

Committee on Standards

Oral evidence: Code of Conduct, HC 671

Tuesday 24 November 2020

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Members present: Chris Bryant (Chair); Mrs Tammy Banks (Lay Member); Mrs Jane Burgess (Lay Member); Andy Carter; Alberto Costa; Mrs Rita Dexter (Lay Member); Sir Bernard Jenkin; Professor Michael Maguire (Lay Member); Anne McLaughlin; Dr Arun Midha (Lay Member); Mr Paul Thorogood (Lay Member).

Questions 34-68

Witnesses

I: Lord Evans of Weardale, Chair, Committee on Standards in Public Life, and Dr Jane Martin CBE, Member, Committee on Standards in Public Life.

Written evidence from witnesses:

- [Lord Evans](#)

Examination of witnesses

Witnesses: Lord Evans of Weardale and Dr Jane Martin CBE.

Chair: Today is a great opportunity in our inquiry into the Code of Conduct and a full review of every element. We have before us two excellent witnesses, Lord Evans and Dr Martin from the Committee on Standards in Public Life. We noticed that you were in the news over the weekend, so you may have some views to share with us. This is a deliberative process and we look forward to hearing what you have to say.

We are a mix of lay members and Members of the House of Commons. We are scattered around the kingdom, as indeed are you.

Q34 **Andy Carter:** In your written evidence, your Committee states that codes of conduct should elaborate on the Seven Principles of Public Life and translate them into enforceable practices specific to each organisation. Should the Code of Conduct enforce only rules, or should it enforce principles, too?

Lord Evans: Thank you for giving us the opportunity to give evidence on this issue, in which we are very interested. We very much support the need for regular reviews of codes of conduct.

The general approach that the Committee has taken over the years, which I fully support, is that the principles of public life—the so-called Nolan principles—are high-level statements of the overall direction in adhering to standards in public life. The benefit is that they stand the test of time—it is 25 years since they were formally articulated in Lord Nolan's first report, and they are unchanged over that period: to a large extent, they are timeless principles.

Our concern about trying to enforce principles is that they are very high level, and that to make them real in any environment it is important that they are interpreted for a code of conduct. Any organisation or institution has a particular set of challenges and a particular environment, which is why we have always taken the principles as the lodestone while interpreting them for the local environment in a way that is clear and straightforward and fits the local context.

We say that there should be a code of conduct and that as far as possible it should be specific. It should be in line with the principles of public life, which are quite difficult to enforce as rules. How do you enforce leadership or selflessness? It is quite difficult, so we feel that it is best given a hard edge through codes of conduct.

Dr Martin: Lord Evans has set out the Committee's view, and that is right, but it might be worth adding that codes of conduct across the piece can look and feel a bit different. Some of the codes will try to unpack with relevant examples of where principles are put into practice, either in the code or in guidance.



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As a former ombudsman, it reminds me of when people asked me whether there is a definition of maladministration, and I am sure that you are all aware that there isn't. It is upheld through administrative law and cases.

To back up what Lord Evans said, it is worth reminding ourselves that these things develop through practice, and that helps us to enforce as far as possible through certain examples.

- Q35 **Andy Carter:** The Standards Commissioner looks at the actions of MPs, should they need to be investigated. Should the Commissioner be able directly to investigate alleged breaches of the Seven Principles?

Lord Evans: I have reservations about that, because some of them are at a high level. How do you investigate an alleged breach of leadership? It is an important principle, but how it applies at a local level is quite complex. I would be a little unsure about whether it is sensible to see the Seven Principles as enforceable in their own right, and whether any breaches, irrespective of any subsequent interpretation according to a localised code, would be helpful. The danger is that it would encourage politically motivated allegations. It is difficult to defend yourself if someone says, "You're not demonstrating selflessness." How do you defend that?

I would be slightly worried that it would encourage misuse of the process. The clarity that is lent by a specific code seems easier to use than what are rightly high-level principles. We have always encouraged all institutions in public life to have codes that interpret their particular circumstances.

Dr Martin: Wherever possible, perhaps in the work the Commissioner does, reference to the codes will always be helpful because it helps to reinforce them.

- Q36 **Chair:** MPs have a catch-all phrase of not being allowed to bring the House into disrepute. The phrase is used by lot of organisations, including most political parties. Is it useful, or does it fall foul of your point about people bringing vexatious complaints?

Lord Evans: It is a bit like, in the House of Lords, not acting on honour, which has to be interpreted and is probably more difficult to explain to a lay person than "bringing into disrepute". Many organisations have that, and it must be applied with judgment.

There are a number of areas where acting reasonably—a rather similar concept—is part of the responsibility. The Standards Commissioner must make those judgments, but as far as possible you should read down wide principles into something more specific. I can understand that where you are particularly worried about the reputation of an organisation you probably need something that does not say, "These are the 63 things you aren't allowed to do because it might be damaging reputationally." I don't think you can get entirely away from judgment—that is just how it is—but as far as possible the clearer and more explicit the rules the easier it is to come to a clear and indisputable judgment.



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- Q37 **Chair:** Most common law developed by precedents being set in lots of cases. There is no definition in statute law of adultery, but adultery is understood in the courts because cases have been heard over the centuries. Our problem is that we do not have enough cases to build a body of case law. Is that fair, or am I dealing in too much parliamentary exceptionalism?

Lord Evans: It is interesting—I had not thought of it in comparison with the development of common law. If you have not had a lot of cases that is a good thing. Over time, there will be understood norms from adjudicated cases, but you are to a large extent dependent on the judgment and good sense of the Parliamentary Commissioner for Standards. I suspect that Jane, with her ombudsman background, might have some useful insights.

Dr Martin: This is the point I was trying to make earlier in relation to maladministration. You are quite right: we have over 25 years of cases that the courts have upheld.

To analyse and quantify disrepute is probably almost impossible, but we need to know what we think. We need to know how we do things around here. What are our benchmarks?

The point about developing case law is important, which is why it is good that we are moving on to that territory.

- Q38 **Sir Bernard Jenkin:** On the broader question of how the Seven Principles of Public Life apply, is it possible for someone to be an effective leader in our constituencies, in Parliament and in the country unless they are respected for their consistent application of values and principles?

Lord Evans: It is tempting to say, “Look at what is happening on the other side of the Atlantic.” The current President’s approach, from traditional perspectives, is rather eccentric and certainly a long way from what people have traditionally expected. Almost 50% of the American electorate seemed to think he is a successful leader.

It is tricky. Having said that, in our context one hopes and believes that, in the longer term, people’s adherence to high standards will ultimately affect their ability to persuade the electorate. If an MP is behaving in a way that does not adhere to high standards, one hopes the local electorate will take that into consideration when making their judgment. Our system does depend on the electorate deciding that this does matter, so in that sense they are connected.

- Q39 **Sir Bernard Jenkin:** The problem with our code is that there is an awful lot of wariness about falling foul of rules but little engagement with the idea of living principles and values as part of a route to being compliant.

We have cases in which people don’t quite get it. They think they’re complying with the rules, but the greatest failure in recent times was the expenses fiasco, to which the lamest defence was, “It was within the rules”, because the whole system had fallen foul.



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How do we bridge the gulf so that those whom we are seeking to regulate with the code engage with the principles and values at the top of the code, as opposed to engaging just with the rules? How do we deal with that lack of engagement?

Lord Evans: This is a real issue not just in the political sphere but in all parts of life, including in the business world. One aspires to more than just a compliance culture and wants positive engagement with values.

I welcome the Valuing Everyone training, which everyone in the Lords now has to undertake and is being encouraged in the Commons, as a way of getting people to think about and discuss these things and for them to be part of the conversation. What is sometimes called ethical buoyancy comes from people talking about the issues and recognising them as part of the discussion.

We welcome the inclusion of standards issues in the induction programme for new MPs after the last election. It was a short session, but it started to get the conversation going, rather than just saying "These are the rules", and trying to widen that.

This is a leadership issue. One hopes that anyone established in either House would talk about these things so that they are part of the common dialogue around how we best do these jobs. That is an aspiration.

Q40 **Sir Bernard Jenkin:** It is an aspiration that I share, but at present there is probably a widening gulf between the way in which politics is practised and learned by political activists and party professionals as they come up the career chain and the rather po-faced conversation that we have about values and principles, which does not dominate newspaper headlines and is not talked about in the pubs.

In some respects, this is getting worse because of a brutalisation of politics, a more populist politics. What is the answer, unless the values we are trying to promote are more aligned or more obvious? A lot of Americans seem to like President Trump's values. It is no good saying that he has the wrong values if people vote for him. How do we square that circle in our own situation?

Dr Martin: I completely understand the point. It is a difficult one. As you say, po-faced conversations are not necessarily the way forward. We can use two analogies. One is that, in organisational terms, it is very often the case that an organisation will look at its culture. There is a lot of literature about culture change. One may or may not agree with all that, but those are signals within an organisation—whether we are talking about the Government, the House of Commons or a political party. Secondly, a lot of organisations have looked at "the way things are done around here" to make sure that they have a shared understanding about how things are done. Finally, it could be a sporting analogy, although you have made the point that we are trying to get away from a bunch of rules. None the less, if you are in the game, you have a sense of what you are trying to do and how you are trying to do it, and where the rules impinge on how you do



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things. It is those types of conversations. You are looking at the Code of Conduct for Members of Parliament, and even the ways in which that is presented to develop a discourse, which is around values and principles. I know that that is easy for me to say and difficult to do. I am not trying to be motherhood and apple pie about this, but if we start to do that we can do so in a way that underlines how our parliamentary democracy works. Again, I recognise that it is not the easiest thing to do, but it is worth saying.

- Q41 **Chair:** Oddly, I wonder whether we have had a specific problem in the past few years because sudden general elections mean that people get selected as candidates without much due process. On all sides it happens fairly suddenly and people end up in Parliament who were not necessarily thinking that they would be elected just four weeks earlier. If you look at the number of cases we have had on both sides of the House, that has sometimes been the case. I want to ask you about one of your proposals. You propose barring MPs from being paid parliamentary advisers or strategists. Can you explain your reasoning behind that and how you think it might work?

Lord Evans: Direct paid advocacy has not been permitted for many years, although it was at one stage. The Commons is unusual compared with a number of other bodies in still allowing parliamentary advice to be provided commercially for particular clients. That is not the case in the Lords, nor in some of the devolved assemblies. The question here is whether the person in the street who is interested in these issues would think that it was fair for a Member of Parliament to give an advantage to particular interests on how they could take forward their agenda in Parliament, even if it is not through direct advocacy. Our feeling was that that was not why people got elected to Parliament and was not what their constituents elected them to do. Therefore, it would make sense for the rules in the Commons to be aligned with the rules that have become the norm in other democratic or legislative assemblies in the UK.

- Q42 **Chair:** But there are Members of the House of Lords who are directors of companies. One presumes that one of the reasons why they have been appointed as directors is that they will provide advice on how the political world works.

Lord Evans: There is a difference between the rules in the Lords and in the Commons on this point. Providing specific advice on parliamentary strategy is not permitted under the rules in the Lords. What advice Lords are invited to give to companies would have to be looked at case by case. I am an adviser to a number of companies and no one has ever asked me to provide political advice. Of course, the situation in the Lords as regards external interests is slightly different from that in the Commons, so the rules and the investigations based on those rules are different as between the Commons and the Lords.

Dr Martin: I would only add that the point is about being paid, is it not? It is about safeguarding against our elected representatives being open to corruption and undue influence, as well as the point about lobbying. I



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think that the two go together. The point about being paid applies to other conflicts, and when we discussed outside interests in the Committee it seemed to us that there was a gap, or a loophole, in the rules. It shows up the limitations of rules, but in the current context it seemed to be something that we should recommend.

- Q43 **Alberto Costa:** Lord Evans, you said that your reasoning is that you would not want Members of Parliament to give an advantage in terms of parliamentary process. Let us think about television dramas, for example. There are some television dramas where political advice has been given by Members of Parliament. We are all the richer for those political dramas that we have watched over the past few decades. I am a lawyer by trade, and there are many instances in which lawyers give strategic advice to clients, but it in no way impacts on the day-to-day work of a parliamentarian. Are you also suggesting that both those examples should be excluded?

Lord Evans: On the media example, are you talking about someone giving advice to a media company so that they can express in dramatic terms—

- Q44 **Alberto Costa:** Yes. It is not uncommon for Members of Parliament to act as political advisers to production companies for either documentary or fiction programmes.

Lord Evans: What the recommendation said was that things like presentations at conferences, explaining how the system works, is one thing and is probably overall a public good. Private advice to companies, specifically on how best to approach the parliamentary process to take forward their interests, would be seen slightly differently. Exactly how you cast that will be for consideration by the Committee. The view of my Committee has been that specific strategic advice on the handling of Parliament which focuses, in return for money, on one company is out of line with best practice in other political assemblies.

- Q45 **Mrs Burgess:** Good morning. I am Jane Burgess, one of the lay members. In some ways, my question is linked to what we have been discussing. This conversation has been going on for the whole four and a half years that I have been a member of the Committee on Standards. Your continuing view is that a provision should be added to restrict outside activities that MPs might take on board, within reasonable limits that would not prevent them from carrying out their full range of duties. One of the important things about codes of conduct and rules is the ability to implement them. I would be interested to understand how you think such a provision could be implemented in practice. Secondly, what criteria would you use to assess whether outside activities were impacting on an MP's ability to do his or her job?

Lord Evans: This comes from a report that we did a couple of years ago—before my time, although obviously I am familiar with it. It is a very difficult area because there are strong views on different sides. There are those who feel that MPs should have no other interests, that they have a job and should get on with it. There are others who think it is important in



terms of people being able to go back to other careers—for example, if they were a nurse and there were continuing professional development requirements and they would not otherwise be able to return to that profession when they stopped being an MP. It is not an easy one. It would be fair to say that, when my Committee considered this, it wondered about the extent to which it could be defined: for example, would more than X hours a week be excessive? But if one did that, one would end up with lots of cliff edges. It would be difficult to say that seven hours was all right, but eight hours was too much. The conclusion of the Committee at that stage was that one cannot lay down tight, specific compliance rules. One would need to take it in context in terms of the overall picture and ask, “What is reasonable?” The key issue is this: given the amount of time, the sort of advice being sought, and any other responsibilities of that MP, is it possible for them to do their job on behalf of their constituents fully and effectively and also to undertake those external interests? We recognise that, in doing that, we are not defining an absolutely clear line. A degree of judgment will be applied. That is why you have the Parliamentary Commissioner for Standards. Their judgment will have to be applied as to whether it is reasonable or not. A key element will be the amount of time it takes. If it is grossly disproportionate in terms of the money and therefore you think, “This will affect wider judgments”, or the form of work would start to impinge on other responsibilities—all those things would need to be taken into consideration.

Dr Martin: I would only add that the Committee would have some sympathy with your question. We had many conversations about this in order to get a balanced view. At the end of the day, it is a case of saying, “In the light of what the public expect, could we start to put some figures around this?” Maybe we could, and maybe we should, but that would be a matter for you as parliamentarians to consider. I would only emphasise the point about the consequences of outside interests as well as the transparency. Lord Evans has already made that point. Members are entitled to make judgments about these things and how it impacts on their role as MPs, or indeed Ministers.

Chair: Speaking as an MP, the biggest difficulty is that I am painfully aware how different my constituency is from Cardiff Central or Lambeth North or the Vale of Gloucestershire, if there is such a seat. I have next to no immigration cases and I have no housing cases, but I have a slew of other cases. How Members conduct their work varies enormously.

We move on to our newest member, Professor Michael Maguire.

- Q46 **Professor Maguire:** Thank you, Chair. Lord Evans and Dr Martin, in your written evidence you proposed that the code should give forthright support to the Commissioner to deter what you call “improper pressure”. What do you mean by improper pressure, because those behaviours are likely to be on the spectrum, some subtle and some not so subtle? Importantly, what additional provisions should there be to support the Commissioner?



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Lord Evans: We maintain a dialogue from time to time with the Parliamentary Commissioner for Standards and our Committee has been dismayed to find that, in the context of certain investigations, the Parliamentary Commissioner and her staff have been subject to abuse – some might even say a degree of intimidation. The role suffers from considerable pressures. That is not necessarily coming directly from Members of Parliament, but from other people who have an interest in the case. While the current Commissioner is someone who is extremely robust, it is obviously unsatisfactory if someone who is in that role is not given enough support to feel that they can do it freely. I am confident that the current Commissioner does do it freely, but it seemed to us important that that role acts in the common good and should be supported by everyone who is involved in a case. We already know that the degree of co-operation given to the Commissioner in particular investigations can be taken into consideration in weighing any consequence. As a declaratory matter, we feel that as far as possible there should be an expectation that people will be supportive of the role and help the Commissioner to undertake this important work. That is not always the case at present.

Q47 **Professor Maguire:** Just to clarify that, do you have any ideas about the additional provisions that you see to support the Commissioner?

Lord Evans: I think this would depend on circumstance, as is often the case. It is not a hard-edged thing, but it is important in terms of the overall culture point that Sir Bernard was making that people should feel that it is their responsibility to uphold the process and support the people who are undertaking difficult jobs for the public, rather than to behave in a less supportive way, which might in turn encourage others to behave in ways that are detrimental to the public interest.

Q48 **Professor Maguire:** Just for clarification, would that include where there is a lack of co-operation or a perception that someone was not treating the process with the respect that they should?

Lord Evans: It is already the case that lack of co-operation can be taken into consideration in the event of an adverse finding, but this would go slightly beyond that. It is more of a cultural point in the way that was discussed previously. Jane has had more involvement in that process, so she may have a contribution.

Dr Martin: I would only amplify the point that this is about establishing new norms. In the light of what we had heard we felt it was worth emphasising the point about trying to establish new norms, and we felt that it would be very good if the Code of Conduct could specifically mention that. With our former ombudsmen hats on, we have seen quite a lot of behaviour from people, whether in favour or not, in complaints to the ombudsman, but over the years we have found ways of dealing with that and of creating a norm that is understood. That is what we are doing here.

Q49 **Professor Maguire:** Thank you, Dr Martin. Perhaps you could give the first answer to my second question. Thinking about your ombudsman



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experience, how can the Commissioner be held effectively to account by fully protecting her independence?

Dr Martin: That is a very good question. Her role must be protected as fully independent. You are right to mention my role as ombudsman. The most important thing was safeguarding the independence of someone making decisions in that way. I do not have anything in particular that I can tell Parliament about how it should secure the independence of its Commissioner, but that is without doubt very important to underpin the whole system. I think I will leave it there.

Lord Evans: It is an issue that arises time and again with any independent post of this sort. We are separately looking at electoral finance regulation and similar issues of governance. Similar issues arise with the Electoral Commission: it is critical that it is independent but equally due accountability must be ensured. In maintaining dialogue, critically important is getting the right person—that is easier to say than always to do, although you have done well on this occasion.

There is no magic answer. There is tension between independence and accountability but maintaining dialogue and ensuring the structures—clarity about why decisions are made—are part of that accountability, but, as Jane says, independence is important.

It is striking that the Commons and the Lords have moved down the route of independence in a number of decisions, and that has been quite transformational over the past 10 or 15 years. One would not want to underestimate the significance of the changes that were made in this and other areas over that period, and there is greater reason for members of the public to be confident than there was a generation ago.

Q50 Chair: A clause in the Code of Conduct states that lobbying a member of the Committee about a specific case is an offence. In our sanctions report we stated that we consider it an aggravating factor when a Member is unco-operative with the Commissioner and her staff.

I feel that we have locked off Members trying to interfere, but I wonder about the public. You, Lord Evans, referred to the public trying to intimidate the Commissioner. Should we not state clearly that we consider that to be a contempt of the House?

Lord Evans: Anything that one can do in that area would be good, but this is a local example of a wider problem, on which the Committee issued a report about three years ago: intimidation in public life. Many people in public life find themselves on the receiving end of abuse and intimidation. It has worsened over the past five or six years. When we took evidence for that report there seemed to be a watershed between 2015 and 2017, when the tone of public discourse really changed.

Part of that is almost certainly the anonymity of social media, where things can be said anonymously that get a lot of support but that in a normal face-to-face situation you would be inhibited in saying. Quite a lot of the abuse and intimidation directed at the Commissioner, among



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others, is likely to be anonymous, but again there is the question of trying to establish norms. Anything that is said on this is one tiny brick in what will need to be a big wall if we are to stop anonymous intimidation and abuse, which is deterring people from coming into public life. I have had a number of conversations over the past two years with people who said, "I can't take this any more; I'm not going to stand again" or "I will stand, but I have had a lot of conversations with others who say they will not as they couldn't face what I am facing." That is detrimental to our overall interests as a country.

Dr Martin: I don't want to excuse any bad behaviour, but when you are in that kind of position you get people wanting to express views you would rather not hear. That is getting worse, and I don't want to excuse it.

You need a certain resilience and to be sure-footed. The Commissioner needs to know that he or she is absolutely supported by the House in their work and that the House has respect for the process around the role.

Q51 **Alberto Costa:** May I turn to how one should determine breaches and impose sanctions? Is there a need for changes in how we determine breaches and impose sanctions?

Is the current process fair to parliamentarians and complainants?

Dr Martin: Everyone involved has to have complete confidence in the process; otherwise it starts to undermine the whole house of cards.

I am aware from conversations in the Committee that we must be mindful of the political environment in which we operate. The rules, impositions and sanctions one would expect in other institutions must respect the sovereignty and legitimacy of elected representatives, political parties and the like, and of course of Parliament itself. It is a fine line.

I am not aware of any work that the Committee has done recently in which this has been raised as an issue for us, but we have opened a wider review and we shall look into these things in more detail.

Having recently done a piece of work on local government for the Committee, I know that sanctions and the way in which they can be applied came out as being very important. When you are applying sanctions you are normally talking not about the mass of MPs, councillors and so on, most of whom do a very good job, abide by the rules and behave very well, but about repeat offenders and those who seek to disobey rules and act in a cavalier fashion. We need what are commonly described as teeth to deal with those issues, which can affect the reputation of the whole process.

That is where I am at the moment, but the Committee may be able to say more once we have gone into the next review.

Lord Evans: I shall talk about one bit of the process: the transparency of investigations. There has been a change in the rules over the past two or



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three years and it is no longer publicly stated that a Member is under investigation by the Commissioner.

In one sense you can see the plus side of that. An allegation has been made. It has not been resolved and determined, so is it reasonable for the Member's name to be publicly disclosed? I think that is a good thing.

The paradox is that a number of MPs who are subject to investigation feel they would like that fact to be public, because it demonstrates proper accountability, that there is a process and that it will determine whether the rules were breached.

On the whole, the Committee favours greater transparency. We recognise that it is a nuanced issue—some will feel it is fairer and some that it is less fair. It is at least worth further considering that bit of the process to see whether it would be better to be more transparent about who is being investigated. There are significant benefits as well as potential drawbacks for other cases.

- Q52 **Alberto Costa:** How would you maintain fairness? If it was disclosed that an MP had breached, say, paragraph 13 of the code, would it be fair for the MP to be able to opine in the media on whether the complaint was merited? In disclosing that a complaint had been made you might give the media the false impression that it is more serious than the wide nature of the alleged breach merits.

Lord Evans: I entirely understand the dilemma. Saying that a complaint has been made is one thing. The benefit is that it is being independently investigated and adjudicated. I would be slightly uncomfortable about the idea that this can be played out in the media, not least because there is a lack of parity. If there is an allegation against somebody and there is a victim, does that mean that not only does the Member but the victim make a public statement? The whole thing then becomes a media trial, which is part of the reason people said, "Let us not have any declaration."

I come back to the point I made previously: a number of Members feel it is unfair they can't say, "Allegations have been made but they are being properly adjudicated. There is a fair, accountable process that will be resolved in due course." There will be an uncomfortable period in between, but that is true of any investigative process, certainly one involving the police. People would welcome things being resolved quickly, but a fair and thorough process cannot necessarily be over in a couple of weeks.

It is a judgment, but the view of the Committee is that on the whole greater transparency is probably beneficial. We do not say that that is self-evidently the case, but it is our preference in this context.

Chair: Rita, you want to ask a question.

- Q53 **Mrs Dexter:** My question arises from the questions that Professor Maguire asked about protecting the Commissioner.



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Lord Evans, you said that the Commissioner should have the support of the House and that that should be declared. I accept that, but it reminds me that one of the strange aspects of the system is that the Commissioner does not have the ability to report directly to Parliament on matters that concern him or her. The voice of the Commissioner is articulated via the Committee. Sometimes that involves negotiation between the Commissioner and the Committee, because if the Commissioner wants something she has to come to the Committee and persuade us it is a good idea, and we then report to the House.

Such an important officeholder should have some independent identity, so that there are divisions between the responsibilities of the Commissioner and of the Committee. The fact that the Commissioner has to go to the Committee if she wants to say something to Parliament strikes me as unsatisfactory for both the Commissioner and the Committee. Have you thought about that or held any view on it?

Lord Evans: The frank answer is that I have not thought about that specifically—we have not taken evidence on the point since I became Chair of the Committee.

I can see that the Committee representing the interests of the wider House may be the route whereby the Commissioner's investigations are channelled back to the wider House. From that point of view, I can see the argument, but I don't think I can help a great deal because I have not thought about this. I would like to hear both sides before coming to a judgment, and I have not. I am slightly at a disadvantage because I do not know the answer.

Dr Martin: I would add only that it is about the sovereignty of Parliament. The Commissioner comes to the Committee so that it is put by the peers to Parliament, and one has to respect that. The role of the Commissioner to have proper checks and balances in proportion so that the whole system is acceptable is understandable.

Lord Evans is right: the Committee hasn't looked at this recently, but it could be looked at to see whether it was desirable, particularly if the Committee and the Commissioner are both finding the system isn't working optimally. I don't think we should go further than that at this stage.

Q54 **Sir Bernard Jenkin:** I should like to pick up on the role of the Commissioner in imposing sanctions. We very much want the Commissioner to be more involved in promoting values and principles and better behaviour and attitudes. Do you think she can combine that role with her policing role?

Dr Martin: I am happy to respond because it reminds me so much of the way in which many ombudsmen work. Absolutely, it could be possible. Clearly, it is a matter for the Commissioner and for you and the House, but as you are asking our view I certainly say that, yes, it is.



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Given the discussion we have been having, particularly around culture and norms, it is important to play back from the Commissioner what she is finding from the cases that come to her and to reinforce the behaviours she expects. That is done routinely without most ombudsman schemes, and there is a parallel there.

Lord Evans: Quite a lot of regulators have an enforcement aspect to their role and a wider, ongoing regulatory one that they combine. They carefully ensure a firewall, but it does not appear impossible to combine.

- Q55 **Sir Bernard Jenkin:** We are looking at an appeal process. It is invidious for MPs to be asked to adjudicate on their own colleagues. It was evident from the birth of the ICGS scheme that not many people outside the House of Commons had much faith in the objectivity of MPs to adjudicate on ourselves.

Do you think we have much to learn from the establishment of the independent panel?

Lord Evans: Bringing greater independence into the process—checks and balances—is attractive. We have not taken a close look at the exact wiring of that.

The process in one or two recent cases in the Lords was not perceived to have been fair to the victim. It became a personalised discussion about the peer under investigation. The benefit of the system that has now been introduced is that it avoids that. I absolutely agree that deciding these things on the Floor of the House does not command great confidence that it is a fully independent and fact-based process.

I would need to give careful thought to equivalence with the IGCS process, but greater independence is on the whole more likely to command confidence among the public and complainants. We must think carefully about the fact that, depending on the complaint, there are sometimes direct victims who need to be seen as part of the process.

- Q56 **Sir Bernard Jenkin:** The IEP could become our appeal mechanism.

Lord Evans: It sounds attractive. I would want to understand exactly the wiring of that.

Chair: It was general revulsion in the Commons about the case in the House of Lords that led us to decide that we would not have debates on the Floor of the House but would simply move to a vote, if necessary, on an Independent Expert Panel decision. If anything that I have seen in the past couple of years has brought Parliament into disrepute, it was that process—not that we in the Commons would ever want to criticise those in the Lords.

- Q57 **Dr Midha:** I want to hear your views on equality and diversity. As you know, the Black Lives Matter movement and other tragic events have brought to the fore issues of equality and diversity and, most importantly, racism in our society. As you know, the Seven Principles are



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reflected in the parliamentary code and have stood the test of time, but do you have a view on how the House's commitment to tackling racism and discrimination could be incorporated into the code? For example, do you think that now is the time to introduce an additional principle that more explicitly expresses issues of diversity, equality and inclusion within a specific descriptor to get the message home?

Lord Evans: The Committee has always taken the view that the objectivity principle would easily read out into anti-racism and anti-discrimination. I have no problem personally with those being specifically highlighted, particularly given levels of public concern on these issues in recent years. I certainly do not think there would be a problem with being explicit about that. It is not in conflict with the Seven Principles, although they do not specifically use those words. In our internal discussions, we have considered whether the Seven Principles, now that they are 25 years old, cover all the areas in which the public would expect particular behaviours. There is no conflict between that and the Seven Principles, and I can see that it may be useful within the context of Parliament for those principles to be articulated alongside the principles of public life.

Dr Martin: I do not have much to add, except to say that I have just mentioned our Standards Matters 2 review. We will absolutely pick this up in that review, mindful of recent events and discourse.

Q58 **Dr Midha:** A second and more general question: how can the public and Members have confidence in the code and the process? How can it be improved?

Lord Evans: What is critical is seeing it work, explaining it and demonstrating that it is independent. It is interesting that in the period after the expenses scandal, that has gone away as a problem because the people who are interested in it recognise that these issues are now handled independently. Although it has been a slightly bumpy ride, as an issue of public concern it has been dealt with, and one hopes it does not return. Being able to point to a robust, independent and effective process that actually delivers is the key here. The more that that can be pointed out, and the more that you can see that areas of public concern are being properly addressed and are not being left hanging unresolved, is the way to show people that this is okay and is being sorted out. There will always be complaints and concerns, and those will move on over time, but the question is whether people have confidence that there is a way of independently investigating and properly resolving them so that people can say, "We have dealt with that and we can attend to something else."

Dr Martin: Obviously, the promotion of the code and its values and principles is the responsibility of everyone in the House, so that point needs to be taken on board. From my long experience of dealing with complaints, I know that no one likes complaints. Complainants do not like bringing them, and those who are being complained about do not like it either, but it is important for transparency in our parliamentary democracy to be bold and recognise that this is a good thing, while also recognising



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the political and media implications of it all. The more that we see it work, the more public trust we will generate.

Chair: We have one final area, which relates to the way in which our various codes affecting politicians interact with each other. Would you like to kick off on this, Bernard?

- Q59 **Sir Bernard Jenkin:** There is real confusion in the public's mind, which is reflected in the fact that when, for example, there is some controversy about a Minister which might be adjudicated by the Ministerial Code, the public not unnaturally complain to the Parliamentary Commissioner for Standards and expect her to adjudicate on it. Even though the Minister might be a Member of the House of Commons, in order to avoid this double jeopardy question, there is a complete Chinese wall between the jurisdiction of the two codes. How much do you think this commands public confidence?

Lord Evans: I think there is a problem here and I have said so publicly, although not specifically around the interplay between the Commons code and the Ministerial Code. The Ministerial Code does not have the same independent process that supports the Commons code. That issue has been overtaken, in a sense. A few years ago that was how these things were dealt with, but increasingly in the Commons and Lords and elsewhere a strong independent element has been introduced. There is a mismatch in the expectations of what you can deliver from the Commons and what you get from the Ministerial Code. That is the context of this.

We intend to take evidence on this question of the Ministerial Code and the system of supporting it. We have made recommendations that were not all adopted by previous Governments. We have not yet taken that evidence, so I would be reluctant to express a conclusion. One of the issues is how the Commons code and the Ministerial Code interrelate. The Ministerial Code is a strange thing, because it is a mixture of ethical standards and a handbook for running a Cabinet Government. It has to do with collective responsibility, and so on. Those are clearly areas that have to do with the role of the Minister and do not cause difficulty in the overlap between the codes. But there are others that are closer to being covered by both, and that is one of the issues we would like to look at. But I would rather not be drawn on what I think the answer is until we have gone through the process.

- Q60 **Chair:** Could you be drawn a bit more on what you think the problem is?

Lord Evans: On the Ministerial Code in general?

Chair: Yes.

Lord Evans: I have already expressed this publicly. In relation to the process for the response to allegations or concerns in the Ministerial Code, there has been—and hopefully will be again shortly—an independent adviser on ministerial interests. The investigation of these issues rests with that independent adviser, but the triggering of an investigation is at the sole discretion of the Prime Minister. The danger is that issues of



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public concern are left unresolved because the investigation has not been triggered. Then the decision on what action to take also rests entirely with the Prime Minister. At one level that makes sense, given that it is the Prime Minister who is the leader of the Government, but on the other hand, in the same way as adjudicating those issues in the Commons or the Lords looks as though you are marking your own homework, the same concern could be expressed about the way in which the Ministerial Code works. The independent elements that exist in the Commons system now, and which have more recently been introduced into the Lords system, do not apply in the Ministerial Code. There is a question to be asked as to whether there should be more independence and whether the investigative element should be triggered independently. Then there is the separate, but parallel, issue of what the response to the investigation should be. Those are both questions where the current arrangements are different from, and arguably less independent than, the arrangements for MPs and Members of the House of Lords.

Chair: Dr Martin, do you want to add to that?

Dr Martin: I have nothing to add, thank you.

- Q61 **Sir Bernard Jenkin:** It feels as though Back-Bench Members of Parliament and Opposition Front-Bench Members are judged by different criteria from Ministers. One example given to us related to hospitality. If a Minister accepts hospitality as part of his ministerial responsibilities, no declaration is required in the Register of Members' Interests. But if an Opposition Front-Bench spokesman accepts the same hospitality, that has to be declared. In the case of a Minister's decision coming under scrutiny because of proximity of social contact with an interested party, that would be much more heavily frowned upon – it would be paid advocacy in our rules – yet if hospitality was accepted by a Minister, he or she would be somehow immune to that charge. You can all speculate about what case I have in mind. Most recently, bullying and harassment by a Member of Parliament would be dealt with under the ICGS scheme very differently from the way in which the Ministerial Code would deal with it. That is not to say that an unintentional breach of the code should have resulted in the resignation of the Home Secretary in this case. I make no judgment about that—I personally think that there were mitigating circumstances—but how should these things be drawn together?

Lord Evans: This may be something that we look at in our next inquiry, but it is hard to understand why you should have different standards between the two codes. If you are drafting a Ministerial Code and a Code of Conduct for MPs, they should both be on the table in front of you and, unless there is a very good reason, where there are similar issues you should come to the same judgment about what the codes should say. I agree with you: it looks inconsistent and I do not understand why you would have different rules on hospitality for MPs as opposed to Ministers. I would have thought that the issues are the same. From that point of view, the same would apply to bullying. If bullying is treated in one way for MPs in their parliamentary role, why would you want to handle it differently in their ministerial role? Logic would suggest that you should have



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consistency, unless there is a good reason and you can explain why it needs to be handled differently. At the moment, it is not clear to me that there is a real reason for it, as opposed to things just drifting apart over time.

- Q62 **Sir Bernard Jenkin:** Did you not touch upon it earlier when you talked about the Prime Minister being responsible for the Government? If the Code of Conduct in the House of Commons results in the suspension of a Member, it might require the resignation of a Minister. But that would be a consequence, if not a direct consequence, and it would not be a requirement for the Prime Minister to ask for that Minister's resignation. Ultimately, the Prime Minister is responsible to Parliament for who is in his Government, and Parliament can pass a vote of no confidence in the Minister. If Parliament is not prepared to do that, why should the Prime Minister have to sack a member of the Government because they had breached the Ministerial Code? He has this dual accountability for them.

Lord Evans: I am not saying that they should. First, you have the question of what the rules are, and the rules should be consistent, unless there is a reason why they are not consistent. Then there is the question of how you respond and enforce those rules. At the moment it is a binary thing: either you get virtually nothing or you have to resign. Perhaps there should be a wider range of sanctions, so that if you have a minor breach something else can be done—in the same way as happens in the Commons. I do not rule that out. It might be sensible to say that there are ways of dealing with breaches of the Ministerial Code other than resignation.

- Q63 **Sir Bernard Jenkin:** The way in which I read the recent report from the independent adviser was that he was presenting mitigating circumstances and it would have been possible for the Prime Minister to have accepted the findings of the report but not to have required the resignation of the Home Secretary. Would that have been possible under the existing Ministerial Code? Should it not be possible?

Lord Evans: I agree with you that it should not necessarily be a requirement that any breach must lead to a resignation. That is why, in our inquiry, we should look at ways in which one can explicitly say that there are alternatives. A minor, or technical, breach—

Sir Bernard Jenkin: Or an unintentional breach.

Lord Evans: Or an unintentional breach. It might be just that, if there is a breach, there is a reprimand but it does not necessarily lead to resignation.

- Q64 **Sir Bernard Jenkin:** Why do you think the Prime Minister insisted that there had not been a breach at all?

Lord Evans: I do not know. I was not consulted by the Prime Minister on that particular matter. What was in the Prime Minister's head, I do not know.

- Q65 **Chair:** May I ask a question of both of you? What is the difference



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between intentional bullying and unintentional bullying?

Lord Evans: Intention.

It is slightly tricky. Bullying is a persistent issue; it is not a one-off. I think the general definition includes the word "repeated". One would expect that most people would recognise if their behaviour was leading to distress in the people with whom they were dealing. I am not close to, and I do not know the facts of, this case. Do I think you can have unintentional bullying? I guess you could, although I should have thought it is quite a rare thing because it has to be persistent and of a certain severity. You would normally expect people to be able to recognise if their behaviour is bullying. It is not impossible to conceive of it, but it would be a rare occurrence.

Q66 **Chair:** One of the key elements of the training programme in Parliament, the Valuing Everyone course, is recognising your own behaviour. By the end of that course, you would normally understand that there is no such thing as a defence of unintentional bullying because by definition you are bullying and consequently you have not understood the effect of your actions and you have been careless or reckless about that. This is why we set up the Independent Expert Panel. I do not want to go on about this too much. I was on television the other day trying to explain to the public the Standards Committee, the Independent Expert Panel and the Ministerial Code, all of which affect MPs. I must have sounded like the stupidest person on earth as far as the public were concerned. It is completely unintelligible. You cannot be a Minister without being a Member of either House. I know that that is not in statute, but in practice it is true. None of this makes sense to the public. In saying that, do I chime a bell with you, or with Dr Martin, or am I being nonsensical?

Dr Martin: You are chiming a bell. I get asked the same questions, although thankfully not on television. The system is complex and I hope that it is something we can look at when we complete our review in the next few months.

Lord Evans: The complexity of the arrangements is, in itself, undesirable because clarity makes it easier for people to comply or, if they have chosen not to comply, it makes it easier to demonstrate where problems have arisen. Complexity in this area is not helpful.

Q67 **Chair:** And to the public, complexity means that MPs get off with stuff.

Lord Evans: Clarity is a benefit for everyone in this area.

Q68 **Sir Bernard Jenkin:** I have one last question. Some people have suggested that the definition of bullying in the Ministerial Code is too dependent upon the perception of the person who feels that they have been bullied. We all know that some people are very robust and will put up a good fight and not be affected by robust behaviour. Other people are much more vulnerable to that kind of behaviour. How do we make sure that anything to do with bullying can be assessed objectively?



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Lord Evans: A lot of standards matters—in one sense, all standards matters—are a question of misuse of power. Although I have no view on the detail of particular cases, the extent of power imbalance is an important issue here. Anybody in public life who is entrusted with power of some sort, whether it is power to make their voice heard or to make decisions, should use that power in the public good. That is why they have been entrusted with it. The same issue applies to bullying. It is a misuse of power in a relationship. The Cabinet Office defines bullying as the impact felt by the victim. That is one way of looking at it. But I come at it in terms of thinking, “What is going on here; is this bullying?” It is a power imbalance being misused. That is an important lens through which to make any judgment. But obviously there needs to be an independent investigative process to apply that.

Chair: We should bring this to a close. As you were speaking, Lord Evans, I was reminded of the lines in “Measure for Measure”, “dress’d in a little brief authority”. In essence, that is all a politician ever is.

Lord Evans: Or a public official.

Chair: Indeed. Many years ago, I was persuaded by the Whips to take part in a debate in which I was not very interested. It was on the creation of Ofcom, which was going to replace five other bodies. I said in the Commons that I thought it was a good idea because it would be much more coherent and consistent and, to use a valleys word, it would be “tidy”. *Hansard* reported it as a “valet’s” word. I know how they got there, in that a valet might tidy up after you, but we do not have many valets in the valleys. I think that what I am hearing from you is that a deal more tidiness would be a good idea. That is one of the things we will explore in detail.

May I express my enormous thanks to Dr Martin and Lord Evans. It has been really helpful. We proceed on the basis of evidence and we are still in the gathering process. We hope that we can continue the ongoing relationship between our Committees because there is a good job of work to be done.