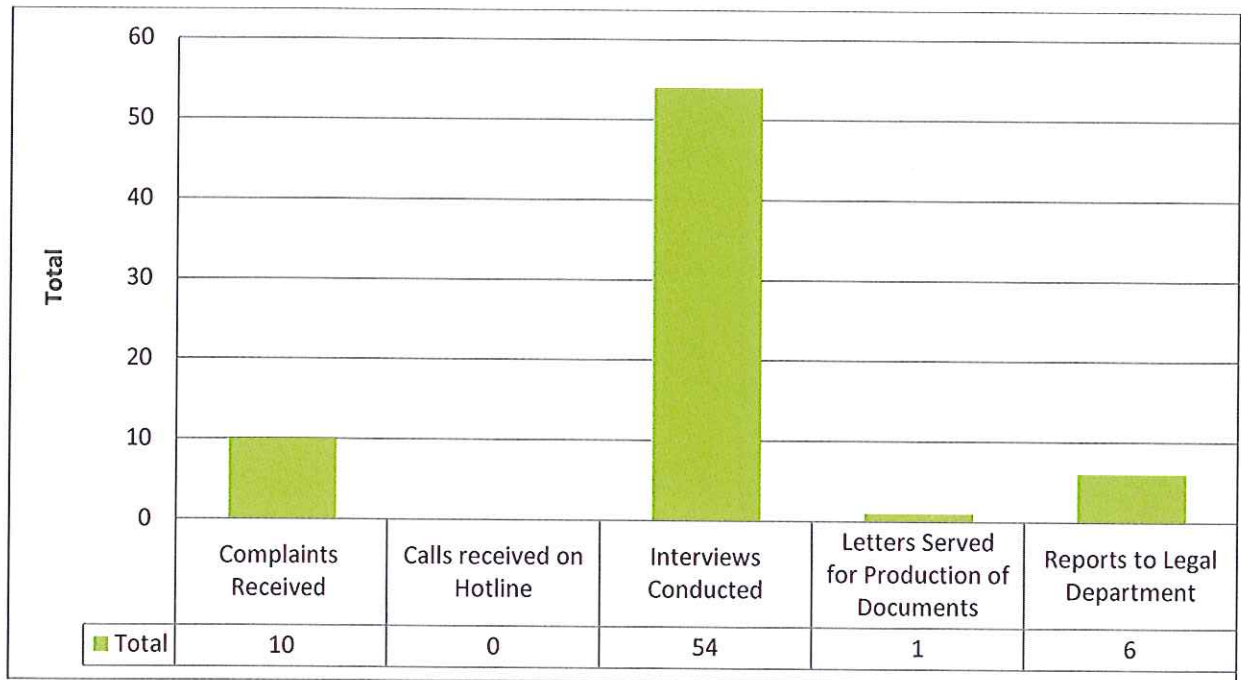
- age;
- gender;
- resident district; and
- offence(s).

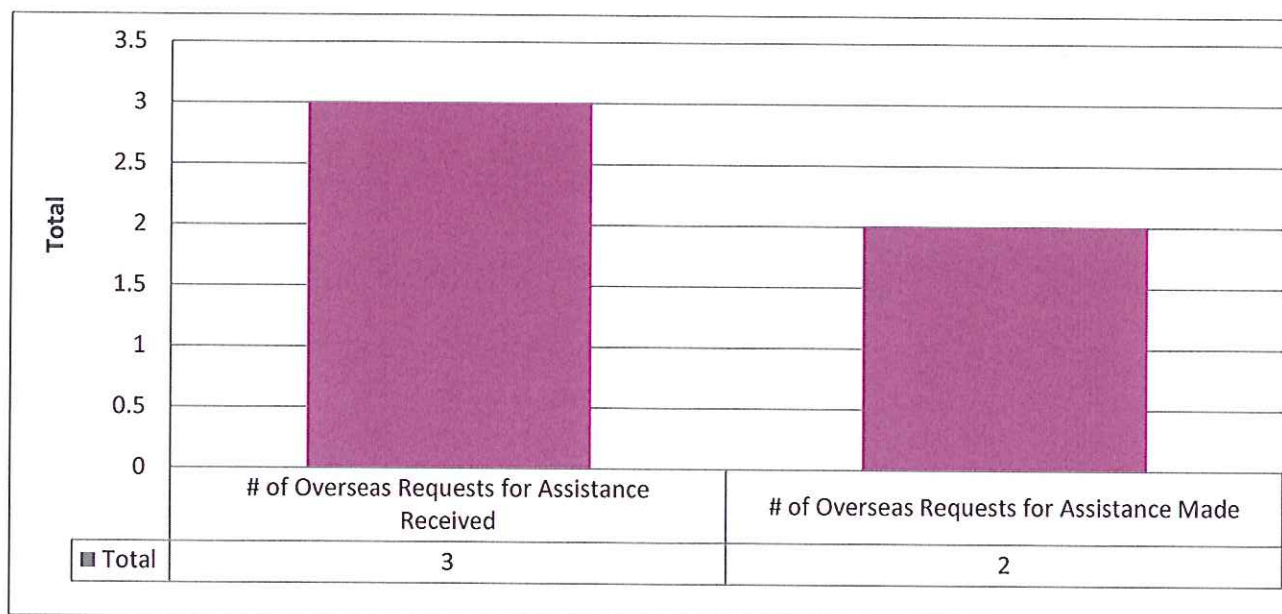
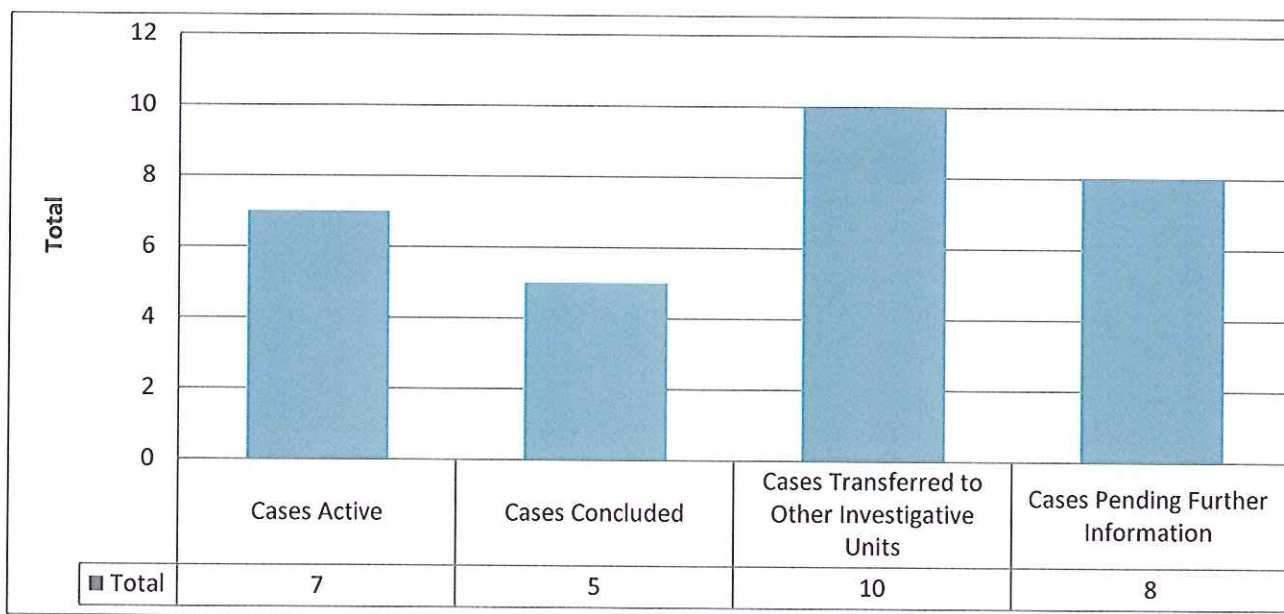
For example, “a 48 year old male from the district of George Town has been arrested on suspicion of bribery, fraud and money laundering”.

It is the policy of the Commission to name persons once charged. The following information will be released about an adult, providing there are no applicable legal restrictions:-

- name;
- occupation;
- resident district; and
- charge details.

For example, “Ms. XYZ, Consultant, from the district of Bodden Town has been charged with bribery, fraud and money laundering”.





## **Section Five – Topical Issues**

### **5.1 Anti-Corruption Law (2016 Revision)**

The Anti-Corruption Law was amended in 2016 to give greater independence to the Commission and enhance its investigations. The 2016 Revision came into effect on 1 July 2016.

### **5.2 Budget, Staffing and Resources**

#### **5.2.1 Supplementary Budget**

At the end of 2016 the Chairman, together with another member, met with the Minister of Finance in order to discuss necessary resources for the Commission given the changes to the legislation. The requested finances were approved by the Cabinet in February 2017 and final approval for the supplementary budget was confirmed at the next sitting of the Legislative Assembly.

#### **5.2.2 Staffing**

Subsequent to the approval of the supplementary budget a recruitment exercise to fill 3 new Investigator posts was successfully carried out in March 2017.

#### **5.2.3 Resources**

The Commission is currently in the process of securing necessary resources for the use by investigators during the course of their work. Such resources include additional technology etc.

### **5.3 Memoranda's of Understanding**

#### **5.3.1 Multilateral Memorandum of Understanding ("MMOU")**

The Commission entered into a MMOU with the Cayman Islands Monetary Authority ("CIMA") and other Cayman Government agencies. This MMOU is part of the compliance with the Financial Action Task Force assessment which will take place in Cayman in December 2017. Each request for information under the MMOU will need to be considered to ensure compliance with the Law.

#### **5.3.2 Memorandum of Understanding ("MOU") with RCIPS**

The Commission entered into a MOU with RCIPS. The MOU governs co-operation and assistance between the entities. In addition, a template for the delegation of powers from the Commission to the Commissioner of Police was agreed in accordance with the Law.

#### **5.3.3 MOU with the Financial Reporting Authority (the "FRA") of the Cayman Islands**

The Commission entered into a MOU with the FRA. The MOU governs co-operation and assistance between the entities.

#### **5.4 Public Relations and Education**

The website was redeveloped and now offers the public easier access to relevant information about the Commission, the Law, and corruption in general.

#### **5.5 Anti-Corruption Unit Training/Liaison Opportunities**

##### **5.5.1 Introductory Meeting with the Commissioner or Police**

On 7 December 2016 the newly appointed Commissioner of Police attended part of the Commission's meeting pursuant to an invitation from the Commission in order to facilitate formal introductions, a discussion of the remits, and preliminary agreement on an MOU for the parties to collaborate when needed.

##### **5.5.2 Introductory Meeting with the Auditor General**

The Auditor General attended part of the Commission's meeting on 8 February 2017 pursuant to an invitation from the Commission in order to facilitate formal introductions, a discussion of the remits, and preliminary agreements for the parties to collaborate when needed. In addition, the Commission agreed to consider the appropriateness and ability for the parties to enter into an MOU.

##### **5.5.3 Meeting with the Security Specialists**

The Chairman met with security specialists visiting from London who are conducting a Security Needs Assessment under the Conflict, Stability and Security Fund. The meeting was arranged at the request of the Office of the Governor.

##### **5.5.4 Meeting with CPA BIMR Election Observation Mission to Cayman Islands**

Following discussions with the Deputy Head of International Outreach with the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) branch of the Elections Observation Mission, the Manager arranged a meeting between the Mission and the Chairman of both this Commission as well as the Commission for Standards in Public Life in May 2017. The CPA BIMR sought to gain an understanding of any corruption related concerns as they relate to general elections held in the Cayman Islands.

##### **5.5.5 Cayman Islands Mutual Evaluation Pre-Assessment Training**

The Commission was invited to attend this training which placed emphasis on money laundering including the tracing and restraint of proceeds of crime.

##### **5.5.6 Meeting with The Independent Commission against Corruption, Hong Kong ("ICAC")**

The Chairman, whilst in Hong Kong, met with representatives of the ICAC for an introductory meeting. The representatives compared resources and responses locally as

well as an overview of the role of the Commissions including independence and oversight.

#### **5.5.7 Meetings with Her Excellency the Governor**

The Chairman, and various members of the Commission, met with Her Excellency on several occasions during the reporting period to discuss matters related to the work of the Commission.

#### **5.5.8 Government's Anti-Fraud Policy**


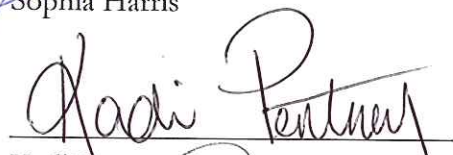
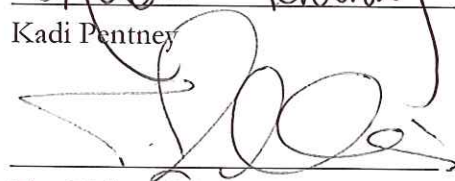
Following the publication of the Government's Anti-Fraud Policy, the Commission wrote to the Deputy Governor to reiterate the Commission's mandate and that any corruption related matters should be referred to the Commission. The Deputy Governor responded to the correspondence acknowledging the Commission's remit.

## Section Six – Moving Forward

The approval of additional resources and staffing to the Commission in late 2016 was gratefully received. The additional funding for the three investigators post has assisted the Commission in its on-going current investigatory workload.

The Commission will seek to fill the post of the Trainee Investigator during the 2017/2018 reporting period.

Dated this 7<sup>th</sup> day of September 2017.

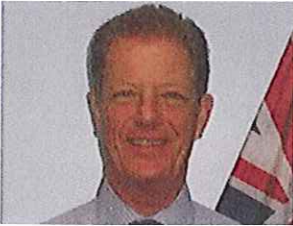
  
Richard Coles (Chairman)  
W. Norman Bodden, OBE  
Sophia Harris  
Kadi Pentney  
Tim Ridley, OBE



## Appendix 1 – Members’ Biographies

### Mr. Richard Coles (Chairman)

Richard Coles is an experienced lawyer both in England and in the Cayman Islands, being a Solicitor admitted in England and Wales, a Cayman Islands Attorney-at-law and former Attorney General for the Cayman Islands. He is a member of the Law Society of England, the Caymanian Bar Association, the Commonwealth Lawyers Association, the Commonwealth Parliamentary Association, a Fellow of the Caribbean Law Institute and the Institute of Advanced Legal Studies in London. Mr. Coles also has the distinction of being a Freeman of the City of London. He has previously served as Chairman of the Human Rights Commission, Deputy Chairman of the Civil Service Appeals Commission, member of the Judicial and Legal Services Commission, and Chairman of Cayman Finance. Mr. Coles was appointed as Chairman on 15 August 2016 for a two year term.



### Mr. W. Norman Bodden, OBE

Mr. Bodden is the current Managing Director of Bodden Corporate Services and a Director of Bodden & Bodden, Attorneys at Law. A successful Caymanian businessman and politician during his twelve year tenure as a Member of the Legislative Assembly, W Norman Bodden was responsible for amongst other statutes, introducing and guiding the Labour Law 1987 through the Legislative Assembly. He was also a member of the Cayman Islands Government during the 1984 to 1992 period that witnessed many useful and successful amendments to the Companies Law of the Cayman Islands for the international business community. Among his many professional achievements Mr Bodden was Managing Director of Cayman Airways from 1968 to 1980, a Member of the Immigration Board 1972 to 1978, Chairman of the Immigration Board 1978 to 1979, an Elected Member of the Legislative Assembly 1980 to 1992, Managing Director of Cayman Travel Services 1980 to 1998, a Member of the Cayman Islands Executive Council responsible for Tourism, Aviation & Trade 1984 to 1992. Mr. Bodden was appointed as Deputy Chairman to the Cayman Airways Board of Directors in 2013. He was awarded the Order of the British Empire (OBE) medal and is an appointed Notary Public and Justice of the Peace since 1989. Mr. Bodden was appointed as a Member on 15 August 2016 for a two year term.





**Mrs. Sophia-Ann Harris (née Solomon)**



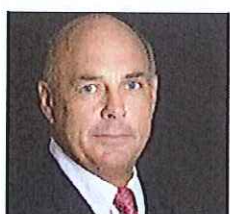
Mrs. Harris is the founder of the law firm Solomon Harris and the Firm's managing partner. She is a council member of the Cayman Islands Law Society and a past member of the Caymanian Bar Association. Mrs. Harris' specialties include banking, investment funds, corporate and commercial law, trusts, immigration and all aspects of local licensing law. She is a past Chairman of the, Government's Business Staffing Plan Board and the Immigration Appeals Tribunal and past Chairwoman of the Board of Directors of Butterfield Bank (Cayman) Ltd. Mrs. Harris is a Past President of the Chamber of Commerce and during her term with the Chamber she has addressed the United Nations on a number of occasions including the United Nations General Assembly on constitutional matters for the Cayman Islands. Mrs. Harris was appointed as a Member on 15 August 2016 for a three year term.

**Mrs. Kadi Pentney (née Merren)**



Mrs. Pentney graduated from Triple C High School in 2004 and went on to earn a Master's degree in Accounting and Taxation from Florida Gulf Coast University in 2008. Mrs. Pentney is a Certified Public Accountant and was a manager at PwC, with financial services experience in Hedge Funds, banking and both court appointed and voluntary liquidations, until April 2015 when she left to become a full-time mother and to focus on growing her family's businesses. From 2008-2015, Mrs. Pentney was an Advisor for PwC's Junior Achievement, and joined the Board in 2015. Mrs. Pentney is a Past President of the Kiwanis Club of Grand Cayman and is also a co-owner of Tea Time in Cayman. In 2014, Mrs. Pentney was awarded the Young Caymanian Leadership Award and in 2015, joined the YCLA Board. She has been a Notary Public since 2014. Mrs. Pentney was appointed as a Member on 15 August 2016 for a three year term.

**Mr. Tim Ridley, OBE**



Mr. Ridley is a graduate of Cambridge University (BA) and Harvard Law School (LLM), qualified as a solicitor in England and is an attorney-at-law in the Cayman Islands. For many years, he was a senior partner of the leading Cayman Islands law firm Maples and Calder and from 1995 until 2000 headed the firm's Asia practice in Hong Kong. Mr. Ridley has wide regulatory and governance experience, having served on the Boards of the Cayman Islands Health Services Commission (2002-2005) and the Cayman Islands Monetary Authority (2002-2008, Chairman 2004-2008). He has also served on various consultative committees that advise the Cayman Islands Government on matters relating to the financial services and local industries. He writes and speaks widely on Cayman Islands legal, financial and regulatory issues, is a member of numerous international professional associations and has served on the editorial boards of leading publications, including the Harvard International Law Journal. He was made an Officer of the British Empire (OBE) in 1996 in recognition for his services to the financial services industry and the local community. Mr. Ridley was appointed as a Member on 15 August 2016 for a two year term.

## Appendix 2 – Offences under the Law

### Bribery of public officers and members of the Legislative Assembly

10. (1) A public officer or a member of the Legislative Assembly who directly or indirectly-

- (a) solicits;
- (b) accepts or obtains; or
- (c) agrees to accept or obtain,

for himself or any other person, any loan, reward, advantage or other benefit with intent-

- (d) to interfere with the administration of justice;
- (e) to procure or facilitate the commission of an offence; or
- (f) to protect from detection or punishment a person who has committed or who intends to commit an offence,

commits an offence.

(2) Any person who gives or offers to a public officer or to a member of the Legislative Assembly any loan, reward, advantage or other benefit, with intent that the public officer should do anything mentioned in subsection (1)(d),(e), or (f) commits an offence.

(3) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of fourteen years.

### Frauds on the Government

11. (1) A person commits an offence where-

(a) directly or indirectly-

(i) he gives, offers or agrees to give or offer to-

- (A) a public officer;
- (B) a member of the Legislative Assembly;
- (C) a member of the family of a public officer;
- (D) a member of the family of a member of the Legislative Assembly; or
- (E) any person for the benefit of a public officer, a member of the Legislative Assembly or another person; or

(ii) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from any other person for himself or another person, a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-

- (A) the transaction of business with or any matter or business relating to the Government; or
- (B) a claim against the Government or any benefit that the Government is authorised or is entitled to bestow,

whether or not, in fact, the public officer or member of the Legislative Assembly is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the Government, he pays a commission or reward to or confers an advantage or benefit of any kind on a member of the Legislative Assembly or a public officer of a government entity with which he deals, or to any member of the family of a member of the Legislative Assembly or a public officer, or to any one for the benefit of the member of the Legislative Assembly or the public officer, with respect to those dealings, unless he has the consent in writing of the chief officer of the government entity with which he deals, the proof of which lies on him;

(c) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from a person who has dealings with the Government a loan, reward, advantage or other benefit directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the chief officer of the government entity that employs him or of which he is an official, the proof of which lies on him;

(d) having or pretending to have influence with the Government, with a member of the Legislative Assembly or a public officer, he demands, accepts or offers or agrees to accept for himself or another person a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-

(i) anything mentioned in paragraph (a)(iii) or (iv); or

(ii) the appointment of any person, including himself, to an office;

(e) he gives, offers or agrees to give or offer to a member of the Legislative Assembly or a public officer a loan, reward, advantage or other benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-

(i) anything mentioned in paragraph (a)(iii) or (iv); or

(ii) the appointment of any person, including himself, to an office; or

(f) having made a tender to obtain a contract with the Government-

(i) he gives, offers or agrees to give or offer to another person who has made a tender or to a member of that person's family, or to another person for the benefit of that person, a reward, advantage or other benefit as consideration for the withdrawal of the tender of that person; or

(ii) he demands, accepts or offers or agrees to accept from another person who has made a tender a loan, reward, advantage or other benefit as consideration for the withdrawal of his tender.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of ten years.

### **Contractor subscribing to election fund**

12. (1) A person who, in order to obtain or retain a contract with the Government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes or gives, or agrees to subscribe or give, to any person any loan, reward, advantage or other benefit-

(a) for the purpose of promoting the election of a candidate or a class or party of candidates

to the Legislative Assembly; or  
(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Legislative Assembly,  
commits an offence.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of ten years.

#### **Breach of trust by public officer or by a member of the Legislative Assembly**

13. A public officer or a member of the Legislative Assembly who, in connection with the duties of his office, commits fraud or a breach of trust is liable on conviction on indictment to imprisonment for a term of five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

#### **Selling or purchasing office**

14. A person who-

- (a) purports to sell or agrees to sell an appointment to or a resignation from a public office, or a consent to any such appointment or resignation, or receives or agrees to receive a reward or profit from the purported sale thereof; or
- (b) purports to purchase or gives a loan, reward, advantage or other benefit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so,

commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

#### **Influencing or negotiating appointments or dealing in offices**

15. A person who-

- (a) receives, agrees to receive, gives or procures to be given, directly or indirectly, a loan, reward, advantage or other benefit as consideration for cooperation, assistance or exercise of influence to secure the appointment of any other person to a public office;
- (b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from a public office, in expectation of a direct or indirect loan, reward, advantage or other benefit; or
- (c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to-
  - (i) the filling of vacancies in public offices;
  - (ii) the sale or purchase of public offices; or
  - (iii) appointments to or resignations from public offices,

commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

### **False claims by public officers**

16. A public officer who-

- (a) is employed in such a capacity as to require him or enable him to furnish returns or statements relating to any sum payable or claimed to be payable to himself or to any other person, or relating to any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person; and
- (b) makes a return or statement relating to any such matter which is, to his knowledge, false in any material particular, commits an offence.

### **Abuse of office**

17. (1) A public officer or a member of the Legislative Assembly who does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another commits an offence and is liable on summary conviction to imprisonment for a term of two years.

(2) If the act under subsection (1) is done or directed to be done for purposes of a loan, reward, advantage or other benefit such person commits an offence and is liable on summary conviction to imprisonment for a term of three years.

### **False certificates by public officers or by members of the Legislative Assembly**

18. A public officer or a member of the Legislative Assembly who is authorised or required by law to give any certificate relating to any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, commits an offence.

### **Conflicts of interests**

19. (1) Where a government entity proposes to deal with a company, partnership or other undertaking in which -

- (a) a public officer of the entity;
- (b) a member of the Legislative Assembly; or
- (c) a member of the family, or an associate, of any person specified in paragraphs (a) or (b),

has a direct, indirect or beneficial interest in such company, partnership or undertaking; or

- (d) any person specified in paragraphs (a), (b) or (c) holds more than ten per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

the public officer or the member of the Legislative Assembly shall forthwith disclose, in writing, to that government entity, the nature of such interest.

(2) Where in relation to a government entity -

- (a) a public officer of the entity;
- (b) a member of the Legislative Assembly; or
- (c) a member of the family, or an associate, of either the public officer or the member of the Legislative Assembly,

has a personal interest in a decision which the government entity is to take, that public officer or member of the Legislative Assembly shall forthwith disclose, in writing, to the government entity, the nature of that personal interest.

(3) A public officer or member of the Legislative Assembly who fails to disclose an interest in accordance with subsection (1) or (2) and who votes or otherwise takes part in proceedings or decisions of the government entity relating to such interest commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

**Duty of a public officer and member of the Legislative Assembly to whom a bribe is offered etc.**

20. (1) A public officer or a member of the Legislative Assembly to whom any loan, reward, advantage or other benefit is given, promised, or offered, in contravention of any provision of this Law shall report to the Commission such loan, reward, advantage or other benefit together with the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to him.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both.

(3) A person from whom any loan, reward, advantage or other benefit has been solicited or obtained, or an attempt has been made to obtain such loan, reward, advantage or other benefit, in contravention of any provision of this Law shall, at the earliest opportunity thereafter, report such soliciting or obtaining of, or attempt to obtain, the loan, reward, advantage or other benefit together with the full and true description and, if known, the name of the person who solicited, or obtained, or attempted to obtain, the loan, reward, advantage or other benefit from him to the Commission.

(4) A person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(5) A public officer or a member of the Legislative Assembly who has reasonable cause to believe that another public officer or a member of the Legislative Assembly has-

- (a) solicited;
- (b) accepted or obtained; or
- (c) agreed to accept or obtain;

any loan, reward, advantage or other benefit in contravention of any provision of this Law, shall report such belief to the Commission and shall provide the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to the public officer or the member of the Legislative Assembly.

(6) A person who fails, without reasonable excuse, to comply with subsection (5) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(7) A person who commits an act of victimisation against a person who has made a disclosure

under subsection (1), (3) or (5) commits an offence and is liable on summary conviction to imprisonment for a term of two years.

(8) In this section, “victimisation” means an act-

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or
- (d) amounting to threats of reprisals.

### **Secret commissions**

21. (1) A person commits an offence who-

- (a) gives, offers or agrees to give or offer to an agent any loan, reward, advantage or other benefit as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal; or
- (b) being an agent, demands, accepts or offers or agrees to accept from any person any loan, reward, advantage or other benefit as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal; or
- (c) with intent to deceive a principal, gives to an agent of that principal, or, being an agent, uses with intent to deceive his principal, a receipt, an account or other writing-
  - (i) in which the principal has an interest;
  - (ii) that contains any statement that is false or erroneous or defective in any material particular; and
  - (iii) that is intended to mislead the principal.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of five years.

### **Bribing a foreign public officer**

22. (1) Subject to sections 23 and 24, a person who, in order to obtain or retain an advantage in the course of business, directly or indirectly promises, gives, offers or agrees to give or offer a loan, reward, advantage, or benefit of any kind to a foreign public officer for his benefit or for the benefit of another person or to any person for the benefit of a foreign public officer-

- (a) as consideration for an act or omission by the foreign public officer in connection with the performance of the officer’s duties or functions; or
- (b) to induce the foreign public officer to use his position to influence any acts or decisions of the foreign country or public international organisation for which the officer performs duties or functions,

commits an offence.



(2) A person who contravenes subsection (1) is liable on conviction on indictment to imprisonment for a term of fourteen years.

(3) Where it appears to the Director of Public Prosecutions that any person to which this section applies, or an officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice which contravenes subsection (1), the Director of Public Prosecutions may, in his discretion, apply to the Grand Court for an order to enjoin such act or practice, and the court may, if it is satisfied upon the evidence, that such person is so engaged or is about to be so engaged as alleged, order a permanent injunction or a temporary restraining order without requiring a bond.

(4) Not later than six months after the date of the commencement of this Law, the Commission, after consultation with the Attorney General and the Cayman Islands Monetary Authority, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of this section and may, based on such determination and to the extent necessary and appropriate, issue-

(a) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Government's enforcement policy, the Commission determines would be in conformance with the provisions of this section; and

(b) general precautionary procedures which persons may use on a voluntary basis to conform their conduct to the Government's enforcement policy regarding the provisions this section.

#### **Savings provision relating to section 22**

23. A person has not committed an offence under section 22 if the loan, reward, advantage or other benefit-

(a) is permitted or required under the laws of the foreign country or public international organisation for which the foreign public officer performs duties or functions; or

(b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public officer that are directly related to-

(i) the promotion, demonstration or explanation of the person's products and services; or

(ii) the execution or performance of a contract between the person and the foreign country for which the officer performs duties or functions.

#### **Facilitation payments**

24. (1) For the purpose of section 22, a payment is not a loan, reward, advantage or other benefit to obtain or retain an advantage in the course of business, if -

(a) the value of the payment is small;

(b) it is made to expedite or secure the performance by a foreign public officer of any act of a routine nature that is part of the foreign public officer's duties or functions, including-



- (i) the issuance of a permit, licence or other document to qualify a person to do business;
  - (ii) the processing of official documents, such as visas and work permits;
  - (iii) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and
  - (iv) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods; and
- (c) as soon as practicable after the payment and the act of a routine nature performed by the foreign public officer occurred, the person made a record of the payment and the act and either the following applies-
- (i) the person has retained that record at all relevant times; or
  - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction.

(2) For the purposes of this Law, an “act of a routine nature” does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of that business, or encouraging another person to make any such decision.

(3) A report under this section shall set out-

- (a) the value of the payment concerned;
- (b) particulars of the act of a routine nature that was sought to be expedited or secured by the payment;
- (c) the date or dates on which the payment was made and on which the act of a routine nature occurred;
- (d) the identity of the relevant foreign public official; and
- (e) the signature of the person who has made the report or some other means of verifying the person's identity.

### **False statements to the Commission**

25. (1) Where a person makes or causes any other person to make to the Commission or to an investigating officer, in the course of the Commission or such investigating officer exercising any power conferred by this Law, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

- (a) is false or intended to mislead; or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement regardless whether or not the person making the statement is under any legal or other obligation to tell the truth, he commits an offence and is liable on

summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years or to both.

(2) Where a person, who has made a statement to the Commission or to an investigating officer, in the course of the Commission or such investigating officer exercising any power conferred by this Law, subsequently thereto makes any other statement to any person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement, regardless of whether or not the person making the statement is under a legal or other obligation to tell the truth that person, if such other statement-

(a) is inconsistent with any statement previously made to the Commission or to an investigating; and

(b) is made wilfully, he commits an offence and is liable on conviction to a fine of one thousand dollars or to imprisonment for a term of three months or to both.

(3) For the avoidance of doubt, it is declared that for the purposes of subsection (1)(b) and subsection (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under law to receive the statement so made.

*It is noted that some of these offences can only be committed by a public officer or a member of the Legislative Assembly while others can be committed by any member of the public.*