

# Committee on Standards

## Oral evidence: Sanctions, HC 2179

Tuesday 25 June 2019

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Watch the meeting

Members present: Kate Green (Chair); Mrs Tammy Banks (Lay Member); Miss Charmaine Burton (Lay Member); Mrs Rita Dexter (Lay Member); Dr Arun Midha (Lay Member); Bridget Phillipson; Sir Peter Rubin (Lay Member); John Stevenson; Sir Gary Streeter; Mr Paul Thorogood (Lay Member).

Questions 1-50

### Witnesses

I: Ken Gall, President, Trade Union Side, House of Commons, and Dave Penman, General Secretary, FDA.

Written evidence from witnesses:

– [Trade Union Side \(SAN0003\)](#)

## Examination of witnesses

Witnesses: Ken Gall and Dave Penman.

**Q1 Chair:** Welcome to this meeting of the Committee on Standards, in which we are taking evidence for our sanctions inquiry. We are pleased to welcome two witnesses this morning who will give us evidence. Can I start by asking each of you to introduce yourselves for the record?

**Dave Penman:** I am Dave Penman, general secretary of the FDA.

**Ken Gall:** I am Ken Gall, president of the House of Commons Trade Union Side.

**Chair:** Before we open the questions, I declare an interest as a member of the GMB, which I know is one of the unions encompassed by the Trade Union Side that you represent, Ken.

**Bridget Phillipson:** Chair, I am also a member of the GMB.

**Q2 Chair:** Those interests will be noted on the record.

I start by asking you to share with us what your members have told you about their experience of bullying and harassment, including sexual harassment, in the House of Commons. What can you say about the experiences that they have had?

**Dave Penman:** The work of Dame Laura Cox in her report is probably the best summary of our experience, as trade union representatives, of the nature of conduct of both management—bullying is not simply a matter relating to parliamentarians—and the MPs themselves, and also the frustrations around the process and the feeling of inadequacy around challenging behaviour and raising complaints. It was clear to almost everyone that there was no effective process for either independently investigating those or for making meaningful decisions on sanctions. That, in itself, led to a culture where people just put up with behaviour. We all felt that the way that Dame Laura Cox conducted her investigation gave a breadth to that story that we, as individual unions, may have heard parts of, but when we all read it, we all recognised it, because we had been told those stories by individuals.

**Ken Gall:** I would echo that. The anecdotal evidence in the years up to Laura Cox's report meant that a lot of what emerged following its publication was not a huge surprise. What was surprising was seeing it collated in one place and the effect that that actually had. Dave is right: the anecdotal evidence that I had over the years, and the meetings that I had with individuals who had legitimate and entirely valid complaints about behaviour by MPs and by their managers, but who felt unable or unwilling to take those to any kind of formal stage, show a lamentable failure by this organisation for years that we are hopefully—and this is hopefully a part of it—beginning to address now.



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**Q3 Chair:** Are you feeling any sense of change in your members' confidence in the process since the Cox report?

**Ken Gall:** Not so much change. It is too early to say whether there is a change in confidence. I think there is an increasing awareness that the House is in a process of creating a new culture. I do not think that we are at the stage yet in that culture change that would be seen as a change in the confidence of staff. There are almost daily updates on the staff intranet of working groups and proposals and other ongoing matters that are related to Cox, including your own inquiry. I think it is too early to say that there has been a change in confidence.

**Dave Penman:** I would echo that. I think people probably see it as the start of a journey. How that journey has been started has not helped at times. There has been a lot of confusion. We felt that changes were rushed through quite soon after Laura Cox's report. You then essentially had, with the Commission adopting Laura Cox's report, a signal that the procedure was going to change again. Staff are in a state of flux just now, as the six-month review indicated. However, people saying that it is at least the start of a journey is probably the best way to describe it.

**Q4 Chair:** Are you able to say how widespread you think the problem is, and to quantify the balance between complaints against MPs by staff and staff-on-staff or staff-on-management complaints?

**Ken Gall:** From my perspective, a very rough figure—you should not take this as being in any way scientific—would be that 19 out of every 20 would be staff on staff. However, that is only to be expected, because this is an employer. You have 2,500 employees. The culture of reporting an incident between staff is much easier to identify. People are much more aware of what they can and cannot do in an employment context, and are less confident about how to approach a complaint about behaviour by a Member of Parliament. I think we would all accept that in the daily transactions of employment here there are going to be incidents. The reason there are more incidents is that they are easier to report and there are clear disciplinary processes and structures in place because it is an employer. Once you step outside that, with Members of Parliament, it becomes, as we have seen, slightly more difficult.

Can I do the Rory Stewart now and take my tie off? It's a bit warm in here.

**Chair:** Yes please, by all means.

**Ken Gall:** That's as far as it will go, I can assure you.

**Q5 Chair:** Mr Penman, is there anything you would like to say about the scale of the problem as you have seen it?

**Dave Penman:** Time and again, what our members tell us is that, with the vast majority of MPs, they are passionate about working for them and they love their jobs. They realise that MPs are committed public servants and they have a very good relationship with them.



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One of the frustrations for us has been the reluctance to address these issues and to bring forward a fully independent process. It has felt that at each stage we have had to drag any form of progress from the MPs themselves or those representing their interests, and that that has tainted the vast majority of MPs whose conduct is exemplary. Our members always talk about how much they enjoy working with Members of Parliament.

With the Laura Cox report, it was quite clear that for serial offenders—if you are talking about people who have sustained problems around their behaviour, around bullying and harassment—it was a very small number. You are always going to have incidents and flashpoints and stuff like that, but the very serious stuff is clearly a minority in terms of Members of Parliament. As Ken says, inevitably in an organisation of 2,500 staff, you are going to have that kind of interaction with managers, and flashpoints and complaints are more likely to come from that type of interaction than from MPs themselves.

**Chair:** Most of our questions will be very specifically about sanctions, because that is the subject of this inquiry, but I am going to ask Tammy Banks to ask a few more of our background questions and then we will get down into some of the more detailed sanctions questions.

Q6 **Mrs Banks:** I just wondered, with regards to your answer just now, what proportion of the complaints have been about sexual harassment as opposed to bullying and harassment.

**Ken Gall:** Anecdotally, again, because so much of this is confidential, I would suggest that a small minority are sexual harassment and that by far the majority of complaints are about bullying and harassment. That is not incidents of course; it is people's informal or formal complaints because, unfortunately, in this culture, and perhaps the wider culture, people who are the victims of bullying or harassment are probably more likely to feel comfortable reporting it than they are sexual harassment. I wish that that were different. Talking about incidents is one thing, but with complaints, I would say that the majority are about bullying and harassment. I think you would probably expect that as well.

**Dave Penman:** It is really important to note that the difficulty is that a lot of our evidence will be anecdotal, around conversations we have, or that a member or a representative has. I thought there was a very important point in Alison Stanley's report—the six-month review—about trying to look at and collate the data, and the House getting its head around how it can deal with that data and information and the story it is telling them in a confidential way, to allow for future changes to be made. That is really where you are wanting to look because you need datasets that are meaningful in terms of the numbers of people who are calling helplines and maybe discussing issues but not progressing them, rather than what we will tend to see, which will be some of the most extreme cases, where someone is coming and wanting representation. I think that that analysis of data and understanding the source of the problem—there is a balance

between the two—is a really important bit of information that needs to be taken seriously.

**Q7 Mrs Banks:** Has any analysis been done to consider whether the problem is worse in Parliament than in any other part of the civil service?

**Dave Penman:** There have been surveys. Following the “Me Too” scandal, the civil service conducted a people survey around bullying and harassment and made some recommendations. Essentially, the vast majority of civil servants will have no interaction with a politician—only really those working in a Private Office or around it. It is therefore difficult to make that kind of analysis, unless you were going to look at a real subset of those who have close interactions with politicians.

Other than that, you are just looking at an organisation and saying, “What are the incidents of bullying and harassment?” If you look at the data that was published in the report, it is relatively similar. You get similar sorts of responses in terms of the proportion of people who say, “I have been subject to something,” or, “I have witnessed something.”

**Ken Gall:** I don’t know if you saw the report that the New Zealand Parliament did recently, which was terribly familiar in a lot of the findings and the cultural aspects. You could have almost applied some of it across the board to this Parliament.

As Dave was referring to, as the “Me Too” culture develops across the private sector and the public sector, I think we will see—I think the legal profession had a report recently that didn’t make very good reading. We have to take it as a positive step that people are now feeling more able to report these things and institutions are—this is leading the way, because of the unfortunate circumstances we find ourselves in—now taking these matters a lot more seriously and are being seen so to do, which I think is also very important.

**Q8 Mrs Banks:** Absolutely; thank you. Finally, to drill down slightly more into the detail in the House, are there any themes? Have you seen the problem being reported as worse in some of the House teams in comparison with others, or have you not looked at it in that detail?

**Ken Gall:** Are we talking here about staff on staff, or Members?

**Mrs Banks:** The whole picture.

**Ken Gall:** Yes, we have. In Strategic Estates, we had a culture for a while that did look as though it was causing more difficulties than other parts of the House, but to their credit, they have instituted some fairly strong cultural change programmes that we hope will bear fruit. Previously, the concerns that we had about Strategic Estates were that it was a hotspot for culturally inappropriate behaviour, but now we are actually seeing that some of the things they are doing we want spread across the House, because they have recognised that this is a problem. It is quite a male environment, and some of the responses to staff surveys from female members of staff were not great, but they have taken it on board to an

extent and they are trying to do something about it. What we are seeing is an area that previously was a problem, and still is, because places are, but that is now taking measures that we would perhaps like to see spread out a wee bit more across the House. That is a positive step.

**Dave Penman:** It is difficult in organisations. What we really welcome is the approach when organisations do this self-analysis and these confidential surveys of staff. Inevitably, if you look at any Government Department or a private company or the House, you are going to find, at different points in time, different scores indicating something is happening in a part of the business, whether that is the engagement scores or whether it is direct questions about bullying or harassment and stuff like that. There should be a part of an organisation's long-term culture that says, "Actually, we are going to look at these things; we are going to try to identify what the problems are and we are going to try to fix them." That is the culture you want to develop.

It is not about at any point in time stopping the clock and pointing the finger at one group of managers, because that is going to change. There will be another organisation either because of the challenge it is going through or the people who are there. I think organisations are now starting to adapt to that and to recognise that this is a long-term tool to aid them in how they manage and understand their staff, which is why we try and encourage staff to respond and to take part in the questionnaires. That is why I always get a little bit hesitant about pointing the finger at a particular group when you narrow those results down, because if it is going to be a meaningful management tool, it also means that you have to respond appropriately to it. It is not about blaming people; it is about trying to understand and develop, dealing with the issues and changing the culture in those bits, because it will shift somewhere else the next time we do a survey.

**Ken Gall:** Anecdotally again, because Dave's right, so much of what we get is confidential, one of the things that has been most disturbing for me has been listening to people over the years who wear a uniform in this House—catering staff, waiters, bar staff, security staff—and the impression they give to me that the wearing of the uniform dehumanises them to a lot of people. People speak to them as if they are not human beings who work for this employer, but as if they are just cyphers in a uniform, in a way that they perhaps don't to others. As part of the culture change that the House is trying to embrace, that is something that we really need to stamp down on as quickly as we can.

Q9 **Sir Gary Streeter:** Just to help me get my head round some of the numbers, you said there are 2,500 employees here. What percentage of those are members you are representing this morning?

**Ken Gall:** Over 50% of the membership of the House of Commons are members of one of the four recognised trade unions.

Q10 **Sir Gary Streeter:** You have mentioned several times anecdotal evidence, which I can understand, and you have linked that to



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confidentiality. Do you keep a record? Do you compile an anonymous database to help you judge how things are moving?

**Ken Gall:** An anonymous database is quite a difficult thing to do these days. A lot of people speak to me and to all the reps on the basis, "This goes no further. I need to talk to somebody about this." Once you start noting that down somewhere, it is a tough balancing act, because although you obviously need information, if information is provided to you on a special and certain basis, it is very hard to go against the individual's wishes and use that in another form.

- Q11 **Sir Gary Streeter:** Thank you. You have criticised the slow pace at which the House has responded—shock—to this bullying and harassment issue. What do you think we could have done differently? What should be done now? What do you think are the key priorities?

**Ken Gall:** Part of the problem for me was that, in the very initial stages, there was a pressing demand to do something, and to be seen to be doing something, which is understandable. The "Newsnight" report and everything that came out after that left this organisation in a terrible place.

Part of the problem—and it has been the same as long as I have been doing this job, which is perhaps too long—is that we have the Commission, we have the House service, we have a lot of players and actors in this, all of whom have an interest and all of whom have a say. That does not lead to coherence. If I have one word that would sum it up, the approach so far has been incoherent.

It is very hard for me—and I think about this all the time—to get a grasp on who is actually in charge of this process. Who owns the process? Who do I go to, to say that this is not working? It would be churlish not to acknowledge that there are so many different players. The Commission is the employer; however, the board runs the House. Both of those are important players in this story.

However, I think there was a failure quite early on to get specific leadership—someone who was named and accountable for all this process, who would then hopefully have been able to create a bit of coherence. At the moment, a lot of staff see your inquiry, the six-month review and other inquiries now going on. We have a new cultural change person. We have a lot of initiatives going on. It is very hard for staff, who are not part of those things every day, to see the end of product of all that. Where is this all leading? Hopefully, we will get there, and quite soon, but in the early stages it seemed a bit dispersed and diffuse.

**Dave Penman:** If you look at what has happened, the independent process in terms of the investigation was launched while Dame Laura Cox was still assessing the evidence. We felt that was rushed. There was a lot of pressure to be seen to produce something. I understand that political pressure.



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In terms of how that relates to House staff, we would rather have got it right first time, rather than launch the process and then a few months later, Dame Laura Cox produces her report and makes different recommendations. The House then agreed those recommendations, so to some degree that is going to turn on its head some of the process that has just been adopted.

It has then taken over six months before the House Commission has finally got round to agreeing how it is going to start to act on some of those recommendations. At every stage, we have had at times a headlong rush to try to be seen to be doing something, and then an inordinate delay before the next stage of work has been done.

As Ken said, that incoherent approach means you are looking at issues of sanctions and at how to make decisions. You have made some reforms to your processes, yet there is a clear recommendation about a fully independent process that is going to make the decisions about the outcome of any investigation. How is that going to be dealt with? How does that conflict with what you do? Does it conflict? Does another body need to be created? All these elements are going to have to be worked through.

Here we are, a year after the process was initially launched, and we are only just starting some of that work. That is part of the frustration, and that leads to staff being unclear—"If I do make a complaint, how do I see that through? Who investigates it? Who makes a decision? If I am not happy, how do I challenge it? If they can't see that whole end-to-end process and there isn't clarity—they know it is going to change, but they don't know how it is going to change—maybe they will be more hesitant about taking part in it.

That is the frustration around this. We need to get on with it. It is good that they have made the decisions about historical cases. That is one big element that we need to get out of the way, but this other stage—the independent decision making—really needs to get solved quickly.

**Q12 Sir Gary Streeter:** Thank you. Finally from me, your response to Alison Stanley's six-month review of the ICGS is what?

**Ken Gall:** My response to it is that I was on the working group that was helping Alison to create her report. Rather naively perhaps, I thought during the process that Alison Stanley's six-month review would answer a lot of the questions that we had about the scheme, but it didn't. It identified a lot of the issues that already existed without necessarily providing clear answers to them. For example, the question of accountability and ownership of the scheme wasn't really made clear at the end of this. To be fair to Alison, given where we are, it was impossible for her to conclude anything other than what she did with regard to that.

We also talked about the cost of reporting and third-party reporting. Could a third party take out a complaint on behalf of someone who was unwilling or too afraid, as can happen, to start the process themselves? Alison



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Stanley's report said that third-party reporting should not be taken forward. However, there was a lot of emphasis on bystanders not letting things go. There was a bit of tension there, and it wasn't particularly clear to me.

It also wasn't clear to me, if bystanders raised issues that they had witnessed, whether that information would be collated or taken forward. There were issues such as that which, again perhaps naively, I hoped would have been concluded by the six-month review, but were not. They were merely identified and left for yet more analysis and scrutiny.

**Q13 Sir Gary Streeter:** Thank you. Mr Penman, same answer?

**Dave Penman:** Yes.

**Q14 Mrs Dexter:** Dwelling for a moment on your point about incoherence, you realise that you are not the only people to have suggested that.

**Ken Gall:** Good God! Really?

**Q15 Mrs Dexter:** One of the things that I don't know, as a lay member of this Committee who has no other involvement in parliamentary organisation or activity, is whether that incoherence is typical of how things are done round here, or whether it is a feature particularly of this issue. I wonder whether you can help me with that.

**Ken Gall:** I think the last time that Dave and I were in a room together doing this was for the Straw committee. Is that right?

**Dave Penman:** Yes.

**Ken Gall:** That was two years ago, and it was looking at the governance of the House. I made the point, which was not mine—it is hardly me coming up with an original thought—that if I look at the House of Commons, who is in charge? Is it the Commission? Maybe. Is it the Speaker? No. Is it the Clerk? No. The Straw report was meant to have provided greater clarity as to decision making and accountability. To an extent it approached that, but this issue has again shown that the lines are very blurred.

The Commission meets once a month, and it has other things than this issue to consider. It has the biggest renovation programme for a public building in our lifetime, and the small matter of Brexit in a hung Parliament. It meets once a month, and if there are vital things that need to be done to further this agenda but there is no time to do it, it is another month before an agreement can be reached. That is, as it has always been, one of the reasons why everything here appears at times to be sclerotic. It is not a hugely reactive organisation that can react quickly to these issues. That has always been a problem, and this is showing again that it hasn't really gone away.

**Mrs Dexter:** Thank you; that is helpful.



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**Chair:** We are going to move into the area of sanctions for our subsequent questions, and I am going to turn to Arun Midha.

- Q16 **Dr Midha:** I am another lay member of the Committee. I would like to understand, from a trade union perspective, what you think is the purpose of sanctions. Are they a deterrent? Can they be used as a vehicle to change positively?

**Dave Penman:** In any employment context—I think that is the best analogy for what we are talking about here: issues with conduct between people at work tend to be what we are trying to address here—sanctions have a variety of roles. Clearly, individuals at work knowing there is an effective process of oversight and there are consequences to actions is part of changing culture and policing behaviours in an organisation, as it is with anything, whether that is crime or anything else.

An effective process, under which people know that misconduct will be investigated effectively and that there is a range of appropriate sanctions that will follow if guilt is established, clearly has the potential to check behaviour, but it also provides some form of justice for the victim of that behaviour, so they feel something meaningful has happened as a result. That can be an apology—sometimes that is what is important—or something more significant. Again, it is the same in any employment context.

Sanctions have a number of roles in regulating behaviour in any organisation, including dealing with escalations of different types of behaviour and repeat offences. Sanctions need to be appropriate to that so, if someone continues to behave in a particular way, there is an escalation in the potential outcome and the individual knows it. That is necessary first to check behaviour and secondly because, if there are repeat offences, you cannot just treat each individual instance as a separate incident. There is a whole range of outcomes you are looking for from sanctions, which is why we have said we think there has to be a suite of sanctions available in terms of behaviour. That is easier to do in the employment context; we recognise it is more difficult to do when it comes to Members of Parliament.

- Q17 **Dr Midha:** That was my follow-up question. Is it difficult that MPs are not employees so you do not have those employment disciplinary opportunities?

**Ken Gall:** The House, over the years, has accepted that it can devolve or give away certain aspects of its own oversight, with IPSA and the Commissioner for Standards. Just because it is difficult, it should not be seen as impossible. There are analogies with the employment context, but the answer can never be, “MPs are not employed, ergo nothing realistic can be done.”

To go back very briefly to your first point—I agree with everything Dave said—one of the reasons why this organisation is where it is in terms of culture is that up until perhaps five years ago, no behaviour by an MP was realistically sanctionable. Looking back on it, it seems absurd that we



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collectively allowed that to happen. There were no real means of investigating conduct. There was nothing, really. It is only over the past few years, with recall, that the Commissioner for Standards has got more powers. Up until that point, I wouldn't describe it as the wild west, but it wasn't necessarily too far away from that. That is part of the reason why we are where we are.

**Q18 Dr Midha:** Does the fact that there is lay member involvement in this sort of Committee give the trade unions some comfort?

**Ken Gall:** Absolutely. As part of the process from nothing to people outside the parliamentary machine and the big political machines being able to adjudicate and rule on the behaviour and conduct of MPs, it is a massive step in the right direction. Of course it is.

**Dave Penman:** I have to say, though, that we do not view that as fully independent. We do not view even a majority of lay members here as satisfying the recommendation in the Dame Laura Cox report, which we fully support. Inevitably, with any Committee where MPs themselves are involved, the parties will be involved. That has been one of the factors here: the political parties influencing outcomes, or trying to. The impact on an individual MP can depend on any number of issues that are going on politically at a point in time. We have seen that where they have tried to influence what has happened.

The Dame Laura Cox recommendation is for full independence, and that is what we want to see implemented. We welcome the developments in this Committee and what it has done as part of a process, as Ken said, but we do not see that as an end in itself—even with a majority of lay people on this Committee.

**Q19 Dr Midha:** May I just tease that out? I know it is not a formal analogy, but in other regulated professions—doctors, lawyers, vets and so on—there is an element of lay involvement and an element of professional involvement. You have links with your equivalents in those professions; do they see it as a hindrance to have that professional involvement, analogous to MPs' involvement in the adjudication process?

**Dave Penman:** If you think about what we are talking about here, if you were a doctor in a hospital and the issue at hand was misconduct in your behaviour towards another member of staff, that would be dealt with purely in an employment context: you are an employee and you will be dealt with as an employee.

Clearly, you can look at some of those other professions and see different structures put in place to regulate professional behaviour. Where you are talking about more technical issues, such as malpractice, clearly you require some kind of professional input so that you can make those sort of judgments. But what we are talking about here is behaviours, in the main. It is about the behaviours of people at work, essentially, and about regulating those behaviours. That is the point where we say that it has to be fully independent.



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**Q20 Dr Midha:** I was going to talk about cultural transformation and how sanctions might help attitudes, but I think you have covered that in your answer.

My final question is whether, from speaking to your colleagues in devolved Administrations and other Parliaments, you see any lessons learned or good practice that this Parliament might be able to look at.

**Ken Gall:** I don't have great experience of the devolved Administrations. My instinct, based on informal conversations, is that the devolved Administrations might be waiting to see what comes out of this. The Scottish Government has its own issues in this regard at the moment. Not just Parliaments but all private companies and public agencies are probably going to start having the kinds of conversations that we are having at the moment, but there is nothing that I know about elsewhere that would hugely influence what we are doing here.

**Dave Penman:** They have more streamlined processes, but that tends to be how they have adopted their business and how they work with it, but the same principle of self-regulation applies, essentially, in both Parliaments around this kind of conduct. I think, as Ken says, they are probably sitting in on this.

The one area, strangely, that has really led the way in public service for us has been the Scottish Government itself. In 2010, they put in a clear process for the civil service in the Scottish Government, where for the first time civil servants could complain about the conduct of Ministers. That is still not the case for the rest of the civil service: although the Cabinet Office has a role to investigate events, there is no clear process yet for how a civil servant would make a complaint against a Minister.

The Scottish Government went further in 2017 by allowing those complaints to be made retrospectively about previous Ministers. Obviously there is a very sensitive and difficult issue going on in the Scottish Government just now around that, but it really has been the one place that has led the way on the issue.

**Dr Midha:** Thank you.

**Q21 Sir Peter Rubin:** I am also a lay member. Can I pursue the question about MPs' involvement, or lack of involvement, in determination and sanctions? Last year, this Committee made a determination and imposed a sanction on an MP who had failed to declare her expensive holidays and so on. That led to the very first use of the recall petition. Are you saying that MPs should not have been involved in that determination and that sanction? If so, why?

**Dave Penman:** For us, there are clearly what you would call professional misconduct issues around the use of expenses—that type of decision. I think we would separate that out from the sort of behavioural code issues of bullying and harassment that we are talking about here.

For us, in reality, the self-regulation ship has sailed—the idea that MPs can regulate themselves in relation to these issues. They have demonstrated



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time and time again that they are unwilling to fundamentally address the point that has now led to where we are with the evidence from Dame Laura Cox and from "Newsnight". For us, the issue of marking your own homework, when it comes to their interaction with staff, which is what we have an interest in, is unequivocal. It has to be fully independent.

MPs themselves, rightly, have to make a decision about professional misconduct, and we talked about that in relation to other stuff and whether it is appropriate for MPs to have a view on that. To be honest, I have enough to do dealing with the issues of staff who work in the environment, without giving personal opinions on MPs in relation to how they deal with their own professional misconduct. When it comes to matters relating to staff, and behaviours relating to staff, we are unequivocal and absolutely clear: it has to be full independence.

- Q22 **Sir Peter Rubin:** You began, very helpfully, by saying that the relationships between most MPs and most members of staff are harmonious. As ever, you never hear the good news; you only ever hear the bad news. I remain concerned about the message being sent about excluding MPs from the determination of the sanctions process in ICGS cases. What is being said—I realise it is not only you saying this; it was obviously in Dame Laura Cox's report as well—is that there is not a single MP in the House who can be trusted to evaluate the evidence in a dispassionate way and come to a rational conclusion. That is an unfortunate message to send.

**Ken Gall:** With respect, let us look at it from another perspective. What do the staff perceive? There are a couple of incidents that I want to refer to that I have mentioned in other forums. Post "Newsnight", perhaps during the period when the Laura Cox report was being drafted, the Prime Minister went away on a European tour somewhere. The person who stood in for her at Prime Minister's questions was a Member of Parliament who was under a Cabinet Office investigation for an allegation of sexual misconduct towards a female journalist. During the numerous meaningful votes on Brexit, which already seem like 100 years ago, the Whip was restored to, I think, two Members of Parliament who had had that Whip removed because of allegations of sexual misconduct towards women.

What are the staff meant to perceive? What message would the staff get from those decisions by political parties regarding MPs? Surely the only realistic message they could get is that, when it came to the crunch, allegations of sexual misconduct were important, but less important than the political expediency of the day.

Rather than the principled position that you are taking, which is that the idea that no MP can adjudicate on another MP is a dangerous position, if we go at it from the view of the people who are predominantly the victims or the complainants in this, what do they want and what do they expect to see out of it? Those are two examples. Given the power dynamic here, and given the way this organisation works, what would they want to see? I think the message that Dave has sent is pretty unequivocal.



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**Dave Penman:** We do not have to guess whether it works; we have seen how it works. It has been ably demonstrated. Dame Laura Cox's report, what we get told and the "Newsnight" report ably demonstrate that they are incapable—not 650 individually, but as an organisation—because of how politics works. Politics will always trump this.

We have had cases where there has been clear evidence and the parties have intervened, because they have found it politically expedient to stop an individual MP being sanctioned. They had the chance. They have blown it. We will not allow this to go back. I cannot be clearer about it. Full independence is what it has to be. MPs cannot regulate their own behaviour when it comes to this employment context and behaviours with staff. It is gone. The ship has sailed in relation to that.

Q23 **Sir Peter Rubin:** May I ask one further question? I hear very clearly where you are coming from on this. You make a very powerful argument about the behaviour of the Whips and the party machine. Is it not possible to draw a distinction between that behaviour elsewhere in the House and the behaviour of MPs on this Committee, which has seven very vocal and robust lay members who express a view and have a vote? Lay members have a very powerful weapon at our disposal, in that, if we do not agree with an outcome of this Committee, we can issue a separate report saying that we do not agree and why. Is it not possible to draw that distinction?

**Dave Penman:** Of course it is possible. Do we think it is good enough? No. Of course it would go some way to creating a kind of semi-independent process. Would the parties still potentially have an influence? Of course they would. Why in six months has the Commission gone from agreeing to Dame Laura Cox's recommendation to not being able to agree a panel to take forward those recommendations? It is politics, and everything that comes from politics. It is personal ambition. It is all these elements that come in and affect it. I am not casting aspersions against any Member of Parliament, either on this Committee or individually, but the opportunity to influence and to try to get in the way of stuff is too great.

Again, I come back to the point that we have witnessed this. This did not start with "Newsnight" or when the Respect policy was brought out in 2014. This has been going on for a long time. We have been trying to get a meaningful process, and at every single stage parliamentarians have had to have power dragged from them. We are at a point now where the momentum is clearly with us, and we cannot let this go. What is to be lost by full independence? That is what I do not understand. Why would anybody not want that? How can a panel making decisions on this that is fully independent both from staff and Members of Parliament not be a good thing? What is there to be scared of? Why do you need to find some halfway house?

**Sir Peter Rubin:** Thank you very much.

Q24 **John Stevenson:** Carrying on with that theme, the two most powerful



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sanctions are suspension and expulsion. Those have quite serious implications for the individual, but in political terms, given the present parliamentary arithmetic, they are also extremely serious. That then leads into the potential for a constitutional crisis, because you are potentially suspending or excluding a representative of a particular part of the country, whichever party they represent. What is your response to the challenge that we are in danger of getting into a constitutional crisis with regard to potential sanctions?

**Ken Gall:** Dave will expand on this, but my take on it is that it will only be a constitutional crisis if we allow it to become one. It is entirely within Parliament's gift to delegate responsibility, as it has previously towards IPSA and towards the Commissioner for Standards. We are arguing for Parliament to decide itself, as it should, to delegate further. It is a constitutional crisis only if, collectively, we allow it to become one.

**Dave Penman:** It is further evidence of why you need full independence. If that is the right judgment—if the behaviour is so severe that it requires a sanction of recall—you do not want the political parties trying to influence it because it is not helpful when it comes to the parliamentary arithmetic. If that is the right sanction—I am sure you all agree that elements of the conduct of a Member of Parliament should be subject to recall. You either say that that sanction is appropriate, but only in the most extreme cases, or you say that it should never be.

The constitutional crisis is created by the Member of Parliament whose behaviour is so extreme that it requires that level of sanction. Otherwise, you are essentially saying that, no matter what a Member does, they cannot face the ultimate consequence, as an employee would. If a member of staff behaved in the same extreme manner, they would probably be dismissed. If an MP behaves like that, what is the ultimate sanction?

Q25 **John Stevenson:** Just carrying on your discussion about independence, you could argue that a compromise has been achieved by this Committee. It has a majority of lay members, as against Members of Parliament, and it makes recommendations to the House. I would be very surprised if the House has ever overruled a decision of the Committee. Have you not therefore effectively achieved the best of all worlds, with a majority of lay members, who have independence, but still having that constitutional final arbitration by the House as a whole?

**Dave Penman:** I think there are two elements to this, including decision making. I understand that there are constitutional niceties concerning a decision on recall made by this Committee or an independent committee, and whether the most extreme sanction would be required to go to the House. That constitutional nicety clearly needs to be determined. Ultimately, the reason why we say that this Committee seems not to be fully independent goes back to the point that you raised. Are you trying to tell me that if a decision was on a knife edge, with the sorts of votes that we've had on Brexit, and there was the potential for a Member of Parliament to be recalled by a decision of this Committee, which had



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Members of Parliament sitting on it, the parties would not want to influence that? Are we saying, "No, don't be silly, they wouldn't want to influence that"?

- Q26 **John Stevenson:** It would be on the understanding that a majority of lay members could outvote the MPs. You must also remember that MPs come from different political parties.

**Dave Penman:** Of course, but are you saying that they wouldn't want to influence it? Are you saying that, depending on which political party it suited, there would be no attempt to influence a decision? Although you can't make the decision, if you are part of the Committee and you are discussing something, you can potentially influence the outcome. What does full independence mean? I come back to the point: what are you scared of? What is it about an independent panel making a decision that scares you? What is the problem with that—where is the difficulty?

**Ken Gall:** I mentioned two specific incidents earlier, but I think a partial answer to your question happened in the Lords quite recently. Admittedly, this is outwith the remit of this Committee, but in the Lord Lester case an allegation was made and investigated. It went all the way through, right to the end, and it was upheld. On the day when the House had to endorse that, basically, as far as I can tell, the guy's mates stood up and talked it out and voted against it. There is obviously more to it than that, but look at it from a perception point of view and the views of the staff who we are here to talk about. They looked at that and it was another nail in the coffin of the idea that somehow, once we get the end product, politicians—this is not even about party politics; it is personal politics—and relationships within Parliament would not take precedence over the decision reached. Admittedly that was in the Lords, which is a very different environment, but for the staff to look at that, it kind of reconfirmed that relationships at that level were beyond their control.

- Q27 **John Stevenson:** You are setting great store by independence, which I understand, but democratically elected politicians are chosen by their constituents. They have democratic legitimacy. The question then arises: who are these independent people? How are they chosen? Are they truly independent? Do they not have their own prejudices? Does that not create its own problem, potentially?

**Dave Penman:** Of course, for any independent panel you must ensure that the selection process is fair and satisfies all parties. One element for us is trying to ensure that MPs feel satisfied that this is a fair process. They must understand that this is not some process by which they are always going to be found guilty. They must have confidence in it. As we indicated in evidence given elsewhere, they must be able to challenge the process. The challenge cannot be only by the person making the complaint; the person with a sanction against them should be able to challenge it. There must be confidence in that.

Is anyone truly independent? That is the question. You can eliminate a lot of that, and the one thing to come back to is the party issue. We have



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seen what the party machine does. If you have MPs involved in that process, I simply do not believe, and the staff will not believe, that at certain points the party machine will not try to influence things. If it can, it will, and it will certainly try. Why not take that away so that that is not an issue? This should be a fully independent process. What is there to be scared of in an independent process?

**Q28 John Stevenson:** Do you therefore see the party machine as more of a problem than the actual individual MP?

**Dave Penman:** I think it is very difficult. As Ken has talked about, that issue in the Lords appeared, when looking at it from the outside, from our perspective, essentially to be about a club. They are looking after each other. Our experience has been that the party machine has an impact; there may also be that element of the nature of camaraderie and MPs themselves. That is why you say, "Let's not get into that." Why would you want to be involved with any of that or having to deal with that? Take it away completely and make it fully independent.

**Ken Gall:** The basic answer to your question is that democratic legitimacy would be provided by the Act that would bring into force the independent part. That would be what you would point to as saying that Parliament has ruled, and this is what we are going to do. The democratic element would be answered by the Act itself.

**Q29 Sir Gary Streeter:** You keep asking the question, "What are you afraid of? What is the real problem with a fully independent system?" One of my responses to that is that politics and Parliament take a lot of learning. They are complex, nuanced, difficult places. One of the strengths of this Committee is the fact that we can discuss issues and lay members who now have the majority can draw upon our political experience. I have been here for 27 years and I still don't understand the place, and so on.

One of the risks of a fully independent body is that it makes decisions not fully understanding what has happened here. With Dame Laura Cox's report, you could argue, "Did she actually consult widely enough? Did she really understand?" I remember when IPSA was first in place. It is better now, but for the first two or three years it clearly had no idea whatsoever about the kind of work we did, how we operated in constituencies and all the rest of it. Some of the rules were ridiculous.

That would be my answer to your question, "What are you afraid of?" I am not afraid of anything—apart from the Chairman—but I am afraid of decisions being made without fully understanding the world that they are being made for.

**Dave Penman:** I absolutely get that. This is clearly a unique working environment. If you look at what the majority of our members do, they work in the civil service, it is very highly pressured, politics plays a part and there are the demands on Government. We see that here, in terms of the MPs. Of course, anyone who is asked to make decisions on this has to get that right and has to understand it.



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But what are we talking about, here? We are talking about behaviour. Everyone is concentrating on issues of recall and so on, but we are talking about sorts of behaviour in the workplace. That is not unique. We are talking about understanding bullying and harassment, and understanding the conduct of an individual. You can't say, "Do you know what? That's okay, because it's a Member of Parliament and it's a unique environment."

Of course you have to understand the context, but what we are talking about here is regulating of behaviour that should not be exceptional. Every employer in the country, of any decent size, has to deal with those issues. That is what we are talking about here. We are not talking about expenses, or those sorts of issues, which are on a more professional basis, about which you might say, "Actually, there may be nuances here that are very particular and that we need to understand." We are talking about the regulating of behaviour when it comes to bullying and harassment. I don't think that you need that unique a set of scales to be able to understand the context if you have got properly independent investigation and evidence around that.

- Q30 Mrs Dexter:** It is interesting, this idea of influence. I think you are right that, in the process, MPs who are members of this Committee seek to influence. As a lay member, I have been influenced by MP colleagues on the Committee. John has influenced me on the policy of secondary employment. Another Member influenced me recently on an outcome for a particular complaint. So they do have influence, but I think we would want to stress—and would you acknowledge?—that influence can be a good thing, as well as a bad thing. I think you are portraying it as a bad thing.

In this case, it is underpinned by the fact that the lay members are the voting majority. MP members can seek to influence us until they are blue in the face, but we are the voting majority: we outvote them. To contrast it with your proposition of a parliamentary tribunal, tribunals can be a gamble. You will know that as trade unionists. As many of your members do not succeed in a tribunal environment as those who do. I am just not sure that in the balance of the considerations—influence, determination, gambling on a tribunal—it is all being weighed correctly.

**Ken Gall:** The motivation for our appearance here today and the submissions that we have made is entirely from the members themselves. It comes up from the members through us. The experiences of staff and employees here are the basis on which we built the proposal that has come to you and will go to other people. The confidence level among those people with politics and politicians is non-existent at the moment.

**Mrs Dexter:** Thank you.

- Q31 Mr Thorogood:** Good morning. I am a lay member as well. On the specific proposed sanctions, the unions have proposed a new sanction, a written warning, which would last for a certain period: six months, 12 months, 24 months, or to the end of the parliamentary term. An MP under such a written warning would be prevented from certain activities,



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such as sitting on a Select Committee. What are your thoughts on this? How do you see this written warning operating? Do you think that if an MP was under an active warning, it would be made public?

**Ken Gall:** I'd like to talk first about the Select Committee point specifically. This is something that I really did want to say today. Some of the most egregious examples that I have heard over the years that I have been doing this job have been from the members of staff of Select Committees, talking about the behaviour of Chairs and members of those Select Committees. That can be sexually inappropriate behaviour, it can be bullying behaviour, and it can be the very, very, very high demands. Some Committee Chairs had the belief—hopefully they do not now—that the staff of their Committee were almost slaves who were to be available 24/7.

At the end of this process, I think it would be absurd if the sanctions available did not include the ability to remove or suspend someone from a Select Committee for inappropriate behaviour. That is one foundation that we have to have. I think that the written warning is certainly one means of bringing that about. It would not remove them from the Select Committee per se—although it could—but it would suspend them. The ability to remove someone from a Select Committee, for a limited time or forever, has to be among the sanctions that are available.

Q32 **Mr Thorogood:** That's clear, but generally, how would you see the written warning proposal working?

**Dave Penman:** We talked earlier about what the point of sanctions is, and this is in part about that. Having a timeframe around it gives you a period of time in which, if there is repeated behaviour, there is an opportunity for the decision-making body to essentially escalate the sanctions.

The written warning has two elements. The first is a timeframe about future behaviour. That is important. That is how it would normally operate in an employment context, if you were given a written warning. We need to bring it back to that: this is a workplace. We are talking about people at work and behavioural issues at work. That is normally what you would do. Again, you are saying, "If you repeat this behaviour within a period of time, there is a potential that, because it is in an escalation period, it will not be treated as something separate." I think that you gain something by having that period of time in the written warning.

Secondly, you can determine what the consequences of that written warning are during that period of time. It could be the suspension from Select Committees or whatever during that period of time. It gives you two angles, which is why we found an attraction to it.

If you look at the stuff from Dame Laura Cox, you clearly have a number of incidents that are flashpoints and individual instances where behaviour has gone beyond what is expected or reasonable, but it is kind of a one-off. Therefore, you are saying to someone, "Look, that type of behaviour is not appropriate and here is how we are going to deal with it." But if you



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are dealing with more sustained issues around behaviour from a Member of Parliament, I think this is also a tool for both trying to change that for the future and, if it does happen, being able to escalate through a reasonable timeframe. That is why most employers have that as an approach.

**Ken Gall:** There are two examples I could give you that are based on things that have actually happened. For example, if an MP behaves badly in one of the bars or cafés in this establishment, which has actually happened—

**Sir Gary Streeter:** Really?

**Ken Gall:** Yes, hard though it may be to imagine. Should the bar manager or catering manager have the ability to tell the MP and/or their guests to leave the establishment, and then say, “You are now facing a six-month written warning”—or six weeks or whatever—“and your behaviour within that period cannot be repeated, otherwise you will be banned from this establishment”?

Q33 **Mr Thorogood:** You make an interesting point. The question is how you see it working. What you are suggesting there is that in a specific instance, the manager of that particular area issues the warning.

**Ken Gall:** Well, no. I am suggesting that among the range of sanctions we have available, that has to be one of them, and it is not at the moment.

Q34 **Mr Thorogood:** Just to finish this, when an MP was under an active warning, would you see that being made public, and what benefit would that have?

**Dave Penman:** There is a whole issue here about confidentiality, which is probably quite unique to this organisation. The default position should always be confidentiality. Again, Alison Stanley deals with this in the report. She talks about trying to make that almost contractual for MPs as well, and trying to say to all parties involved in this about maintaining issues of confidentiality. The only point when that would not be the case would be when we get into the most extreme example. That, again, would be the norm in any employment contract.

Those should be obligations on all parties, because I can understand that from a parliamentarian’s point of view, any publicity around this could be quite damaging and disproportionate. You are deciding a sanction because you are saying that is the sanction that is appropriate to the offence, and you do not want to add to that by publicity and creating a further sanction. Confidentiality is absolutely critical. It is really difficult to deal with, and I recognise and understand the difficulties around it, but again, it is not impossible.

Q35 **Sir Gary Streeter:** People being politically motivated is not just about Members of Parliament. What if the manager of the area that we are talking about were an ardent right winger and hated Labour MPs, and here is an opportunity—although it might be in confidence, we know



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there is nothing much in confidence—to do something that is politically motivated? What would be the safeguard against that happening?

**Dave Penman:** They are subject to a code of conduct and disciplinary action. I mean, you have to prove it; you have to be able to demonstrate it.

Q36 **Sir Gary Streeter:** To whom?

**Dave Penman:** Because they are an employee.

**Sir Gary Streeter:** To whom would you demonstrate it?

**Dave Penman:** If a complaint were made, they would be investigated and action would be taken against them. They are an employee, and as an employee they are subject to the rules of that employment, including rules around confidentiality and impartiality. Like any public servant or civil servant, you are subject to that, and it is much easier to regulate and enforce in an employment context than it is for MPs, where you do not have the employment context. Of course, you cannot stop someone behaving in a way, but you can have measures to deal with that, and those measures being effective is part of the way you stop people behaving in that way in future.

I have to say, though, that of all the issues we have to deal with, I have not heard a lot of accusations about staff being politically motivated and trying to undermine MPs.

Q37 **Sir Gary Streeter:** None at all?

**Dave Penman:** There is a danger that we end up going down rabbit holes here to try to avoid dealing with the main issue, because hypothetically at some point in the future one thing may happen. Clearly, if any member of staff behaved in that way, deliberately trying to make a political point or do something, they could be subject to sanction. That is what we would expect; we would expect the full force of the disciplinary code to apply to them.

**Ken Gall:** And any serious investigatory process should very quickly identify vexatious complaints.

Q38 **Sir Gary Streeter:** I am just making the point that it is not as straightforward as perhaps was suggested.

**Ken Gall:** No, sure.

Q39 **Chair:** Can I ask you how we can ensure that any sanctions imposed do not damage the interests of either the MP's constituents or their staff, or the public generally? Is that something you have given thought to?

**Dave Penman:** Yes, and that is why we have looked at the elements we have. Ultimately, if an MP were not sitting on a Select Committee—that is the easiest example to use—that would not necessarily have an impact on the constituents. It is about that MP and an interest that they would have, but it would not stop them serving their constituency.



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On the question of denial of access to certain areas, if the incident was in relation to one of the areas in the House and it was deemed that banning the person from that was an appropriate sanction, you could deal with issues around their staff having access to it, if it was the Library or somewhere like that, so that that would not impact on their constituents.

Again, this is an issue that I think needs to be addressed. The point is not to punish the constituents; the point is to punish the Member of Parliament for their behaviour. They also have to face the fact with their constituents that their behaviour is causing issues. But ultimately I think these things are all resolvable, which is why we are interested in a range of sanctions. A broader range of sanctions allows any decision-making body to try to match the sanction to the offence, so you are not forced down a particular route and you can be flexible about how you apply it, to try to make sure that these issues are addressed.

- Q40 **Chair:** You may have seen that the Parliamentary Commissioner has written to us and we have published our suggestions for a possible range of sanctions. We would be very happy to have any comments on those specific sanctions and how well they address the considerations that you have raised with us—either now or later, if you would like to offer us thoughts in writing afterwards.

**Ken Gall:** My intention was to speak to all the branches here and then to write to you.

**Chair:** We would certainly welcome further evidence from you in response to those ideas.

**Dave Penman:** We welcome the approach of trying to adopt a range of sanctions, because we think that is actually the right approach.

- Q41 **Mr Thorogood:** One of the proposals that the Commissioner has made is that a sanction should be that we withdraw services from an MP—that is, we do not allow them to sit on a Select Committee or travel abroad on parliamentary business, or they might even have to contribute to the costs of an investigation. What are your comments on that?

**Ken Gall:** I hadn't thought about contributing to the costs of an investigation, I must say, but I think the first two I would be in favour of.

**Dave Penman:** You are asking about financial penalties. Again, in an employment context, we have dealt with people for whom, where it is appropriate, where essentially they have wasted taxpayers' money, a sanction may be a financial penalty. I think it needs to relate to the offence, rather than it being seen to be a fine, effectively. So you are making a sanction relating to the nature of the offence in relation to cost; I think that is where it is appropriate to look at those issues.

But clearly, travelling abroad and sitting on Select Committees are the sorts of things that we think are appropriate. It's a question of finding a way, as we have talked about, of having an impact on the Member him or



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herself, rather than the constituents, and there is that range of ways of doing it.

- Q42 **Mr Thorogood:** That is a good point. The focus ought to be on the MP who may well have misbehaved, but if you withdraw services from the MP, and there are a whole load of services you can withdraw from an MP—how do you see this being effectively targeted so that it does not impact the MP's constituents or the MP's staff themselves?

**Ken Gall:** It shouldn't be beyond us to work out which services the House provides whose withdrawal would not directly inhibit the MP's ability to represent their constituents; I am thinking of access to catering facilities, and the bringing in of guests.

Another example I was going to give was an MP bringing in a lot of guests to an event who swears at a security guard who is trying to get the people in but is also trying to maintain the standards of security that are necessary. That has happened a couple of times. Should it be beyond us to say to that Member of Parliament, "You are now prohibited from bringing guests in"? Would that directly trespass upon their ability to represent their constituents? I don't think it would, and I think it would be commensurate with the offence that had been—

- Q43 **Mr Thorogood:** But you would agree that, in the consideration of sanctions, you should think about the wider impact on constituents and others?

**Ken Gall:** Of course—absolutely. Could I just say this? There was one point I wanted to make that had to do with IPSA and with training. One of the things that has been a fairly consistent theme when we have been dealing with MPs has been the difficulty of getting MPs to undergo training, or the unlikelihood of making training for MPs mandatory. This is something that has been said off camera and sotto voce on numerous occasions.

The point to do with IPSA is that IPSA is a means of allocating taxpayers' money to MPs, to you all, to help you to represent your constituents. Is it reasonable to suggest that the taxpayers might want certain standards to be adhered to as a precondition of that money being allocated, and would they believe that training and conduct should be one of those standards? I think that it is reasonable to say that, as a precondition of having taxpayers' money allocated to MPs, it should be mandatory for them to attend training about governing their conduct. I do not see that as beyond us.

There have been too many examples in the past of the argument about training for MPs on these kinds of issues being, "They're busy people and they can't do it; the time available for them to do it is limited." I understand that and I am not unsympathetic to it, but I think training for MPs will be crucial. How do we make them do it? It is an acceptable standard of conduct that I think taxpayers would expect.

- Q44 **Miss Burton:** Your memorandum says that consideration needs to be



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given to when cases are made public. That is rather vague, so could you tell us what specific suggestions you have about confidentiality?

**Dave Penman:** As I said earlier, the default position should be confidentiality. There is a recognition of the difficulties in that environment—we have talked about how leaky this place is. We understand that. We also understand that any publicity of these issues is potentially a further sanction. If you have decided that the sanction is limited to one thing, adding to it is not what you want to do because that individual will face a greater sanction than is appropriate to the offence.

Clearly, at times there will be issues: for example, if a sanction was that an MP was removed from a Select Committee, it was clear that was happening and people were aware that there was a removal rather than someone choosing not to be part of a Committee, some element of that information may get out. But it is a default of confidentiality and a recognition that, at the more extreme elements of sanctions, that may be difficult to do.

If, for example, an MP was removed from a Committee, you could deal with that by making a statement about the MP's removal as a result of an issues relating to their conduct, and you would give no further details about the nature of the offence or the decision. You are dealing with the fact that the sanction itself will, inevitably, become public.

There is the potential, as was the case of expenses, where you get a sanction that inevitably will be public, and being public is essentially part of the sanction. It is part of the process that the MP will understand that, in more extreme sanctions, inevitably there is publicity because it is appropriate for it to be public. On the vast majority of occasions we would see confidentiality applied. I go back to the Alison Stanley report, where she talked about trying to enforce that contractually, knowing that it is a difficulty; making an obligation and finding a way of making an obligation on the parties is something that we would support.

Q45 **Miss Burton:** You just talked about some of the ways that could happen, but let us say, for instance, that a Member had been suspended from the Library. The staff would have to know, so there are others ways that it could come out. Returning to confidentiality, which is the theme of my questions, how would you suggest that confidentiality can be upheld in situations such as that?

**Dave Penman:** There are limitations, inevitably. Let's think of an employment context: in the civil service, if a manager was found guilty of bullying or harassment, they may be moved or there may be a sanction applied on them. While you have not put up a notice explaining what has happened and the decision, inevitably, someone knows that person has been removed, moved to another office or something has happened.

Inevitably you get to a point with sanctions where people in that work environment have some idea of what has happened. You cannot guarantee absolutely in all cases that there is no information about it. That is different from tittle-tattle about the details, and some kind of press

statement because it is deemed appropriate. It is impossible to say that in every case no one would ever know, because of the nature of the sanction. Inevitably, some of those elements may come out, but the details should never be released.

Ultimately, we come back to the point that if you don't want to be sanctioned and you don't want to face the consequences of this, the responsibility for that lies with the person whose behaviour is being sanctioned, whether that is a manager who is being moved in an employment context or a Member of Parliament denied service or taken from a Committee because that has been deemed an appropriate sanction. Inevitably, some consequence comes as a result of the nature of the offence. But you can deal with the vast majority of offences in terms of confidentiality.

- Q46 Miss Burton:** Finally, both the Committee and the Commissioner have made it clear that they do not agree with the House's decision to extend confidentiality from ICGS cases to non-ICGS cases. What do the unions think? Do you accept that the new rules are unfair to MPs if it is alleged they are under investigation and the Commissioner is no longer allowed to confirm that they are not being investigated?

**Ken Gall:** Personally, I thought that was wrong. I do not agree with the decision that was made by the House. However, as part of a drive, which we do support, for all possible measures to be taken to increase the confidentiality of the process, that was proposed by MPs. I did not agree with it at all, but it was accepted by the House.

**Dave Penman:** As I think we have indicated, there is a difference for us between dealing with conduct and a workplace issue around behaviours and dealing with other elements of misconduct. For an elected politician, the visibility and transparency of that is a democratic issue about where it is appropriate that the public know what is happening. We are concerned with what it means in relation to behaviours and interactions with our members, and whether it is appropriate for that to be confidential or not. We made views around some of those elements and other issues, but we really want to focus on those behavioural bullying harassments and the confidentiality around those issues.

- Q47 Chair:** I want to explore a couple of things in your written evidence. You suggested a statutory parliamentary tribunal to impose sanctions. How do you see that working alongside the current way in which the role of the Parliamentary Commissioner for Standards operates? Would the tribunal be responsible for the Commissioner's oversight of the investigation as well, or would it be solely focused on sanctions?

**Dave Penman:** What we wanted from that is decision making on the outcome. So there would be an independent investigation and that, with recommendations, would go to the tribunal. That tribunal would be the decision-making body on guilt or innocence—whether it has been proven or not in relation to that—and it would then make the determination

around the sanction that would apply. That is how we saw that taking place.

**Q48 Chair:** Then you have suggested another separate statutory body for appeals. Is that correct?

**Dave Penman:** What we think is really important is that there is independence between those two decision-makings that is fair to all, including Members of Parliament. That is what you would expect in terms of any appellant authority: it would be independent of the original decision-making body, so it does not feel obligated to reinforce a decision. It would look at it again, obviously subject to the rules of when you can appeal—that sort of stuff. We felt that was a way to try to create that independence through the appeal process.

**Q49 Chair:** How do you envisage recruiting Members to that appeal panel?

**Dave Penman:** We have talked about issues around how you make sure you have got people with the right experience in relation to this. One of the things we say in our evidence, to talk about the employment context, is that too often a quasi-judicial approach is taken—look at the Lord Lester approach and what people talked about, with the ability to face off your accusers and it be beyond reasonable doubt. That is not the sort of context we think applies here.

The process of identifying individuals would be to set criteria for the sorts of people you want and both their level of experience in the employment field but also their understanding the dynamics of this organisation. You would have an appropriate recruitment process—presumably a public appointment. It is also really important for us that any tribunal like that has the confidence of MPs themselves.

All parties to this have to feel confident in it. That is really important and is something that our members talk about as well. It is no good going off and doing something if the MPs themselves do not have confidence in it. We have not fleshed out exactly what the nature of that body or our selection process would be, but it would involve the principles of independence that we have talked about at length—the separation of the decision-making and the appellant authorities—and getting a breadth of experience from that. The detail on how you go about it can be worked out at any point.

**Ken Gall:** We were able to find top-quality lay members for the Committee on Standards. It should not be beyond us to undertake a similar process to find members of a tribunal.

**Q50 Chair:** You have suggested that that function could be carried out by IPSA or by the parliamentary and health service ombudsman. In the light of what you have just said, do you think that they are equipped and have the right experience to take on those roles, which seem quite different from their current remits?

**Dave Penman:** There is a real difficulty in just pegging on to an organisation that is set up to do something different. There is a logic that



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says that if you have a body that regulates elements of MPs' behaviour—professional or financial misconduct, for example—you could ask the same body, rather than setting up something else.

I think that there are dangers around just expecting an organisation to be able to cope with that. Whether it would be a separate organisation or about changing the nature of IPSA, it would have to be done seriously. Again, that is about what would be in the confidence both of parliamentarians and of staff. I do not think that we have a fixed position on that. It is not simply about creating new organisations—there are dangers in that—but there is a real danger to suddenly expecting an organisation to take on a very different role and function if it does not necessarily have the expertise or the confidence of people to do that.

**Chair:** Thank you. That concludes the public session of the Committee today. We are very grateful to you for coming to give us evidence. If there is any additional information that you would like to write to us about, we would be very happy to receive it. We will now return to private session. Thank you for coming.