



Committee on Standards

Oral evidence: Code of Conduct consultation, [HC 954](#)

Tuesday 26 April 2022

Ordered by the House of Commons to be published on 26 April 2022.

[Watch the meeting](#)

Members present: Chris Bryant (Chair); Mrs Tammy Banks (Lay Member); Andy Carter; Alberto Costa; Mrs Rita Dexter (Lay Member); Yvonne Fovargue; Sir Bernard Jenkin; Dr Arun Midha (Lay Member); Mehmuda Mian (Lay Member); Mr Paul Thorogood (Lay Member); Dr Michael Maguire (Lay Member).

Questions 405-522

Witnesses

I: Rt Hon Mark Spencer MP, Lord President and Leader of the House of Commons, and Rt Hon Michael Ellis MP, Paymaster General and Minister for the Cabinet Office.

Examination of witnesses

Witnesses: Rt Hon Mark Spencer MP and Rt Hon Michael Ellis MP.

Chair: Welcome to this Standards Committee hearing. We are, as you know, investigating appropriate changes to the code of conduct. We have produced an interim report, and we are delighted to have the Leader of the House and Mr Michael Ellis before us. Mr Ellis, you said to me last night that you hoped we would not go on beyond an hour, but since you are eight minutes late, I think we might take as much time as we need.

Michael Ellis: I apologise for being a little late.

Chair: We will start with Sir Bernard Jenkin.

Q405 **Sir Bernard Jenkin:** I thought the Government had accepted the idea that there should be bespoke descriptors of the seven principles of public life, addressed to Members of Parliament. That does not preclude the CSPL descriptors. But in discussing the whole structure of the code, which is a set of principles we expect Members to aspire to follow and a set of rules that are adjudicated and enforced, the principles, in our view, lack relevance because they are addressed to everybody in public life, rather than specifically to the very peculiar circumstances of Members. Members have particular challenges managing conflicts of interest. Therefore, we think that our descriptors—we have considered them very carefully—are much more accessible to Members. They don't require interpretation because we have done that work for them. That is why we want to put them in the code. Why are you possibly still objecting to that?

Mark Spencer: I quite like the fact that those seven principles go right across the public sector. That makes us feel that we are part of that public sector team. We are delivering for our constituents, just like many people across the public sector are. Where they are most pertinent is not in investigations, but when it comes to someone who has been found to have committed a misdemeanour or to have been in breach of some form of standards code. When you look at any sanctions that you give out, that is the moment when those seven principles should be considered most pertinent.

The seven principles are widely acknowledged by all people in the public sector and are understood by Members of Parliament. They are easily accessible to members of the public, who understand what those words mean, so they are something that we should hold quite dear. We should be part of that civil service/public sector team that delivers on behalf of members of the public.

Michael Ellis: I completely agree with the Leader of the House. We absolutely accept, as the Committee does, that the principles of public life should remain the foundation stone. The seven principles are almost akin to a founding document for standards in public life, and one should be slow to interfere with what is a very well-recognised foundation stone, 25



HOUSE OF COMMONS

or 30 years in the making, which is acknowledged not just in the political arena but throughout public life. Lord Evans himself spoke about the stability and the positive impact of people knowing about the position.

Q406 **Chair:** Yes, but he also said that we should have specific descriptors for Parliament. He said that quite categorically, and he supported our introduction of specific descriptors for Parliament.

Michael Ellis: He did. The Government's view is that what that would do, however, is undermine the universality of the principles. As the Leader of the House was saying, everybody in the public service world is required to abide by these principles. If we were to particularise, the Government's view is that that would undermine one of the strengths of it, which is its universality.

Mark Spencer: I think we can clearly set rules by which MPs operate and should conduct themselves. That is separate to the principles of public life. If you are in breach of the rules, that is when those principles kick in. Clearly, you have done something inappropriate. You have been found to be guilty of doing something inappropriate. Here are the seven principles by which you are now judged. When it comes to the sanction that you are going to impose on that individual, it is quite easy to pick out which of those seven principles of public life they are in breach of.

Q407 **Sir Bernard Jenkin:** But the CSPL doesn't agree with you. They have expressed no concern to us whatever about us undermining the universality of their principles. Why does the Government know better than the CSPL?

Mark Spencer: I do not think it is a matter of knowing better. I think it is just a matter of viewing it as, as the Paymaster General called it, that cornerstone of public life. We would view it as being quite important to remain part of that whole public service realm and keep in line with those very strong seven principles.

Q408 **Chair:** Is it not helpful at least to have a bespoke understanding of what selflessness means within a parliamentary context, as opposed to being a police commissioner or whatever?

Mark Spencer: If I have to explain to you what selflessness means, then you are probably in the wrong job, aren't you, as an MP? Surely you would understand that. Surely you would know, as a Member of Parliament, what leadership means.

Q409 **Sir Bernard Jenkin:** Let me just test that. One bit of evidence that we took was from Claire Foster-Gilbert of the Westminster Abbey Institute. One thing you cannot be in politics is completely selfless. If you were completely selfless, you would never get any power. The problem that MPs have is that in order to be able to fulfil their public function, they have to compete for power. That is not a selfless exercise. It is not like being a civil servant. You have to promote yourself in a way that a civil servant never would or never should. We are in a different realm here.

The selflessness descriptor says, "Holders of public office should take

decisions solely in terms of the public interest”—that is a subjective test for a politician. The proposal is that it says, “Members of Parliament should act solely in the public interest. They should ensure that no private, financial or other personal interest compromises their principal role as a Member of Parliament. They should never misuse their position to gain financial or other material benefits for themselves, their family or their friends.”

A fuller description—a fuller interpretation—is actually going to be more helpful to Members of Parliament. Otherwise, they think these things don’t really apply to them, or they are not directly applicable, or they have got to work it out for themselves.

Mark Spencer: No, I don’t think that is true. The point I am trying to make to you is that that only matters and only kicks in at the point that they are found guilty of an offence. So, you set the rules. The rules are in place. Once they are found to be in breach of the rules, you then assess them in terms of the sanction they should receive in line with those seven principles. You can then judge whether they have acted in a selfless or selfish way at that moment.

Q410 **Sir Bernard Jenkin:** That is a fundamental problem that we have about what the code is for. The code is there to promote better behaviour and better attitudes. It is not just a set of rules to be navigated by the politicians to avoid getting into trouble. If we want to encourage Members to aspire to behave better and to have better attitudes, shouldn’t we address the principles directly to Members, and let the public see how the code is addressed directly to Members? Take leadership, for example.

Chair: Bernard, if you might just let them answer.

Mark Spencer: You shouldn’t even seek election if you are not going to act in a selfless way. I suppose what I am trying to say to you is that in seeking election to become a Member of Parliament, you should understand those seven principles—those seven words. You shouldn’t have to have it written down in front of you or explained to you that you should act in the interests of your electorate.

Q411 **Sir Bernard Jenkin:** Oh well, let’s scrap the whole thing then. Why don’t we just scrap it?

Mark Spencer: Scrap what?

Q412 **Sir Bernard Jenkin:** If you should know that already, why don’t we just scrap it?

Mark Spencer: No, because those principles are there as a cornerstone and as an example to people who are working in public life. Clearly, the way in which they conduct themselves as Members of Parliament is by a set of rules.

Michael Ellis: Can I just add to that, if I may? Others in public life—of course they also act selflessly and they will have to promote, not



HOUSE OF COMMONS

necessarily themselves, but they will be promoting priorities and policies and agendas. They are not that distinct from others in public service.

The other thing that one needs to look at—I agree with the Leader of the House’s point that people understand the general meaning of these words and that trying to drill down into a definition can create unanticipated problems.

Q413 **Chair:** What is the anticipated problem that you see in what we have drafted? Do you have an objection to anything that we have written in the descriptors?

Michael Ellis: What we say is that it is better to leave these things as they are understood.

Q414 **Chair:** I understand that, but do you have a problem with anything that we have put in our descriptors?

Michael Ellis: Can I put it to you this way, Mr Bryant? The courts were called upon to define the word “insulting” for the purposes of public order, and they simply settled on a definition that it was the ordinary and understood meaning of the word. In other words, they did not seek to drill down into exactly what it meant, because they wanted to leave options open. My default position would be that we want to avoid drilling down too much into a specific definition because, actually, it can create lacunas.

Q415 **Chair:** I am sorry to push you on this, but from the very beginning, it has not just been the word “selflessness”; it has then been a descriptor of the word. There has already been a drilling down, and all we are doing is trying to make the drilling down specifically relevant to Parliament. I am asking you again: is there anything in the descriptors that we have written that you have a problem with? Have you read them?

Michael Ellis: Yes. The fundamental default position, though, is not about the words. It is about the universality of the principle.

Sir Bernard Jenkin: I have another question.

Chair: Sorry, I have to go to Arun, I’m afraid.

Sir Bernard Jenkin: Will you come back to me?

Chair: I will come back to you later, but Arun has been waiting.

Q416 **Dr Arun Midha:** I am Arun Midha, and I am a lay member of the Committee. I offer reassurance that the Committee is not proposing to get rid of the Nolan principles or the Committee on Standards at all. Effectively, as colleagues have tried to say, we are trying to recast the descriptors to reflect contemporary roles of MPs, just to make them more easily understandable. I am not suggesting that MPs cannot work things out for themselves, but we all operate in different worlds, particularly the lay members. Sometimes, by thinking of a particular principle, it is much easier to understand exactly what that means in your own context. That is all we have been doing. In a sense, you are not going to be judged—



Chair: Arun, we need to get to a question.

Dr Arun Midha: Sorry. Given that explanation, couldn't the Government live with what is seen as a help to MPs to understand the principles?

Mark Spencer: At the risk of being too open, I have been a MP for 12 years and, until this week, I have never read the descriptors under those principles, but I wholly understand the seven principles. I understand the seven words. I do not need anyone to write down for me what "selflessness" means, what "accountability" means or what "leadership" means—I know that, my electorate know that and my constituents know that. I wholly understand that. I did not have to read someone else's description of what "selflessness" means to understand it, and we are in danger of overcooking this if we think that 650 MPs will take the trouble to read that. If you don't know it, you don't know it and you should not be an MP.

Chair: Okay.

Q417 **Mrs Tammy Banks:** With all due respect, you have been an MP for 12 years, but you are not reflective of all the MPs. One of the things that we struggle with time and time again is using the code of conduct as a preventive measure and helping MPs to really understand the different words and the Nolan principles. What you need and what another MP needs will be completely different, so if we can give the detail in the descriptors, you are well within your rights just to read the headline, they are well within their rights to read the detail, and we have covered all bases.

I would like to come back to the question that has not been answered. I absolutely understand your explanation that MPs should know these things, but the fact that we even exist and have had to refer back to the code of conduct time and time again, and the fact that people such as yourselves say you have not read it 12 years into your roles as MPs, shows exactly why we should give the detail—give it on a plate—and let people use it in a way that would be beneficial for them. I guess I'm coming straight back to the question that the Chair asked: have you got any problem with the descriptors? If not, why don't we settle on a place that meets everybody's needs rather than one cohort's?

Mark Spencer: It is a point of principle that those descriptors should be the same for everyone in the public sector and those who serve members of the public. We can clearly have separate rules for MPs on how they should conduct themselves, but the seven principles should be universal to the whole of the public sector and people who are supporting and delivering for members of the public.

Chair: We are only on question 1, so I am going to move us on if that's okay. I am going to Arun.

Q418 **Dr Arun Midha:** In our initial recommendations, the Committee proposed an eighth principle, which we termed "respect"—possibly "respectfulness". We took evidence from Lord Evans, the Chair of the



HOUSE OF COMMONS

Committee on Standards in Public Life. To be fair, he felt that, while the sentiments were really important—the descriptor was important—they might be better reflected and incorporated into the leadership principle. So, I have two questions. First, do you still disagree with having this quasi-eighth principle? If you do, do you still oppose the sentiments contained in that respect principle when we talk about anti-racism, inclusion, diversity and so on being incorporated into a leadership principle? I am slightly hesitant because in our first conversation you were not too comfortable with having bespoke descriptors, but I will pose those questions to you.

Mark Spencer: I think we are now both arguing in the opposite direction. I would say that respect is clearly built into those seven principles, but this is where politics is unique compared to other sectors and those who support members of the public. Politics is often quite robust. While I can treat you with respect, I might wholly disagree with your political view, and I should have the right to be able to challenge your view in a very direct way. We can't undermine the cut and thrust and brutality of politics, sometimes, so respect can be misinterpreted, I suppose.

Q419 **Dr Arun Midha:** Can I move you away from the concept of respect and the sentiments contained within it? We are talking particularly about inclusion, diversity and anti-racism. Obviously, we are both being respectful to each other now, but it is not that; it is about those concepts. For MPs as leaders in society, which you are, by demonstrating those sentiments of anti-racism, diversity and inclusion, you are performing a fantastic leadership role. What are your thoughts on that?

Mark Spencer: I think you are right, if you are saying to me that respect is already included under the pillar of leadership. Clearly, that is true. But making it a stand-alone eighth principle would be a mistake because it would be open to over-interpretation by other people, who will then say, "Because I disagreed with you, I was not respectful to you."

Q420 **Dr Arun Midha:** Are you comfortable with having those words contained within the leadership principle?

Mark Spencer: I think I am saying they are already there, in effect.

Q421 **Chair:** I think everybody in the political sphere is agreed at the moment that whoever spoke to *The Mail on Sunday* at the weekend, which led to the article about Angela Rayner, was out of order.

Michael Ellis: Disgraceful.

Q422 **Chair:** Disgraceful, despicable and all the rest of it. What principle have they breached?

Mark Spencer: Well, lots, to be honest. Clearly, they did not demonstrate leadership. I don't think they demonstrated integrity.

Q423 **Chair:** What rule have they broken?

Mark Spencer: In terms of your Committee?



HOUSE OF COMMONS

Q424 **Chair:** In terms of the rules of the House.

Mark Spencer: I don't suppose they have broken any rule in the House or committed a crime that could be charged in general society. I think they have just acted, frankly, inappropriately, and that should be roundly condemned.

Michael Ellis: The parties also have a responsibility of discipline, and they may well have brought those they represent—the House, their party—into disrepute.

Q425 **Chair:** Paragraph 17 is about the House being brought into disrepute. It will probably never come out, because I am sure the person is now hiding under a rock somewhere.

Michael Ellis: Journalists tend not to release their sources.

Q426 **Chair:** And the individual is undoubtedly hiding underneath the rock from which they crawled.

Michael Ellis: But the principle is that one would have thought—without wishing to preach, just in case that individual is exposed—that that is a comment that would bring the House into disrepute.

Mark Spencer: Misogyny is recognised as wholly inappropriate.

Q427 **Chair:** There is an argument for saying that therefore misogyny, racism and so on are out of order—I am using that term in the widest sense. Whether you make it explicit in the descriptors or the rules, is there not an argument for that? Otherwise, these moments will happen time and time again. To be honest, if you spoke to most women MPs, they would say that this is not exactly the first time that this has happened.

Michael Ellis: Absolutely—of any party. The reality is that if your contention is that there ought to be a new requirement to more explicitly demonstrate anti-discriminatory attitudes, the balance that has to be drawn when one starts to drill down further than is already clear is that one has to consider the chilling effect on debate that might unwittingly be effected. As the Leader of the House was saying, nobody wants to stifle legitimate debate—even raucous, robust debate, and even politically contentious issues where people express themselves in an obnoxious fashion—because it is important to our democracy that people don't feel intimidated into not expressing their views. The challenge, as ever, with difficult issues is to balance those two very important—

Q428 **Chair:** I know, but if that had been said in the Chamber, Mr Speaker would have asked them to withdraw, and they would have been suspended from the House if they hadn't.

Michael Ellis: Of course. I would expect so.

Q429 **Mr Paul Thorogood:** Following this theme of allowing space for MPs to debate robustly and not be curtailed in their exchange of views, in your written evidence you expressed concern about the chilling effect, which you just repeated there, but do you agree that there is a difference



HOUSE OF COMMONS

between robustly expressed or controversial views and personal attacks, especially unreasonable and excessive ones, particularly in this age of social media, when there is the ability to do something almost instantly?

Mark Spencer: Yes, but of course outside the Chamber, if I were to make a personal attack on you over social media, you would have recourse through the courts to pursue me for slander or libel.

Q430 **Mr Paul Thorogood:** But you do see the difference between a personal, potentially slanderous attack and this ability to exchange?

Mark Spencer: Yes, but those rules already exist. There are a number of examples of Members of Parliament who have said something inappropriate on social media and have paid the financial cost for that when they have been pursued through the courts and sued.

Q431 **Chair:** Are there?

Mark Spencer: Yes.

Q432 **Chair:** Could you give us a list? Not necessarily now, but if you have got some examples.

Mark Spencer: Yes. At the risk of highlighting it, I think the Member for Mansfield had to pay compensation to the Member for Islington North for a tweet he put out. I think there were those who retweeted an allegation—

Chair: This was under the Defamation Act, presumably.

Mark Spencer: Yes. There was an allegation of paedophilia, where a number of people retweeted the tweet and had to pay compensation. There is recourse through the courts for personal attacks that are proven to be slanderous.

Q433 **Chair:** But that is different, isn't it? I remember somebody attacking me for apparently wearing a £25,000 watch. I don't have a £25,000 watch, but it's not defamatory to say that I was wearing one; it's just inaccurate. I am not sure that that should have been caught by this. My point is that defamation is quite a high bar, which requires deep financial pockets, normally, to be able to take such a case.

Michael Ellis: There is also the criminal sanction. If people's words outside of this place step into the territory of threatening, abusive behaviour, going beyond that with which we are under a principle to adhere, then that also is a separate category. There is the civil sanction—the defamation—and the criminal sanction.

Q434 **Mr Paul Thorogood:** I think the point behind my question is that we are trying to raise the standards of conduct. We are talking about behaviour within Parliament. I think that this is around MPs—in general debate, or how they act—acting in good faith, properly, and with good behaviour, and that certainly has not happened. If you are going to the point where you have identified MPs who have been accused of slander and so on having to go to criminal law, surely MPs are acting inappropriately within the House. My question is, should we hold people to a higher standard

within Parliament?

Mark Spencer: I think we all have a responsibility to try to act in an appropriate way and to conduct debate in as civil a way as possible. However, that should not detract from the cut and thrust of politics and the ability to criticise each other. I think that scrutiny of each other is a very important principle of democracy. People should have the right to criticise and question my views, and they should have the right to do that very robustly.

Michael Ellis: And even rudely, sometimes.

Q435 **Mr Paul Thorogood:** There is a difference between rudeness and some of the vicious attacks that have happened. They are personal; I think the key word is “personal”.

Michael Ellis: This is the issue, of course, because it all boils down to striking the right balance. We all want everyone here to be working in a positive and safe environment—that goes without saying. However, it is also important that politicians can engage in free debate and political discussions.

Q436 **Mr Paul Thorogood:** I don’t think anybody is arguing against that.

Michael Ellis: No one is arguing that, but my concern is about what is sometimes called mission creep, which is that if one is not too careful with drilling down a definition, then, over a period of months and years, those norms become the definition. Therefore, someone who is outwith the norm—someone who may be one of one or two voices in the entire House—

Q437 **Chair:** I suppose that is my question. Have we got the tone right in politics at the moment? There are MPs wearing stab vests.

Mark Spencer: I think it is always possible to criticise the tone, but I think the robustness of our democracy, and the right of people to be robust in those debates, is what makes our democracy great.

Chair: So you think we have the tone right, now?

Mark Spencer: I think it is always possible to criticise it. It is always possible to pick holes in it. I acknowledge that. However, I would defend your right to rudely question me. I think you—

Q438 **Chair:** What about targeted ads, with Facebook ads targeted at individual MPs by political parties from all sides?

Mark Spencer: I think it is right that you would have the right to point out to my constituents my voting record. I would stand by that voting record. I would stand by that principle that you have the right to point out to my constituents the way in which I voted. I have the right of reply, of course, and that is how democracy works.

Q439 **Mrs Rita Dexter:** I am very taken by this idea that rudeness is okay.

Michael Ellis: I didn’t say it was okay.



HOUSE OF COMMONS

Mrs Rita Dexter: I think you did say, “even rudely,” and it jars with me, in the sense that—well, on its merits, it jars with me, but it is also the thin end of a wedge, so I feel I need to respond to the fact that you said that. I think it’s probably not right because it does contribute to the tone.

Michael Ellis: All I can say is that I was in the Chamber last Thursday for several hours, listening to a debate, which we do on a regular basis. There was a very robust exchange of views—including personal views—about certain individuals. We need to balance the rights of people to express themselves in extremely robust ways, but we don’t want to cross over the threshold into that being offensive or outwith the acceptable standards of robust debate. I’m afraid that this is the difficulty: one person’s robustness might be another’s rudeness or lack of respect. These things are not susceptible to easy definition.

That is why I make the point about mission creep. If we create a new norm, and a person has a view that is entirely outwith the general principle of think on a topic, that could become disrespectful.

Mark Spencer: I would have said—

Mrs Rita Dexter: I would just say that robust is different to rude. I didn’t challenge you on robustness, because I accept robust. Rude is different.

Mark Spencer: I would say that your interruption of me could be interpreted as rude.

Mrs Rita Dexter: And that would be very fair.

Mark Spencer: Is that rude? I don’t know.

Chair: It can’t have been rude, or I would have ruled it out of order. You wouldn’t want to challenge the Chair, would you? Sorry, Rita, I have others who want to ask about this—Mehmuda, and then Tammy.

Q440 **Mehmuda Mian:** You talk about a balance that needs to be struck, but do you not think that a lot of members of the public now think that that balance has tipped, and that the excessive personal attacks are more prevalent? There are other organisations and professions where people need to be robust in arguments, and so on. I have been a lay member for just under a year now. I have gone to the House of Commons and listened to some of the speeches and debates, and I find it extraordinary the amount of times I have heard excessive personal attacks. I am not saying that you shouldn’t be challenged or that your opinions shouldn’t be criticised, but it is often not a debate any more; it is just a series of personal attacks and excessively rude behaviour. I don’t think it is necessarily the mark of a functioning democracy to talk to people in a manner that—

Chair: Colleagues, we have to ask them questions.

Mehmuda Mian: Okay. My question is about that balance that you talk about.



HOUSE OF COMMONS

Mark Spencer: I'm not sure I recognise that. If you go on YouTube and look back at some of the debates from the 1980s between Mrs Thatcher and Members on the Opposition Benches, they were very robust. They were just as confrontational as they are today. The difference in society today is that it is much more aggressive on social media. But that is not MP against MP. That is often members of the public being very personal about MPs.

Look at the Twitter feed of any Member of Parliament. I could put up, "Great to visit this children's cancer charity today," and I guarantee that the first 10 comments would be, "Don't like that rubbish—what about this?" It's not MP against MP. It is the public that is driving that rudeness and aggression.

Michael Ellis: Very briefly, the risk is that the mischief we would be seeking to avoid would be anything that has a tendency to sterilise the Chamber or neuter the debate. As the Leader was saying, the House has been an extremely robust place for generations—forever—and some would argue that it was worse than it is now in previous generations.

Mehmuda Mian: Can I just respond to that very quickly? Just because it has been happening for generations doesn't necessarily mean that you should continue the saga.

Chair: I am going to go to Yvonne and then to Tammy.

Q441 **Yvonne Fovargue:** Mr Ellis, you said that you have the right to express your views in an obnoxious way and you don't want people to be intimidated into not expressing views in an obnoxious way. When does obnoxious tip over into unreasonable and excessive?

Michael Ellis: That is a very good question and a question that I would respectfully put back to the Committee. Let's say that we seek to drill down in our terminology for a definition of, for example, respect. To one person, the sort of extremely robust and, dare I say, obnoxious exchange that is outwith the normal course of what one would hope to expect—that in itself creates a challenge: the challenge that some might feel the chilling effect that they can't express themselves as they would wish to and others might take advantage of that. The issue is that one person's rudeness is another person's lack of respect, and so on. This is why we would wish to avoid, if we can, anything that serves or might serve to neutralise the Chamber or sterilise it into a place that we're not used to.

Chair: Just to be clear, the Chamber is a matter for the Speaker, and the Speaker alone; it is not a matter for our Committee. I am going to have to get us moving a bit, because that was question 3. Tammy, did you have something quickly to ask? No. We are going to move on. Michael.

Q442 **Dr Michael Maguire:** Good morning. I am Michael Maguire, a lay member of the Committee. I want to move the conversation on. What do you think are the differences between ministerial interests and Members' interests, and do the public care about such differences?



Michael Ellis: As far as registration of interests is concerned, the main issue would be one of recognising the separation of powers, as I know this Committee will have heard argued before. Of course, we hold strongly to the view that Ministers are of the Executive branch, which is distinct and separate from the legislative branch, and therefore it is right that there are two separate processes. There is also of course a separate process for the third branch, which we tend not to talk about here but which obviously exists—the judiciary. We would not expect the judiciary to have disciplinary processes or, for that matter, registration processes that are part of the legislature or the Executive. The three are kept separate and distinct, and my view is that that is the fundamental difference; it is the constitutional principle of separation of powers.

That said, it is of course also true that Ministers, although different and separate, are required to adhere to some strict and very strict principles and to declare accordingly their interests under the ministerial code. They perform, constitutionally and operationally, different functions from a Back-Bench Member of Parliament and, in recognition of the different role of the Executive, there is a more in-depth and context-specific process, which is above House of Commons registration, because what a Minister does is to immediately register through their private office any gift, for example, that they may have received. The fact that that is not published until later does not alter the fact that they have to declare it as and when it is given, or very soon thereafter. They have that. They have their permanent secretary. They have their private office, the civil service—

Q443 **Chair:** But isn't the point of it for the public to know?

Michael Ellis: Of course, and the public do know when Lord Geidt and his committee—

Mark Spencer: I'm not sure that's true, actually. Surely what really matters is that there is not undue influence within politics. If some Russian oligarch wants to take me on their yacht for a fortnight around the Mediterranean, does it matter whether my constituents know? I think it's good for transparency that they know, but the more important principle is that I have not been under undue influence from that—

Q444 **Chair:** Surely it matters that the public know whether you have or you haven't.

Mark Spencer: I recognise that it does, but it's much more important that I am not then using or acting as a vector for that individual and I have not been influenced unduly by that individual. The principle of making sure that that influence is not had is way more important than anything else. One way of delivering that is by the public knowing about it. If everybody is aware of it, that clearly stops it happening. That is one tool by which—

Q445 **Chair:** Surely an intrinsic part of it is that the public should be able to know what influences might be being exerted on you. And the public cannot know that without its publication.



HOUSE OF COMMONS

Michael Ellis: It's published quarterly, is it not?

Q446 **Chair:** It's not, is it?

Michael Ellis: Well, the data on gifts, hospitality and meetings is published quarterly.

Q447 **Chair:** When did the FCDO last publish?

Michael Ellis: I don't have that information immediately to hand, but—

Q448 **Chair:** Surely you would have prepared for today and got that information about all the different Departments.

Michael Ellis: Well, as far as publication is concerned, there is a requirement of twice a year for Lord Geidt's committee—

Q449 **Chair:** Lord Geidt's committee?

Michael Ellis: Lord Geidt's responsibilities. And I believe, to answer your question, that the last publication was in November 2021.

Q450 **Chair:** So it's already more than three months late—in fact, it's not: the last FCDO report was in September 2021, so we know only about events up to September 2021. We're more than—what is it, eight months since then? But if it's in the House, it's 28 days.

Mark Spencer: Yes, but the point that I am making to you is that there is a system in place so that if any of those Ministers in the Foreign Office have been subject to pressure, hospitality or influence, the whole of that civil service machine knows about that and has recorded it, so that that system is aware of that influence.

Q451 **Chair:** But there is no means of verifying that, is there?

Mark Spencer: The point I am making to you is that you are talking about the public being aware of that in a very rapid timescale and that is a separate argument. The timing of that publication is a separate argument to the principle of the separation of powers. We can have a separate debate about how quickly ministerial responsibilities are published, but I think the principle of the separation of powers is a very important one. I think what we are saying is that that is registered, clearly, with the civil service, and that is published on a twice yearly basis.

Q452 **Chair:** In theory, every Department is meant to do all these things every quarter. Lots of them don't. Lots of them are late. The FCDO didn't do any reporting for a whole year, and when it did, it ended up doing only half the period because it didn't have the information. Some of it has now been published much later. Do you know how many papers the Cabinet Office published on this in March of this year? It's your Department.

You don't know.

Michael Ellis: Please tell me.

Chair: Fifteen separate documents. It is not researchable by anybody. It



is not findable by anybody.

Michael Ellis: Mr Bryant, can I put it to you in a slightly different way? There is extra scrutiny on Ministers, not less scrutiny, and I say that for this reason. First, Ministers are required by the ministerial code to declare any relevant interests, and if they were to fail to do so, they could be sanctioned by the Prime Minister in the way that we know.

Secondly, Ministers are scrutinised very carefully by their permanent secretary, who is likely to know an awful lot more than anyone else about the work in their Department, but also what their specific interests are and what gifts they may or may not have received.

Thirdly, there is the independent adviser on ministerial interests, who is another form of scrutiny—Lord Geidt.

Fourthly, there is the publication. I accept the point that the Leader of the House has made that timing of publication is a different question. My point is that there are those four separate levels of scrutiny that Ministers actually have, and the—

Q453 **Chair:** Sorry to interrupt you, and I won't go on about this for too long, but timeliness of publication is important. The last set of publications, by most Departments, were not even an accurate list of the Ministers in the Departments, because they are so out of date. Do you not accept that it would make much more sense if, just as in the House every Member has to register something within 28 days and it is published on a rolling basis, all this material about Ministers' interests was published in the same way?

Michael Ellis: There is a slight difference, because legally speaking a gift, for example, given to a Minister is not his or hers; it belongs to the Crown.

Chair: Unless they buy it.

Michael Ellis: Unless they buy it; it does not belong to the individual unless they do that. As I said, the ministerial code makes it very clear that hospitality, for example, accepted by anyone in that position should be declared in the register accordingly. One has to bear in mind as well that ministerial interests tend to be more limited in many ways; they are certainly more regulated.

Mark Spencer: It can be more complicated, to be fair. If I went on a foreign trip and someone gave me a gift of a piece of jewellery or a huge golden sword and they presented it to me, it would take a while for the civil service to establish the value of that item and I would not be able to log that item—

Chair: Sorry, but that is just about the weakest argument I've ever heard. That is a really weak argument.

Mark Spencer: No, it does take time to establish the value of those items.



Chair: Come off it.

Mark Spencer: How can I log its value if I don't know its value?

Q454 **Andy Carter:** You made the point that there is a greater level of requirement on Ministers. I want to push back a little and challenge on transparency for the electorate—for our constituents. Why should a Back Bencher attending a football match through hospitality have to register within 28 days when a Minister, perhaps in DCMS, does not have to give the same level of transparency around their attendance to the electorate? Why should there be a difference between a Minister and a Back Bencher?

Michael Ellis: The Minister is also required to make that declaration speedily, but the publication of it may follow because publication dates are different.

Q455 **Andy Carter:** I understand that, but why should there be a difference in publication?

Michael Ellis: It is important to emphasise that the moment of declaration is when that Minister makes the declaration via the private office. That may be even faster than the Back Bencher registered those tickets.

Q456 **Andy Carter:** But why should there be a difference in the amount of transparency that our electorate—our constituents—can expect?

Mark Spencer: There isn't.

Andy Carter: I'm afraid there is.

Mark Spencer: Are you talking about timeliness?

Andy Carter: I am talking about timeliness—

Mark Spencer: There is no difference in scrutiny or registration; only in the timeliness.

Chair: The Minister doesn't have to say the amount either.

Q457 **Andy Carter:** If I stand next to a Minister at a football match, I have to publish that within 28 days, and it will be in the public domain that I was there and who paid for it. The Minister doesn't need to do that. Why should there be a difference?

Q458 **Mark Spencer:** That's not true though. It depends on how they were invited. If they were invited as a constituency MP, they have to register that on the House of Commons register. If they were there as a Minister, for their ministerial responsibilities, clearly they would register that with the ministerial registrar.

Q459 **Andy Carter:** Do you accept that it creates some challenges for the public to understand the differences in transparency?



HOUSE OF COMMONS

Michael Ellis: But a Minister is part of the Executive, as you know, and a Back Bencher is part of the legislature.

Q460 **Andy Carter:** Why should the Executive have a different reporting restriction in terms of timeliness? You are right that it is about timeliness, but why should there be a different timescale for Ministers compared with Back Benchers?

Mark Spencer: That is a separate debate from whether or not there should be a separate system. I am more than happy to engage on whether there should be a more timely process, but that is a separate debate.

Q461 **Andy Carter:** The argument we are making is that it would be a much easier process to combine it all into one. Then everything would be disclosed at the same time and the timeliness argument about whether the environment is legislative—a Back Bencher—or executive would be irrelevant.

Mark Spencer: We have to recognise that the whole purpose of the system is to stop undue influence and make sure that any influence that is brought to bear is logged and registered, and that is what happens.

Andy Carter: But it is not transparent for the electorate. That is the point I am making.

Mark Spencer: No, the transparency is one tool by which those people are held to account. There are many other tools to hold you as a Minister to account, in that your whole private office is working to cocoon you and protect you from undue influence. If I were to say to my private office tomorrow, "Great news, guys! I've been invited on to an oligarch's yacht for a fortnight," they'd say, "Uh, Minister, we're not quite sure that would be the right thing to do. You might need to rethink that pretty rapidly."

Q462 **Alberto Costa:** Good morning. I have a great deal of sympathy with the separation of powers argument—I entirely understand it. One thing we have not touched on is the effect were the system to be combined; in my opinion, the effect would be an offence against separation of powers. You would, in effect, be giving a parliamentary functionary disciplinary oversight of ministerial activity. Do you agree with that statement?

Mark Spencer: Yes.

Michael Ellis: Yes, I would.

Q463 **Alberto Costa:** Okay. From my perspective, that is the core problem, but I do think the Committee is being very reasonable in seeking a practical solution to this whereby Ministers declare in a more timely fashion gifts and hospitality that they have received in their ministerial capacity. What suggestions on that do you have for the Committee?

Mark Spencer: The timeliness of reporting is worthy of debate and that that reporting should be done on a more regular basis is worthy of challenge. That is a worthy challenge and debate to have.



HOUSE OF COMMONS

Michael Ellis: I would agree, although I add a note of caution. What is one seeking to achieve in the publication of data? Obviously, one is seeking to achieve full transparency, and that is the primary focus. There is a bureaucracy around the process and an expense. At the moment publication takes place twice a year, I think, but I agree with the Leader of the House that the timeliness of publication is definitely something to look at.

My starting point is that the actual declaration takes place when it is declared at the private office level, even if it is not viewable by the public at that moment.

Chair: I understand that point, but if you want to see all the registration of all 650 MPs, you look at one document. If you want to look at everything from the Government in a year, it is 156 documents—and most of them are more than six months out of date.

Q464 **Alberto Costa:** I think the witnesses have answered my question by saying that this is a point that should be taken forward. Is that correct?

Mark Spencer: The timeliness is worthy of debate.

Q465 **Alberto Costa:** You think that is an issue that should be debated.

Mark Spencer: The separation of powers principle overrides all of that, though. I think there should be separate logs and registers, but the speediness of publication is worthy of further scrutiny.

Q466 **Sir Bernard Jenkin:** How important is it for public confidence in the system that we actually do publish this stuff?

Mark Spencer: I think it is very important.

Q467 **Sir Bernard Jenkin:** How much does it inspire public confidence that ministerial stuff is published six months after the event, if at all, in a chaotic manner compared with the way the House of Commons publishes this stuff—in 28 days, in a single place and in a much more accessible format? How much do you think it strengthens public confidence in the oversight of ministerial standards.

Michael Ellis: If I may, I suggest it does not make an awful lot of difference—

Sir Bernard Jenkin: Really?

Michael Ellis: To answer your question, we have an extremely robust system.

Q468 **Sir Bernard Jenkin:** Yes, but the public don't see it.

Michael Ellis: Forgive me, but if there was some impropriety when that information was released, it would not matter if it was last month, last week or six months ago; that would be highlighted. I have no doubt that any impropriety would not be brushed under the carpet, just because it was six months previously.



HOUSE OF COMMONS

Q469 **Sir Bernard Jenkin:** You have no doubt, Mr Ellis. I am asking what message it sends to the public, and I submit that the public get the idea that it is all a bit slipshod in the Government compared with the way the House of Commons does it. And it could all so easily be improved—unless the Government have something to hide.

Michael Ellis: Obviously not. We have said that the publication timing can be debated, but the important principle that we adhere to is that the Executive is separate from the legislature.

Q470 **Chair:** Except that all members of the Executive have to be Members of the House of Commons—*[Interruption.]* Sorry, a Member of either House, though there is no law that says that, but it is standard practice.

Mr Spencer, you used the phrase, “in their ministerial capacity”. Can I ask you about that? Priti Patel went to the Bond premiere on 28 September 2021 as a guest of the Jamaica Tourist Board. She declared that not through the House, but to her Department. Why is that “in her ministerial capacity”?

Mark Spencer: That would be a matter for her. I don’t know the influence in terms of her constituency—I don’t know whether there is a huge Jamaican population there—

Q471 **Chair:** Why is it “in her ministerial capacity”?

Mark Spencer: I think it is fairly obvious that she was invited as the Home Secretary.

Q472 **Chair:** Why is the Home Secretary being invited for—whatever it is—£2,000 a ticket? You don’t declare an amount when it is done in a ministerial capacity. In essence, Ministers get to decide where to register it, don’t they?

Mark Spencer: Yes.

Q473 **Chair:** It is entirely up to them.

Mark Spencer: It is entirely right that—I suspect and I suggest—she was invited as the Home Secretary.

Q474 **Chair:** But why? What has a Bond premiere got to do with her role as Home Secretary?

Michael Ellis: One could argue that the nature of the film is connected to Executive functions.

Q475 **Chair:** What?

Michael Ellis: It is a matter for her, though, Mr Bryant. Individual cases notwithstanding—

Mark Spencer: But we know about that because it was logged and registered and is now in the public domain. That demonstrates that the system works.



HOUSE OF COMMONS

Q476 **Chair:** It would have been in the public domain within 28 days if she had registered it in the House.

Mark Spencer: Are we suggesting that there was some undue influence at that film premiere?

Q477 **Chair:** No, my point is that, at the moment, the only reason that a Minister does not register it with the House is because we have an exemption in the rules for Ministers when they are doing something “in their ministerial capacity”. Ministers can play that card. When Chris Heaton-Harris went to the Brits last year, he chose not to play that card. He said, “I don’t think I’ve been invited in my ministerial capacity. I’ve just been invited as an MP, so I’m going to register it with the House.” All the other Ministers who went to the same event decided to do it through their Departments, so it did not appear for several months.

Michael Ellis: They were all declared.

Q478 **Chair:** Let me give another example. Liz Truss was also invited to the Bond premiere, but she went courtesy of E.ON. I ask again, in what sense is that at all “in their ministerial capacity”?

Mark Spencer: I think they were clearly invited as the Foreign Secretary and the Home Secretary, not as constituency MPs. That is why they were invited.

Q479 **Chair:** Because Bond travels abroad and she’s in charge of MI6? Is that what you are saying?

Mark Spencer: Clearly, those people who want to engage with senior politicians and frankly promote their own events will invite senior politicians to them.

Q480 **Chair:** It is not the event itself. The Jamaica Tourist Board is promoting Jamaica tourism, isn’t it? Why on earth do people give free tickets to Ministers or MPs? Because they want to influence their views. They want to sit down and talk to them and get them onside about something.

Michael Ellis: Yes, I acknowledge that.

Q481 **Chair:** The public should know about that.

Michael Ellis: But they do.

Q482 **Chair:** In a timely way. Within 28 days rather than months later.

Mark Spencer: The fact that we are discussing it right now proves that we know about it—that it was logged and registered.

Michael Ellis: That’s right. It was declared.

Mark Spencer: So the debate is around the timeliness of that publication is what you are saying.

Q483 **Chair:** All the other MPs who were not Ministers and who went to the same event published that through the House. My question is why you



HOUSE OF COMMONS

are arguing that we should keep this exemption in the rules. The ministerial code is for you—it is not for us. The bit that is for us is that phrase, “in their ministerial capacity”, which is an exemption provided for Ministers. Thus far, the Committee has felt that we should get rid of it because it makes things unfair between ordinary Members and ministerial Members.

Alberto Costa: That is not a unanimous view, Chair.

Mark Spencer: Clearly, it would be unfair that Ministers receive many more invitations and engagement with lobbyists or whatever than a normal Back Bencher.

Michael Ellis: When I was Culture Minister some years ago, I obviously went to a very large number of cultural events—this was pre-covid. One has to look at that in the context—

Q484 **Chair:** Can you just remind us how many of them are registered?

Michael Ellis: I believe all of them were registered.

Q485 **Chair:** Have you checked?

Michael Ellis: They were supposed to be registered and they would have been checked at the time. The reality of the matter is that all these things are declared. You are referring to examples that you know about because there was no attempt to obfuscate. It seems to me that the issue is one of the timeliness of publishing the data, which is something that we have said could certainly be discussed. The main mischief that I would be concerned about is continuing the separation of Executive and legislature. That is the main problem.

Mark Spencer: The fundamental problem is not the ones that we know about; it is if someone has received influence that they have not declared or registered. Both systems are open to that abuse. What matters here is that those people who are receiving hospitality are not actually under undue influence, and we are not aware of it and the civil service who work with them are not aware of it.

Chair: You could argue that the point is that a Minister is able to choose which is the least transparent place to register something. I am going to take Bernard’s question and then we probably ought to move on.

Q486 **Alberto Costa:** Can I just interrupt, Chair? My understanding is that if the Minister is given something in their MP capacity, they cannot choose. It would be a breach and the commissioner could investigate if the acceptance of the hospitality or gift was very evidently given, for example, where an email said, “We’d like to invite you, as the MP for x constituency.”

Chair: I am not sure whether you are asking me a question, Alberto.

Mark Spencer: That is right. For example, if I were invited to see a Nottingham Forest football match, it would be pretty difficult for me to argue that that is in my ministerial capacity; that is clearly aimed at my



constituency, because I am a Nottinghamshire MP. I would have to log and register that as Member of Parliament for Sherwood, not in my ministerial capacity.

Q487 **Chair:** But if you went to Chelsea, that wouldn't be the case?

Mark Spencer: Yes, because I am not really a Chelsea fan, to be honest.

Chair: So that is how we decide these things.

Mark Spencer: I think it is down to the individual MPs to recognise whether it is a constituency invitation or a ministerial one, because there is that separation of powers.

Chair: So they do just choose—okay.

Mark Spencer: They need to judge in their own mind whether it is in their capacity as an MP or as a Minister.

Chair: I think you are very far from understanding the rules on this, but I really do need to move on.

Q488 **Sir Bernard Jenkin:** I am just reminded of Paul Flynn's repeated adage—that somehow Ministers knew whether they were digesting a lunch with their ministerial stomach or their Member of Parliament stomach. Of course, the separation of powers in our system is being used here as a bit of a convenient fiction because Ministers are Members of Parliament. Shouldn't it be for this system to decide whether something is likely or possible to be regarded as a potential conflict of interest with the role of the Minister as a Member of Parliament? Wouldn't it be more transparent and command better public confidence if these things were on the Members' Register, if we consider it to be appropriate?

Mark Spencer: If you are the Culture Minister and you receive lots of cultural invitations, someone politically can use that against you by pointing out to your constituents that you are just on all these jollies: "Look, this MP does nothing but go to the ballet." Frankly, I can't think of anything worse than going to the ballet, personally, but if you made me the Culture Minister, I would have to go to all of those events, wouldn't I? Now, that looks like I'm just on a flippin' jollyfest, going to all these operas, ballets and museums. It would be quite easy to draw up a leaflet that said, "Your MP, frankly, spends more time going on all these jollies than he does actually concentrating on you, his constituents."

Sir Bernard Jenkin: But that is precisely the example I am not referring to. What we are referring to is the example of where a Minister is asked to something because they are the Minister and a Member of Parliament that is not related directly to their ministerial portfolio. That seems to be the real problem, and I do not know why you are so reluctant for us to address that. Maybe the Minister should decline the invitation if they think it offers the prospect of being perceived as a conflict of interest. They do not have to go.

Chair: Right, I am going to have to move us on. I am sorry. Tammy, you



wanted to ask something, and then I am going to move on to Andy.

Q489 Mrs Tammy Banks: With respect—I am really trying not to be obnoxious or rude—I really find that you are evading most of our questions. The conversation we have just had, speaking as a member of the public and a lay member who has been here for five years, was an absolute joke. Some of the references we have spoken to are ridiculous. Why should Ministers have a system that is overcomplicated? The length of time it takes to go through the process inhibits transparency, and I do not understand at all why you would sit there for 20 minutes arguing that you would want a different system for a Minister, just in case your constituents come back and say, “He has been invited to too many cultural events.” If that is the case, justify why you are going to them: you are there because you have been elected by your constituents, and you are a Minister to work within Government.

Why don’t you want a really simple system where members of the public, other MPs and everybody can see within 28 days what you have gone to and what you have not gone to? It does not matter because, like you said at the beginning, you know how to be accountable, you know how to be leaders and you know how to be responsible, so you can justify your decision making really simply. Why do we need such a complicated system? I am not asking you to answer that, because I have no faith that you will give me a yes or no answer.

Mark Spencer: That isn’t a yes or no question, but what I would say to you is that there is a simple system: you register it as a Minister or you register it as an MP. That is a very simple system. What we are debating is the timeliness of that reporting.

Q490 Mrs Tammy Banks: No, we are also debating whether a Minister feels that that invitation is because they are a Minister. You have just used an example of football to say, “That clearly is in my MP role, and that clearly is not in my MP role,” so we are not just debating the timeliness; we are debating transparency. From a member of the public’s perspective, this is convoluted and complex when it does not need to be.

Mark Spencer: Both are transparent. Whichever register I put things on, they are both transparent, they are both recorded, and they are both available to the public. Where we disagree, or what we are debating, is the timeliness of that reporting. I said to you right at the beginning of this that I am up for that debate, and I am up for that challenge of whether or not it should be more speedy.

Mrs Tammy Banks: I disagree.

Chair: I am going to move us on, if that is okay. Andy.

Q491 Andy Carter: Can I talk a little about paid advocacy? In the Government’s evidence, you have suggested that barring participation in proceedings where it could benefit paid interests would diminish debate. Can you give us some explanation of why you would suggest that? Mark, perhaps I will start with you.



HOUSE OF COMMONS

Mark Spencer: We should not have paid advocacy. That should not be acceptable, and it is not acceptable under any circumstances. As an example, if I were an architect working within a specific company, and there was a debate about whether that architect company should receive a Government contract, I should not participate in that debate. If there were a general debate on architecture in the United Kingdom, clearly my expertise would bring something to that debate, as long as at the beginning of that debate I said, "I draw attention to my declaration of interests, in that I am an architect and therefore have some financial interest in architecture in general."

Q492 **Andy Carter:** It seems to me that Members of Parliament are elected for their knowledge and their skills that, often, they built up prior to getting to Parliament. To suggest that nobody should use any of those skills and experiences in debates would be wrong, but do you think that at the moment there are times when we are perhaps not getting this quite right? You suggested in the evidence that putting a ban on everything would diminish debate. Have you seen examples where you think it has gone the wrong way?

Mark Spencer: I actually think that we are not too far away from getting it right, if I am honest. Again, it is about transparency and the declaration of interests, and making sure everybody is aware of those interests. I go back to that example: where there is clear, direct financial interest, you should not participate in debates—you should recuse yourself immediately, and not be involved in that. Where you have expertise or general interest, you can, as long as people are aware of it.

Q493 **Andy Carter:** Thank you. Mr Ellis, can I talk to you about the serious wrong exemption? It is already there in the lobbying rules. The last two examples of paid advocacy referred to this Committee both attempted to use the exemption, and both the commissioner and the Committee decided that it did not apply in both cases. What are the Government's concerns about clarification of that exemption? Do you think it should be used only for the sole provision of whistleblowing? Or do you think it could be used repeatedly?

Michael Ellis: When it comes to serious wrong, the Government agree that the serious wrong exemption should not be a wide loophole. The position is that, given the relatively small number of instances—and there are very few—where it has been improperly invoked, it is not necessarily proportionate, or even necessary, to introduce a prescriptive set of criteria. In other words, one would be seeking to address a wrong that is either a de minimis problem or, not non-existent, but certainly minimal, with very few examples. Therefore, it is not necessary or proportionate to do it.

Q494 **Chair:** Can I just ask this then? Obviously, the last occasion was the Owen Paterson case, where he tried to use it as a very large loophole—like the channel tunnel, you could argue. Do you think precedent is enough? We have effectively ruled on that and, therefore, that is enough for the future?



Michael Ellis: What I would say about that is that the existing rules rightly prohibit the initiation of approaches in return for reward, consideration, gifts or whatever. Our procedures do need to be sufficiently flexible to allow Members to raise matters of concern in the public interest. There is a danger one must seek to avoid, in my submission. Proscriptive criteria start to get into the territory of banning things, and seek to anticipate and categorise what is perhaps incidental in one given case, or integral in another. That could lead to delay, complexity and deterring Members from raising instances where a serious wrong exists.

Q495 **Chair:** But have you seen instances of that?

Michael Ellis: We want to address the mischief before it occurs. We want to prevent a problem occurring. We all want to avoid the problems that we have seen. We encourage the Committee to consider this very carefully, because we do not want to deter Members from raising instances where a serious wrong exists, in the way that I have described. The existing rules do already work, it seems to me. That is why one can always find examples where things have gone wrong, but that doesn't mean that it is necessarily proportionate to make the changes that are being discussed.

Q496 **Chair:** But Mr Paterson clearly thought that he was rightly using the rule, or his lawyers persuaded him that he was. I presume you think that Mr Paterson was wrong.

Michael Ellis: I prefer not to involve individual cases. We are talking about the general principles, it seems to me. I would say that the flexibility should not be exploited. Could I put it that way? The flexibility of language here should not be exploited. I am happy to say it would be improper for the serious wrong exemption to be invoked too liberally, as a sort of retrospective justification for doing something. The Government do not think—and I certainly do not think—that this has been a recurrent issue. One can always give an example, but it has not been a recurrent issue.

Q497 **Andy Carter:** You are absolutely right. There have been eight cases of paid advocacy since 1995 that the Committee has dealt with, and only two when serious wrong has been introduced. The fact that serious wrong has been introduced twice—

Michael Ellis: In 30 years.

Andy Carter: I just wonder what you think about that.

Michael Ellis: Well, it is the point that I was making to Mr Bryant. The existing rules already work, and with two examples in 30 years it would not be proportionate or necessary to make the changes contemplated.

Q498 **Mehmuda Mian:** Turning now to the issue of MPs' second jobs, in your response, you consider that time limits would be "impractical" and that capping earnings would require an "arbitrary cap", which would not necessarily achieve the desired result. You state that you "support reforms to restrict the type of outside work which MPs are able to undertake." What kind of restrictions were you thinking of?



HOUSE OF COMMONS

Mark Spencer: Paid advocacy is the one that you should not be able to participate in, or advice on parliamentary proceedings. Acting as a consultant and giving advice directly on parliamentary proceedings would be inappropriate.

Q499 **Mehmuda Mian:** And that's it, is it?

Mark Spencer: Yes. In general terms, your principal role should be a Member of Parliament. That should be your focus, and your constituents should receive the level of service that they would expect from you as a Member of Parliament. That does not preclude you from doing other things in your spare time. Clearly, I would have a choice as a Member of Parliament to spend more time doing leisure activity or acting in another role doing something that may well benefit me financially, in terms of work or a second job. Ultimately, your constituents are the judge of that, and again it is about transparency, so everybody should know what other activity you are doing or what other financial gain you are making. As long as everybody is aware of that and your main focus is your job as MP, that is what matters.

Michael Ellis: I would agree with that, of course. The Government's firm position is that an MP's primary job is and must be to serve their constituents and represent their constituents' interests in Parliament. That is unquestionably the case. As has been mentioned, the House has historically benefited from Members who have outside experience. It was the Government that brought forward an amendment—I think it was in November last year—that said that outside work should be undertaken under the reasonable limit point.

Chair: Sorry, say that last bit again.

Michael Ellis: In November—outside work should be undertaken within only reasonable limits. That was something that we brought forward in an amendment during a debate on 17 November.

Q500 **Chair:** So that's still your position?

Michael Ellis: Well, steps should certainly be taken by the Committee on Standards, and agreed and implemented on the basis of cross-party support.

Q501 **Chair:** If it's still your position, what do you mean by "reasonable limits"? I thought you had resiled from your position.

Michael Ellis: I am referring to the debate in November, when we put forward the reasonable limits position. You are asking now about how that could be defined. What we say is that it is incumbent on the Member of Parliament to answer to his or her own constituents. That is the key point. It is the constituents who should be the judge. It is not my position or the Government's position that anyone other than the constituents should be the judge of that MP. Some constituents in one part of the country, I might add, might take a very different view from other constituents in another part of the country. That is part of the issue. You would be in danger of opening up an intrinsic unfairness if constituents in a highly



HOUSE OF COMMONS

marginal seat, for example, took a different view from constituents in a highly safe seat, or if constituents in a traditionally Labour seat took a different view from those in a traditionally Conservative seat. Different standards might unwittingly be applied.

Q502 **Chair:** I get that, but the Government's position in November last year, as I understand it, was that we should be bringing forward proposals, based on either hours or salary. That's not the Government's position anymore, is it?

Mark Spencer: We acknowledge that that is difficult to define. If you write those definitions down, there will always be examples where that is wrong or difficult to define. In general terms, again to go back to the seven principles, your primary focus should be that as an MP. That is where your efforts should be focused, but there is capacity to do other bits and bobs on the side, whether that is leisure, work or charitable activity. That will benefit you as an MP as well.

Q503 **Chair:** I think that means that the Government heartily agree with what we put in our interim report on this matter.

Mark Spencer: I think we are quite close.

Chair: Good!

Q504 **Yvonne Fovargue:** You said that you support the position of training at the beginning and when it could be helpful later on, but that it is up to each political party to consider whether that should be mandatory? There is precedent for mandatory training for MPs, but why is this less important?

Mark Spencer: I don't think it is less important. Clearly, different people will be elected with different skillsets, but I think we could all benefit from training, frankly. I would welcome and encourage more training of MPs and more opportunity to improve themselves, but whether that is mandatory is a different debate. If you force someone to go on a training course that they really do not want to engage with, they will not engage and they will not get anything out of the training.

Michael Ellis: I agree.

Q505 **Yvonne Fovargue:** But does it not emphasise the importance of the training, going on the course? Even if someone does not want to go on to the course, they might learn something from going on it. That has happened in the past with other skills.

Mark Spencer: I think carrot is much better than stick. That is what I would say. If you say to newly elected MPs, "Great opportunity here for training. Come and engage with us. We can help you out, we can help you be a better MP", that is a much better system than saying, "You will turn up at this location, at this moment, and be subject to this."

Michael Ellis: May I add something else? When we did that Valuing Everyone training, I think I am right in saying—I have no doubt I will be



HOUSE OF COMMONS

corrected if I am wrong—that the vast majority did take part in it. In other words, it was not mandatory to take part, but everyone took part. Making it mandatory—

Chair: One or two of the political parties made it mandatory.

Michael Ellis: But it was not mandatory in terms of the House's regulations, which is what the Committee is interested in. That is why I would argue—I think the Leader of the House and I are in the same place here—that it is a party decision and discipline issue.

Mark Spencer: What is the sanction? If you say that it is compulsory training and I do not turn up, what is the sanction? You are into a very difficult area. I think you are much better with carrot here than you are with stick—

Michael Ellis: Especially as it doesn't seem to be necessary.

Mark Spencer: And demonstrating to people that there is a lot to be gained by them personally—it will make them into a better MP if they undergo it and take advantage of the training courses available.

Q506 **Chair:** The advantage of training, if I am right—my guess, although I might be being very unfair to you both, is that it is not in your daily business to read and know every line of the code of conduct, and you probably mugged up a bit before coming here today. I think it is an issue for a lot of us as MPs: you don't really engage with the code until either there is a problem, or you think you might have to do something around it. So, there might be an advantage to more ongoing training, so that people are updated regularly and do not end up inadvertently getting themselves into a mess.

Mark Spencer: Yes. But that should be an invitation, rather than a prescriptive, "You will be at this location at this time."

Q507 **Mrs Tammy Banks:** I have the pleasure of running a national training company, so I have a couple of reflections on your words. First, you said that if people are told to go to training, they will not engage in it. I would argue that that depends on the quality of the trainer, because good training will involve people right from the beginning and meet them where they are at. Taking that away from a decision-making perspective, actually good training will make all the difference.

Secondly, regulatory bodies right across the country, from Ofsted to CQC and the GMC, have mandatory training for exactly the reasons that we are suggesting. You guys have extremely complex and busy lives, and you are prioritising all the time. What comes in front of you might not be the priority of the code of conduct, if it is given to you as an option. However, six months, 12 months or 12 years down the line, when you trip over something that is in the code of conduct that we could have supported you to understand, it leaves you in a really unfair position. From a constituent's perspective, they want to know that you have been given everything possible to support you to be the best MP.



HOUSE OF COMMONS

I know from the training we deliver that is mandatory and from the training we deliver that is optional, 90% of our customers book for mandatory training in the first instance because they have no choice. They book it because it is a tick-box exercise. None of them want to go, but when we get them in there, they absolutely see how it benefits them and their wider community, and then they optionally book on to the next sessions with that carrot, because we have then evidenced to them the difference good training can make. My point is that everybody, from my perspective, when going on training comes with your opinion, but the reality of it is different.

Michael Ellis: Could I just make one point? In the examples you gave, there is a difference because those were, as I understand it, employees working in a company. Members of Parliament are not employees, and therefore the issue of compulsion is different. It is ideologically different, but also conceptually different. The position we would take is that people should go on appropriate courses, but if they were to fail to do so, that should be a matter, if anything, for political parties to consider. The fundamental premise, as we have seen from the Valuing Everyone training, is that just about everyone went on it—there may have been one or two who didn't—when it wasn't mandatory, so making it mandatory would not seem to be a proportionate response.

Chair: It felt mandatory, I think. You could argue that IPSA could say to all Members, "You can't employ anybody with taxpayers' money until you have gone on an employment training course."

Michael Ellis: Oh, I'm not saying it wouldn't be technically possible to make people—

Chair: No, but I'm saying it might be advisable.

Q508 **Mrs Tammy Banks:** You could argue that you should be more held to account and more supported because you are not employees. You have been elected on behalf of the constituents. Whenever I hear that, "Oh, but we're not employees," I see it as the exact opposite and why there should be more in place to support you, guide you and help you to stay on the line of meeting the code of conduct.

Mark Spencer: But there are huge windows of opportunity. When you are newly elected, you are very keen to engage. We can make the most of those windows of opportunity to encourage people to participate, and I think you will get quite a positive response to that.

Chair: Okay. I am keen, if I can, to wind up in the next 10 minutes or so. Sorry. Alberto.

Q509 **Alberto Costa:** I have long argued that we should be enhancing the disciplinary structure function of this Committee by having an appropriate appellate body. As you know, the Committee instructed a former judge to opine on the matter. He has put a series of recommendations to us, which is broadly that we keep in place the work that the Commissioner does but rather than calling the Commissioner's judgment "a decision",



we call her judgment “an opinion”.

The opinion, if it is on a more serious matter that is not capable of being rectified, comes before this Committee as a committee of first instance—a court of first instance—and then we have an appropriate appellate system above this Committee. What has been suggested is that the appellate system is the IEP, given that the IEP is currently in situ in respect of a series of other themed disciplinary issues. What do the Government think about the IEP being the most appropriate appellate body for the non-bullying, sexual discrimination and sexual harassment matters?

Mark Spencer: There is a lot in that report that is very positive. I think he has clearly given a lot of thought to this, and I think we are supportive of the vast majority of it. It is clearly going in the right direction. What is fundamentally important is that those people who are victims, and those people who are going through the process of being accused of something, have confidence in the system. Introducing that sort of appeal process, whatever model you come up with, will give confidence to both sides of the system that it will be fair, open and transparent, and give rise to natural justice.

Q510 **Alberto Costa:** So if the Committee does recommend the IEP as the appellate body, would the Government support that?

Mark Spencer: I would be very interested to see what you come forward with, but I think that type of model is definitely going in the right direction.

Michael Ellis: You might expect me to say this as a barrister and former Attorney General: I strongly support the idea of an appeals process. That is in accordance with the interests of natural justice and is appropriate in all circumstances. It would give confidence to both sides in a dispute. The process in itself is inherently adversarial, and one has to be particularly careful to have processes in place that allow for rectification or remedy. I think I am right in saying that the Lords have such a process. In that way, it is something that we certainly await with interest.

Mark Spencer: The only slight difference, I suppose, is at the end of the process. Clearly with the IEP, you are investigating very sensitive cases of sexual harassment, where the victim would not want to be named, and I wholly respect that. I suppose in the cases that we are talking about here, there would be the opportunity for the House of Commons to debate the motion, which would be a fundamental difference.

Q511 **Alberto Costa:** That pre-empts another question: if we do move to an IEP system of appeals for the Standards Committee process, would the Government agree that any motion on the Floor—for example, to suspend the Member—should be taken forthwith and without amendment, as in ICGS cases?

Mark Spencer: There is an argument to say that it should still be debatable. You’re talking about a sanction that could lead to the end of someone’s career—to recall. Most of the time the House of Commons has



HOUSE OF COMMONS

got this right, and where those matters have been debated, they have been quite short debates. There is an argument to say that they should be debatable, rather than put forthwith.

Michael Ellis: I agree. After all, one could turn the argument that has been put to us in certain other aspects of this meeting back to this point: what is there to hide? Why should the House be forbidden to debate the matter? What I would also say, with some emphasis, is that if one was creating an appeal process, one should be very careful not to make our processes justiciable in the sense that it would become outwith—

Q512 **Chair:** You're not suggesting we are, are you?

Michael Ellis: No, I am suggesting the opposite.

Q513 **Chair:** You are not suggesting that proposals from Sir Ernest Ryder would make it justiciable?

Michael Ellis: No, the Government is not suggesting that, but we wait to hear with interest what this Committee comes up with. The reality of the matter is—

Q514 **Chair:** I don't think we are going to diverge very far from Sir Ernest's proposals, so it would be quite helpful if you could be a bit more categorical about whether you support them or not.

Mark Spencer: Let me be categorical. I think that, yes, we support pretty much most of what Sir Ernest Ryder—

Chair: And the only bit is about the last element.

Mark Spencer: Yes—whether that is debatable.

Chair: The argument is whether it is due process really. We've got a lot of due process, and then suddenly we go into party political debate in the Chamber.

Mark Spencer: Oh no, I don't think that is true, actually. If you look at the majority of previous cases, there haven't been those cheap political points scored in those moments.

Chair: The last year would beg to differ, I think.

Mark Spencer: I think there is one example of where that is not true, but that is because there was not an appeal process, and that was driving lots of that debate. I think you are going to rectify that with this review and that will lead to a much better position. I think the House normally gets this stuff right.

Q515 **Chair:** It didn't then, did it?

Mark Spencer: No, because there wasn't an appeal system.

Chair: Oh, come, come.

Mark Spencer: I think that, now, you are putting that right.



HOUSE OF COMMONS

Q516 **Chair:** Come, come. What, so you're now defending Owen Paterson again?

Mark Spencer: No, what I am saying is that to establish natural justice—I think Sir Ernest Ryder supports this—there needs to be a transparent system where there is the ability to appeal a decision. I think you have got to the right place on that and I celebrate and commend you for doing that.

Michael Ellis: We have supported the principle, as I have said, of a right to appeal.

Chair: Sir Bernard.

Sir Bernard Jenkin: The Leader of the House has just made the point that he might have made in answer to my question, so I'll pass.

Chair: Okay, we have one final question, I think. Mehmuda.

Q517 **Mehmuda Mian:** In your letter, you express concern about the provision for a Member who cannot be present for the whole case not to take any further part in it. Could you expand on that? What specifically are you concerned about?

Mark Spencer: Clearly, Members of Parliament have a huge number of responsibilities. If that meeting were to clash with another very important meeting, it would be poor form, actually, if they were ruled out of taking part in any form of that process from then on. I think there just needs to be that little bit of flexibility, and recognition that lots of important things are going on in an MP's life. Just for missing the first meeting, precluding them from the whole process is, I think, a little bit mean. I think there needs to be a bit of flexibility, and recognition that something may come up that is very important and that is unavoidable. I don't necessarily control my diary. The Chamber might control my diary. There may well be the necessity of making a business statement. That is unavoidable for me; I have to do that at that moment. If I am due in front of that Committee at the same time, I have no choice but to go to the House of Commons Chamber and do that job. That should not preclude me from taking part in the rest of the process.

Michael Ellis: Also, for example, a Member of Parliament might have the Prime Minister or the Leader of the Opposition visiting their constituency on a given day, which clashes with the Committee. Other members of the Committee will not have that issue, so they can all attend. But that visit might have been a huge deal in that person's constituency—it has been weeks or months in the planning and hundreds of people are waiting for the Member of Parliament. Or it could be a royal visit, or something of that sort. It could be any number of things, any number of pressures on a Member of Parliament, that mean that they are absent on a particular day. But that doesn't—it shouldn't exclude them.

Q518 **Chair:** It would exclude a juror, wouldn't it?

Michael Ellis: That would depend on the facts and circumstances, but it certainly—*[Interruption.]*



HOUSE OF COMMONS

Chair: Will somebody switch that phone off? Sorry. It would preclude them, wouldn't it?

Mark Spencer: It must not be used as a loophole. What you can't do is miss six meetings and then rock up at the end and say, "I want to engage in this process," having missed those meetings. But I think there just needs to be that bit of flexibility and common sense applied to the fact that—

Q519 **Chair:** We have tended to have a self-denying ordinance that if you have had to miss something, you then don't really take part. Or you might be there but not vote or whatever. We try to do things without votes. Anyway, I think you have—

Mark Spencer: But the Committee would acknowledge that the number of MPs who don't participate in a debate and then still vote on that matter is definitely the majority.

Q520 **Chair:** In the House, yes, but here, we try not to do that. We try very hard, because I think it is better due process—

Mark Spencer: Your attendance and engagement should be a huge priority in your political life, if you are engaged in this process. All I am saying to you is that I don't think that it should be wholly prescriptive that if you miss the first meeting, you are excluded. I am just saying there may be an occasion when missing it is unavoidable.

Michael Ellis: It should be very strict but not compulsory.

Q521 **Chair:** One very final question, then. How do you think the House is doing in relation to standards and public confidence in standards in Parliament at the moment?

Mark Spencer: I think we are in a reasonable place. It is always possible to criticise MPs; MPs will always be criticised. If you go back to the start of my political career in 2010, you see that we are actually in a better place than the previous intake found themselves in, in terms of expenses. But "Politician gets criticised" should not be a revelation to us; that is part of the job to a certain extent. You are going to be criticised when you put your head above the parapet and stand for public office. We need to be robust enough and grown up enough to understand that will happen, but that should not stop us trying to improve standards and transparency, and I think the work the Committee is doing is a huge step in that direction.

Q522 **Chair:** Mr Ellis, you don't need to say anything more if you don't want to.

Michael Ellis: No, I agree.

Chair: There we are—lovely—the Government agrees with itself. Thank you very much. I am sorry we have taken up so much of your time. We are very grateful to you for today. Leader of the House, we will probably be seeing you again fairly soon because we may well be producing another report soon on something else, and obviously the ongoing discussion about transparency is an important one to all of us.



HOUSE OF COMMONS

Mark Spencer: Well, I am happy to engage. Again, I compliment you for the work you are doing.

Chair: Thank you very much.