HOUSE OF COMMONS

Committee on Standards

Oral evidence: Code of Conduct consultation, HC 954

Tuesday 8 March 2022

Ordered by the House of Commons to be published on 8 March 2022.

Watch the meeting

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

Questions 352-404

Witness

I: Rt Hon Sir Ernest Ryder, former Senior President of Tribunals for the United Kingdom and former Lord Justice of Appeal.

Examination of witness

Witness: Rt Hon Sir Ernest Ryder.

Chair: Sir Ernest Ryder, it is a great delight, first, to have you here, and, more importantly, on the back of the report that you did for us, which is as thorough as I had expected it would be from the conversations we had had previously, especially on parliamentary privilege, which is very helpful to us. It is coherent, consistent and concise. All of those things are things that we admire, so we are enormously grateful to you.

We have about an hour and a bit, but do feel free to tell us if we are going wrong. We are going to start with Rita.

Q352 **Mrs Dexter:** Hello there; it is nice to meet you. As the Chair said, thank you very much for a very thorough report, which I am sure will be extremely useful to us. I will start with a more straightforward question, which we hope will also provide you with an opportunity to say some things that you might want to emphasise. I was left with one question from the report: are your proposals a menu or should they be swallowed as a whole? I would be interested to know your view about that.

Sir Ernest Ryder: I think they should be taken as a whole, because parliamentary law is a broad concept and if we are delving into bits of it and ignoring the rest, the risk is that you might not maintain all of the protections you want to maintain, or you might have unintended consequences by simply taking the bits that might be attractive and forgetting some of the other bits. It was intended to be a complete package. I do accept that there are options within the themes that you asked me to look at and the Committee may take a view about some of those options, although I have come to a firm view—a personal view—about which of the options I would prefer.

Chair: Sir Bernard—knight shall speak unto knight.

Q353 **Sir Bernard Jenkin:** Thank you for being with us today and thank you for your report. You discuss the way the standards system operates within the exclusive cognisance of Parliament, respecting parliamentary privilege and respecting the relationship that Parliament has with the courts. How far do you think that makes Parliament completely exceptional, and how far can its internal regulatory processes be modelled on those of other institutions because it is so exceptional?

Sir Ernest Ryder: Parliament is exceptional in the sense that it should not want to have encroachment by the courts because if it were to permit that there would be two consequences. There would be a diminution in your legal sovereignty, and that isn't something that I would wish upon any democratically elected sovereign body, and there would be a diminution in your political sovereignty because you would end up with an external body, be it a court or any other external monitoring or regulatory body, telling the House how its Members should perform their functions. That is—if I may say, with respect—what you are all elected to do. It is the principal function of the House to protect itself and its Members, and I

would strongly advise against the derogation of that principle, unless there is no other option. There may well be public commentators who say that if the House does not want to maintain its standards, this is the last chance saloon. I really do hope we are not there.

Q354 **Sir Bernard Jenkin:** But in terms of the way our procedures currently—I won't say mimic—reflect the practice of employment tribunals, given the exceptional circumstances of Parliament, and given that a decision under the process can result in the removal of a Member of Parliament from the said sovereign legislature, to what extent is it appropriate for such a humdrum culture of deciding employment disputes to be used at the very top of our constitutional structure?

Sir Ernest Ryder: I think I would want to distinguish disciplinary processes that go ultimately into an employment tribunal, which is a quasi-investigative and adversarial courts body. However informal an employment tribunal claims to be, having sat in them for years, they are rather less informal than you would want. That is my first point: these processes are different.

What Parliament is doing in its standards jurisdiction is not an employment disciplinary offence that leads to a simple dispute resolution process. The employment tribunal is that—a business dispute resolution process. This is all about the maintenance of standards in respect of parliamentary function. It is the very efficacy of the House and how its Members relate to that that is in issue. It is not a straightforward disciplinary process of a similar function to that in the employment tribunal.

You rightly asked me whether there were any comparators. Not in the United Kingdom—I think it is an exclusive jurisdiction without comparison. But if one were to look at Commonwealth jurisdictions in Parliaments around the world, in western democracies, there are very similar jurisdictions, such as New Zealand, Australia and Canada, and if one were to look at some of the European Union, including the European Union itself, there are similar processes in place. They all depend on a form of parliamentary law that is privileged, and they are not the same as disciplinary adversarial process. I really do distinguish the two things. An adversarial process is all about the party deciding what it is they want to have resolved by the tribunal. This is all about the public interest, and this is the public interest being decided in Parliament, and those two things are very different. An individual MP, or the complainant, might well want a particular point deciding; that is rather different from what Parliament needs to have decided when standards are an issue.

Q355 **Chair:** Some have said about particular cases in recent years that people should have gone to court—they should have been charged with an offence, such as misconduct in public office. My understanding of misconduct in public office is that that is a common-law offence, not a statutory offence. I think that the Law Commission asked that it should be made a statutory offence, because it is quite difficult to work out what it means. Is that fair?

Sir Ernest Ryder: I think that is fair. The Law Commission would be better than me as someone to ask the question about what the options are in relation to that offence. I take seriously the self-denying ordinance that Parliament has that, if it is a criminal offence, it goes into the criminal courts to be determined; that is the appropriate place for it. That is always a difficult balance to have, between rule of law externally and rule of law in Parliament, but I think you have the appropriate balance. That single example of misconduct in public office is the interface, and it is not a particularly easy interface. Like many, it is a grey area. I would prefer the Law Commission to make firm recommendations about that.

Q356 **Mrs Dexter:** I want to go back to your response to Sir Bernard. That was plain and fascinating at the same time. If I were an MP, and based on my experience as a lay member of the Committee, having dealt with a number of conduct cases over the years, I think that many MPs might feel that they were especially disadvantaged by the rationale that you set out, in the sense that any conduct infringements that they were being judged on take on so much more significance. You have said, "Well, it's not just—not even—a disciplinary matter, in the sense that any infringements of conduct are about the House as a whole," so the infringement transcends personal culpability, as it were. You can see how an MP might think, "Actually, I did a fairly minor thing here, relatively speaking. I may have done it, but"—that does happen. Many cases that come to us involve people who are stressed for particular reasons. What would we say to the MP who felt that they were being judged more harshly than they deserved?

Sir Ernest Ryder: That all depends on the proportionality of the process you use. The Committee—the House—has put in place a gradation. First—rightly, in my personal opinion—you have taken out bullying, harassment and sexual misconduct. Those are matters that are rather different and that members of the public will have a much firmer view about, because they are more akin to standards across the whole of public and private life. Then you have stages within the process, so the rectification procedure allows just those less serious issues that do not have that impact on the Member, other Members or Parliament itself to be decided by agreement. That is classic good practice—a facilitated way of resolving the less serious issues. Although I make it clear that I do not think that the paragraph 17 rule should ever lead to rectification because of the very nature of the seriousness and gravity in it—

Chair: That is bringing the House into disrepute.

Sir Ernest Ryder: Yes. Because there is no rule to support it, it is broad, it is hard-hitting, it is potentially very serious, whatever it is, and it may be very novel. There will always be the MP who could say, "Well, hold on a minute, nobody has ever told me about that before," and that is a reasonable response. That follows through from what you are saying; that is why the Committee and the House have to deal with those.

You have a graded series of responses, which I think, if I may say so, is very sensible. It is a process that facilitates people to talk about the

problems they have, with the investigator and, ultimately, with the first decision maker. In terms of Select Committee process, as well, where people can talk—they have the right to talk, the right to represent what they wish to say—that is a very good start point.

Q357 **Mehmuda Mian**: Good morning, Sir Ernest. In your report, you concluded that MPs should continue to play a role in adjudicating on breaches of the code of conduct. However, that goes against what the Committee on Standards in Public Life concluded. Could you tell us why you disagree?

Sir Ernest Ryder: There are two ways that one could look at the position that the Committee on Standards in Public Life is taking at the moment, both of which, if I may say so without criticism, relate to an exasperation, from the public's perspective, with what the public might see as MPs not regulating themselves.

You can either say that the CSPL wants more external regulation proper—I appreciate that Lord Evans didn't go that far in his oral evidence—but external regulation proper cuts across both the political mandate that MPs have and the legal privilege that they exercise and are protected by in Parliament.

It is a double whammy. You could end up with a situation where an external body, using the balance of probability, is able to say, "This isn't a parliamentary function; this isn't how MPs should behave in Parliament, in parliamentary proceedings." I cannot, for all the reasons that previous Joint Committees, Government and the CSPL itself have articulated, see that that is right.

There was, therefore, a halfway house that Lord Evans came to, which is: can you have external regulation within the House, very much like the parallel jurisdiction on bullying, harassment and sexual misconduct? Yes, of course, one can have that, but that removes two public interests. One is parliamentarians being responsible for their own sovereignty and what is a parliamentary function, and what is a breach of standards relating to that function. They should be the elected experts in that field.

The second is the role of the lay members on this Committee. You have an extraordinarily privileged 50% hold over this Committee, representing the public interest. If one is putting a new body in place, what is that body going to be? What is its representation going to be? Are you going to have at least four Members of Parliament to reflect the balance of the House, in terms of political representation? Do you then want another four lay members, for the very reason that you are seven and seven here? You almost end up creating the same thing again. So I am sorry; I do not see it working. It is a very appropriate response to political and public concern, but the balance of public interest is here, and it is here that you could make all the difference.

Q358 **Chair:** You could argue that having regard to the discipline and the standards of the House is a parliamentary function in itself.

Sir Ernest Ryder: I would, yes. Thank you.

Q359 **Dr Midha:** Just to follow up on that, my observation after five years on the Committee—

Chair: He always says that.

Dr Midha: I always say that. My observation is that this system is behind the times. For example, I was on the General Medical Council, and 20 years ago they had a concept of self-regulation. The public demanded, "You can't mark your own homework," so you went to professionally led regulation, which was the imbalance, but you had lay people, and you have pretty much joint now. That is what we have got to here, and it seems to be a good balance. I suspect what the Committee on Standards in Public Life is slightly concerned about is the perception of the public of seeing MPs being in judgment over other MPs. Is the perception issue so significant that you have got to remove them?

Sir Ernest Ryder: I think you are right, if I may say so. There is an element about public information that this Committee might need to address, and the House itself might need to address, because there would be very few people who realise that there are seven of you sitting round this table who have an equal voice in what is said in this Committee, and for good reason. Those two public interests are well reflected.

The distinction to be drawn with professional bodies, such as the General Dental Council, General Medical Council and similar councils, is that their ultimate aim is fitness to practise. There is a huge difference between the concept of fitness to practise and what is the function of a Member of Parliament, and whether you have fallen below the standard in relation to the functionality test. I think you are right—the Committee's process is ahead of the curve. I would not want to see it damaged until it has been tried and tested for a little longer.

Dr Maguire: Chair—

Chair: No, I am going to go to Tammy. Sorry, Michael.

Q360 **Mrs Banks:** Hi, Sir Ernest. I am Tammy Banks; I am a lay member as well. I wanted to talk to you about the inquisitorial procedure. The Committee decided that it would not recommend any move from the current inquisitorial procedure to an adversarial procedure, like in the courts. This issue was therefore not part of your review at all, but you have indicated that you support the Committee's decision. Could you explain why?

Sir Ernest Ryder: I do support the decision, partly because there is not an adversarial model that I think fits the parliamentary circumstance. The inquisitorial model has at its heart an investigation into the truth of the circumstance. It has always been the difference between a true inquisition and an adversarial process. An adversarial process is there to determine justice on the facts as presented. That is usually justice in relation to points that the parties in an adversarial context have decided they want to litigate. That is the extreme circumstance.

I appreciate that in modern court case management terms, judges do intervene rather a lot—some would say excessively. But historically, pleadings documents to the court were there to show what the parties wanted to litigate, and you did not go beyond those documents. Indeed, an indictment in a criminal process is exactly the same, whereas the public interest involved in an inquisition is very strong. It is, again, reflected by the membership of this Committee.

The protections of an inquisition are different from the protections of an adversarial process. An adversarial process is designed for lawyers to take points and to spar with each other and the court about them. An inquisition is not: it is a proper inquiry in relation to the relevant issues in the case. But the decision maker ultimately decides.

I am absolutely clear that, given the Committee is exercising the authority of the House, and the House does not have a model of adversarial procedure with lawyers involved, I cannot find a model that I would want to recommend to you with those lawyers involved and that you would want to take forward, because that is the risk that you would be entertaining. You were very clear with me that the House does not permit counsel or legal advisers generally to advocate on behalf of anybody in the House or its Committees. If I may say so, that is wise. That is a different process; it goes to a different protection.

Q361 **Mrs Banks:** Thank you. I think what you said about the process having the truth at the heart is something that we all feel passionately about.

Sir Ernest Ryder: It is the primary public interest that is here. If anybody wants to take paragraph 10 of my report, which was not an admonition to say the House must do better, it was, "Please, please, do what it is you are there to do and let the Committee do it", that is because of the public interest involved in that question.

Q362 **Mr Thorogood:** Morning, Sir Ernest. Nice to meet you. You proposed that the House should approve a new code of procedure that incorporates the good practice that is already there and those that you are recommending. What do you think that means for existing publications that relate to this? Secondly, do you think that the need to secure the House's explicit approval will make it difficult to amend them, and make them somewhat inflexible when it comes to adapting to changing circumstances?

Sir Ernest Ryder: I thought that almost everything you would need in a new code of procedure could be found in documents—most of which are public, but not all. One would start with the procedural component of the code of conduct and guide, because it is there at the very end, then you move into the information note from the Commissioner. I would add the Committee's information guide, because I found it a very helpful document in its language, which was very appropriate to the sort of code of procedure that I am talking about. You put those pieces together.

There are other elements. There are some materials to be found in the Standing Orders—149 and 150—and some materials that might be found in procedures relating to Select Committees of the House. I would like to

see them all in one place, so that you can see the procedure that relates to investigation through first decision making, a procedural appeal—I believe there should be that facility—a substantive appeal and sanction. They should all be in one place, so that they can be read in their entirety.

I don't think it is beyond the time constraints of the House to be able to provide a regular opportunity to review such a code so that it has the authority of the House. It does not require an extensive debate, although the first time might admittedly require some debate, because even though these are established words in pre-existing documents, I can see from previous investigations and cases the need to settle people's minds about what public interests are in play and the fairness of the process. I absolutely see that, but once you have done it, time should not be a significant constraint on you.

In terms of flexibility, I point out in the review that what you do not want is the courts-based rulebook. The courts would tell you they don't want the courts-based rulebook, but there is a model that we pioneered in the tribunals, which is headline. If you take the headline form, the tribunals' committee rulebook is very short. All eight versions are in headline form. The language is in plain language as well. It is easy to apply and easy to amend if you wish to do so, so I don't think you would find that an inflexible end product.

Chair: Michael—and feel free to ask whatever you wanted to ask earlier as well.

Q363 **Dr Maguire:** Good morning. You say that the Commissioner should not be part of the Committee's deliberations on a particular case. Could you say a bit more about why you think that is procedurally unfair? Does it not restrict the Commissioner's role, given that she is an adviser to the Committee?

My supplementary question is about the issue that Mehmuda raised. Do you have any thoughts on how the Committee deals with conflicts of interest?

Sir Ernest Ryder: Certainly, yes. I will take each part. I take it as read that when I am assured and reassured—I put it deliberately that way—the Commissioner would never think it appropriate to interfere with this Committee's deliberations, but that is based on a principle that is sound. Your deliberations are for yourselves—the members of this Committee—and not for an officer of the House or, indeed, for the Clerks or Speaker's Counsel, save when advice is asked for about a point of procedure or law. The Commissioner's attendance during those deliberations is only for her ancillary function of giving general advice to this Committee about good practice and process. That is a very good objective to achieve.

However, the perception of partiality that the attendance of the Commissioner at those deliberations gives, when the Member cannot also be present, creates such a feeling of potential ill will and lack of impartiality that I would not recommend that it continues. There are numerous other ways in which the Commissioner and this Committee can

discuss good practice and developments that you would all wish to see. She can bring them forward to you, and you can bring them to her. There can be a discussion about that.

Going back to the two principal concepts that I put forward in relation to fairness, I did that deliberately, because they are the two most likely to arise, both in domestic case law about fairness and in article 6 ECHR Strasbourg case law about fairness. Where you have somebody whose role is merged from investigation into decision maker, the perception of impartiality is degraded. You do not want to be there, because people are unhappy as a consequence.

It is possible. I can show you European examples of the investigator and the decision maker being the same person—or there being at least a very strong connection between them—but in common-law jurisdictions, at least since Pinochet, that has been a relative rarity, and you will see reflected in, for example, the ACAS code. It does not tell you that you cannot do it; it just says, "If practical, don't do it." That is really where I am coming from.

This is about perception. The public's perception and Members' perception are, it seems to me, critically important here. You want to satisfy both that this is an impartial process. As the Commissioner was really very content to say, "I don't need to be there," I thought that was something that I could safely pursue on the public's behalf, because I think they would be happier as well.

Q364 **Dr Maguire:** What about the issue of restricting the Commissioner's role as an adviser to the Committee?

Sir Ernest Ryder: It does, but only to the extent that you do not have an alternative opportunity to discuss things between you that you would wish to see develop into good practice. There are bound to be alternatives where the Commissioner appears in this Committee without an individual case being discussed, when it is entirely appropriate for her to remain and talk with you about good practice and for you to ask her questions about that. You also asked about conflict of interest.

Q365 **Chair:** Just before you go into that, the Commissioner is an Officer of the House; she advises the Committee—we meet every week or fortnight, or something like that, and discuss the future of the code of conduct, whether she has enough resources, and all those kinds of things—and that is absolutely fine. It is only when we enter into being a tribunal on an individual case that a different hat has to come into play.

Sir Ernest Ryder: I agree. The general advice function is a really important one that I would not want to restrict. I would want the Commissioner to have the opportunity to talk with you all, to make proposals and to respond to your proposals, but when you are acting in a quasi-judicial capacity—in that circumstance—deliberations are entirely for you, and I would prefer that the Member and the Commissioner are seen to be absent at the same time. Then, that perception is absolutely clear.

Q366 **Chair:** Okay. You were going to answer the other question.

Sir Ernest Ryder: Conflicts of interest are never easy because you can realise only halfway through a meeting that you are in conflict because something has arisen. The easiest way in which that is determined is that everybody acting in a quasi-judicial capacity reminds themselves at the beginning about conflict of interest. If somebody has a sufficiently proximate personal or professional connection—not necessarily a fiduciary connection—to the other person, be it the complainant or the person making the case, then you withdraw, explaining your conflict, straight away.

If that is not possible—I entirely accept that things arise and suddenly bring things into clear focus—you withdraw at the precise moment that the conflict becomes clear to you. Committees are well used to that, I would imagine, as much in the House as anywhere else, but it is never an easy, practical thing to decide. It is also, if I may say so, an opportunity for the individual who feels they may be in conflict to talk to the Chair and the Clerks about it, because that is usually a deliberation from which everybody else can be excluded, and that is a discussion in private about whether someone is likely to be in conflict or not. That is a really good process to have if somebody is worried about what is about to be discussed.

Q367 **Sir Bernard Jenkin:** I should perhaps declare an interest: I recused myself from a recent case, but that was after I had taken advice that there was no procedure for recusal. There is no procedure for replacing the vacancy left on the Committee by someone who recuses themselves. Does that need to be addressed?

Sir Ernest Ryder: I would suggest not because there is a difference between declaring a conflict and recusing yourself in the sense of never being a member of the Committee again. If you are simply withdrawing for the case and you are able, as you are today, to take an absolutely full part in the Committee's process for all other purposes, it isn't normally good practice or proportionate for there have to be a substitute for you.

If this Committee had a higher quorum than that in the Standing Orders or if the Committee all had to be present at all times for a determination to be had, I absolutely see the argument that you would be raising—that your absence not only has fundamentally changed the political balance of the Committee, so it is no longer reflective of the House, but has left the Committee without personal expertise, a Member, on an extended basis, and there should be 14 of you to have that debate.

I can see the rationale for replacing a person, but it has to be one that comes for debate before the House. The Select Committees as a whole would have to decide that if somebody is going, the representative function should be filled by someone else.

Q368 **Sir Bernard Jenkin:** There is a confusion because we are a Select Committee—plus lay members, but nevertheless a Select Committee—and Select Committees are elected on a representative basis that somehow the

Members on this Committee are sitting in a representative capacity. How do we address that misconception of what the Committee really does?

Sir Ernest Ryder: I think the best answer is to go back to the first answer I gave you to the last question. Because you sit here in a personal capacity, you are not representing a political party, but you are representative of the distribution of Members in the House; you are not mandated in essence in relation to the vote you cast if a Division were ever required in this Committee on an individual case. That is why I do not think it is appropriate for you simply to be replaced by someone else. You are not here for a purely party political purpose; you are here for the judgment and skill of senior Members of Parliament in a Committee that needs that judgment and skill to be exercised about the functions of Members of Parliament have. I think it is not necessary to go down that route, but I think the House as a whole would have to say there are some functions that require there to be a balance. If it came to that conclusion, then yes, there should be substitution. It is not something that I am recommending.

Q369 **Chair:** There might be another difficulty, I guess. In a sense, we have the means of recusing: you just don't take part any further in the tribunal process as it were.

Sir Ernest Ryder: Yes.

Q370 **Chair:** But the danger of a replacement process is that you would then be elected by the House solely in relation to a particular case. I could see dangers in that.

Sir Ernest Ryder: I can't see it working. It would be fraught with political difficulty even if you had a reserve list of people. If we come on to the issue of how one could have sub-panels of this Committee to deal with first instance and appeals determinations, I think that is equally fraught with similar problems.

Q371 **Dr Midha:** Sir Bernard, you did recuse yourself in that instance, and we ended up with an imbalance in a sense. Quite rightly, you are saying that MPs are not representative of their political affiliations; they are acting as individuals. Is another solution—I am sure whether it is right or wrong—that, if, for example, Sir Bernard recused himself, somebody else would have to stand down as well just to maintain the balance? So we end up down to 12, or would we keep on going down?

Sir Ernest Ryder: For all the obvious reasons, I would not recommend you do that either.

Q372 **Dr Midha:** An MP has a right to sit on a Select Committee regardless. It would be up to their conscience, in a sense.

Sir Ernest Ryder: But as Sir Bernard demonstrated, there are circumstances that require an individual, even where there may be grey areas, to say, "I just think this is getting too difficult for me." And that is absolutely right and the right way to do it.

Q373 **Chair:** Grand—thanks very much for that.

I want to take us to the bit that I don't fully understand, so please help me if I am being very stupid. On initial case discussions, or ground rules hearings, could you just explain how you think that might work? Who is in the room and what are we deciding?

Sir Ernest Ryder: Ground rules hearings or pre-hearing reviews before a meeting are a commonplace across almost forms of adjudication now, so they are becoming relatively well practised. It is like a deliberation, so there would be no Member here, and there would be no Commissioner, but the Clerks and, if you required legal advice, Speaker's Counsel of course can be here—you are entitled to be clerked for that purpose. This is an opportunity to set up the more complex meetings that you are going to have, so if you know that a Member is going to require evidence that has not been taken by the Commissioner, or there are suddenly new witnesses who are required to be seen by the Commissioner, you would want to decide what to do about that before you are met with the issue in the meeting, where you are hoping to come to a provisional conclusion. Likewise if the taking of oral evidence during a meeting is genuinely for credibility purposes—so that, unusually, the facts are not agreed or there is a significant dispute between two different witnesses, one of whom may be the Member—that should be set up properly, so that both witnesses understand that the questions come through the Chair or, as you have done today, from the Committee, with the Committee's permission, and it is not an opportunity for the Member to cross-examine the witness or vice versa, because that is not what an inquisition is. Setting the procedural ground rules is what one does in a meeting of that kind. It is deliberations, and you set out answers—

Q374 **Chair:** But it is a deliberation of the Committee with its advisers, but not the Commissioner.

Sir Ernest Ryder: Absolutely right, and you can, at the end of it, say, "We have decided not to do A, B and C, because we know we are being asked to do that," because the Clerks have properly canvassed that with the Member and the Commissioner beforehand.

Q375 **Chair:** In a way, certainly that is what we did in the Boris Johnson case, isn't it, because we decided we were going to ask for some more information of our own. We didn't ask the Commissioner to do it, and I think what you are suggesting is that in that case we would have been better off to ask the Commissioner.

Sir Ernest Ryder: I would always recommend you do that first, so that the standard of investigation is the same, but that has to be in the Committee's discretion. There are always going to be urgent time constraints, or for that matter political constraints. Presumably, getting the Prime Minister to sit here and answer questions is something that is a properly organised event.

Q376 **Chair:** One of the other things we have done is that we have left it entirely up to the Member whether they want to give oral evidence to us

or not. Do you support that, or should we be standardising that so that all Members give evidence?

Sir Ernest Ryder: No, I think that should remain a matter for the Member. If I go back to the Lord Reed point in Osborn *v*. The Parole Board. You start off with the Member's evidence in good faith. If one starts to have a process of demanding evidence, you are putting yourself in a position where you may be thinking, "What inference shall I draw from silence?" In an inquisition, the ability of the Member not to say anything more than they have already said to the Commissioner is something that should be respected. You as a Committee may decide to draw adverse inferences from what they have said, but not from their silence and desire to simply say, "I've said my piece. It's now over to you."

Q377 **Sir Bernard Jenkin:** I have two questions related to that. I do not know how much consideration you gave to this, but it has been the practice of Commissioners to take most of their evidence in writing, and in one case we went back and wanted more information. What is your view about how much should be done by correspondence and how much should be done by face-to-face interview?

Sir Ernest Ryder: I think that is very difficult for me, outside of the investigatory process, to say, because that is a proportionality and relevance question. Quite often, correspondence is sufficient, because you are not asking for the statement to be on oath; it is simply a written exposition so that you have advance notice of the content. So correspondence can be quite sufficient, as long as it's transparently disclosed, which is what I believe it to be. The written evidence is so much more helpful because the Commissioner can ask the supplementary questions for you in advance. Then you've got that in writing and you've then got the ability to see how the story develops. I mean "story" in the non-pejorative sense. It is the narrative.

Q378 **Sir Bernard Jenkin:** But where the exchange of correspondence is possibly evasive, or just inconclusive, should there be more readiness to resort to face-to-face discussion?

Sir Ernest Ryder: There should be a readiness to resort to face to face because if there is any likelihood that the Committee would regard it as evasive, the Commissioner should feel bold enough to say, "I want to speak to you and ask you questions." If the Member is declining, that is what the Commissioner is writing to you in the memorandum—that she has given the Member that opportunity and that is as far as the Member is willing to go.

Q379 **Chair:** On the back of that, in such an instance would it be a legitimate position for us to adopt that we are not only inviting you to give evidence, but we are requiring you to give evidence?

Sir Ernest Ryder: Yes, I think there are some evasions that are sufficiently significant that it is appropriate for the Committee to use its powers.

Q380 **Sir Bernard Jenkin:** On the other question, one of the disadvantages of

not having a conversation between the Committee and the Member is that the Member can resign themselves to their fate and, if you like, regard it as something that has been done to them, which was unfair and they had nothing to do with, and they remain in a kind of defiant state. I can think of a few instances of this because there has not been, if you like, a judge in front of the accused, saying, "Now, you've done this and you've done that, and this is what we've decided. Do you understand what we've decided, and why?" That conversation never takes place. How do we have that conversation?

Sir Ernest Ryder: The conversation is, as you have intimated, cathartic. I cannot think of an example when it isn't. Nobody giving evidence, me included this morning, is in the same position that they would have been in while doing so on paper, and it is a very good exercise for judges, if I may say so, to sit on the other side of Select Committees and similar bodies to answer questions from Members, and indeed from members of the public. There are real purposes to it. I absolutely agree with you, but I think it would be a rarity that the Committee enforced the attendance to enforce the discussion.

I said in answer to one of your questions, in the conclusion of my review, that giving people leeway to talk to their case, in the way they want to, is the norm. I think that has to include sufficient leeway to be silent, but there has also to be an opportunity to say to somebody, "It would be better if you explained it to us."

Q381 **Sir Bernard Jenkin:** I am thinking this is meant to be a learning process. It is meant to be about creating forward accountability for other people in the future, so that lessons are learned. Quite often, we feel that lessons aren't learned. Should we do that offline? As a matter of standard procedure, should we have a conversation offline with the Member so that they understand why the decision is being made?

Sir Ernest Ryder: In the process of preparation, it ought to be the norm that the correspondence between the Clerks and the Member indicates, with this Committee's sanction and its authority, that it is always a good idea to discuss a case with the Committee when that invitation is made, and the Committee will rarely summon somebody, because the Committee will take somebody in good faith. Credibility is a subsequent decision that you come to when you have heard what is being said. Getting that across to somebody is very wise. I wouldn't normally recommend a private session after a hearing because you'd debate your conclusions with the Member, no matter how much you may not want to. You may reflect on the fact that judges, constitutionally, cannot comment on their judgments, for very good reason. One, you never say the same thing twice. Two, you actually give somebody a second bite of the cherry without the appeal. I wouldn't recommend that.

Sir Bernard Jenkin: That is very interesting.

Q382 **Chair:** One little question: you mentioned "on oath". Now, theoretically—well, not theoretically; it is true that a Committee can require somebody to

give evidence on oath—obviously, if you suddenly decide for the first time ever to say, "Right, under the Parliamentary Oaths Act, I now require you to give evidence," that implies that we are not taking you in good faith. Do you have a view on that?

Sir Ernest Ryder: I wouldn't revert to the taking of evidence on oath. I think it is either a standard practice that one has the oath or affirmation, or not. The standard practice before Select Committees is not.

Q383 **Chair:** Grand. The Committee would be making a decision having done all these processes. We would then produce a report in the normal way. Before it goes to appeal, should that be public, or should it only go to the Member concerned?

Sir Ernest Ryder: I am quite in favour of the process that judges use in court tribunals: having the determination of the Committee in draft to the Member for a period of time—one week, 10 days; in a judicial capacity it can be as short as 48 hours—so that the Member can think about it and take advice on the content. Taking legal advice on the content would not be an inappropriate use of a legal adviser. You are then able to say that time will run for an appeal from a particular date, which can be the date of delivery of the draft, after which it will no longer be confidential unless you have appealed. The appeal body can then decide whether to continue the confidentiality for a short period of time.

Q384 **Chair:** What about if there is a complainant? Does the complainant get that as well?

Sir Ernest Ryder: I would not advise so, because this is not an adversarial process. Here, you are not seeking to say to the complainant, "One of the points you wanted to make is decided in this way. Do you want to suggest any corrections to the way we've done it?" That is not what you are about. Because this is a public interest determination, you are only giving this to the Member in the same way that one would in the Salmon procedure used in inquiries—that is, you are cross-checking your determination with a Member to allow them to take advice on it before it goes public.

Q385 **Chair:** In the adjudications you referred to, is there a confidentiality requirement on the person who is receiving it, and how is that enforced?

Sir Ernest Ryder: Absolutely, in the court context, there is a very recent case that demonstrates it. It is a contempt in the face of the court to breach the rubric which says that on its face: you may not publish this document and you may only discuss it with your legal adviser. Your Committee is entitled to come up with a similar form of restricted publication in order to maintain confidentiality. It would then be punishable in relation to contempt in the way that any other contempt of this Committee would be. I appreciate that is a whole new chapter, that I have not asked.

Chair: This is a box labelled "Pandora". Thank you for that.

Q386 **Andy Carter:** Sir Ernest, can I pick up on one of your points about how, in

a court environment, a judge would never comment on the outcome of a case. Do you think it should be the case in this Committee, given the quasi-judicial nature, that comment after publication should be restricted solely to the report that is published?

Sir Ernest Ryder: It is a very nice discipline to have for anybody who is acting in a quasi-judicial capacity. However, I have to acknowledge that half of you are Members of Parliament and have the very privilege of freedom of speech in Parliament that I am relying on as part of the source of parliamentary law and you cannot be restricted from making comment, at least in that context.

There is a good self-imposed ordinance in relation to private comment which becomes public, because it is the gossip in the Tea Room, for example. I think that is an appropriate self-denying ordinance.

Q387 **Andy Carter:** Thank you; that is very helpful. Can I move on to the appeal process and structure that you have identified? For Committee members' benefit, in our November report, we talked about four options for appeal process: setting up an internal sub-committee, referring any appeal to the Independent Expert Panel, creating a new appeal body, and retaining the status quo. You identified that you thought the IEP was the best route to go down. Given that you said right at the start of your evidence that you felt that an external body was not the right place to go for making judgments on Members of Parliament, why did you go with the IEP?

Sir Ernest Ryder: Because the appeal that I am recommending, which is there because of the potential seriousness of a sanction on the reputation of a Member and the House, is effectively on a point of law or procedure, unless there is new evidence. That is not the same as the parliamentary skill in relation to the function of proceedings that the members of this Committee bring.

An external body with legal expertise is perfectly capable of bringing its expertise to bear on a point of legal procedure that has gone wrong, an investigatory point of procedure that has gone wrong, or whether something genuinely is cogent new evidence that could not reasonably have been obtained and that would make a material difference—the three classics of the appeal process, which are in the existing IEP's routes of appeal guidance. They would work here, because it does not need to debate what a parliamentary function is or what the standard is below which someone has gone, which is for the members of this Committee.

I see a very clear distinction there. Whether the IEP or another similar independent body should be chosen, I think is a resource question. The IEP is set up for a purpose. I have seen what it is doing. The purpose is the same one as the one that I envisage. Therefore, it should work. But it would need to be sufficiently resourced to be able to work, because you will have some urgent procedural appeals, as well as some slightly more long-standing appeals against sanction or ultimate determination points.

Q388 **Chair:** May I check whether I have got this right? I think that the process

you are suggesting is, first, that the Parliamentary Commissioner for Standards decides whether to launch an investigation and appoints an investigator or investigators. The investigator reports to the Parliamentary Commissioner. The Parliamentary Commissioner, if she thinks that there is something that can be rectified, deals with that and it is all fine, done and dusted; if she thinks it is more serious, she reports to our Committee. Our Committee decides, first, how we will deal with the case, and then whether there has been a breach and what the sanction should be. A panel of the IEP will then decide whether to hear an appeal on both those elements in one, or—?

Sir Ernest Ryder: It would depend on the grounds of appeal. I have made it very clear: a modern appeal process does not allow someone to say generally, "I don't like this"—

Chair: You cannot rehash the whole argument, yes.

Sir Ernest Ryder: It has to be, "What is the ground of appeal?", so you set out the rights of appeal in advance, in the way that you already have to the IEP on the ICGS cases.

Q389 **Chair:** If the IEP then upheld the original decision of the Committee, in essence what would be published is the decision of the Committee.

Sir Ernest Ryder: Yes.

Q390 **Chair:** If they decided to disagree, whether on the sanction or not, they would publish their own report.

Sir Ernest Ryder: That is right. A possible route that the Committee might be interested in, which I could have expressed more views about, is: if the IEP decides that there is an appeal on one or more grounds, it could send it back to the Committee to redetermine those two things. That is not an inappropriate thing to happen. In fact, one could argue that if there were any question about the functions of Parliament, its Members and standards, that is exactly what the IEP should be doing. It should not arrogate to itself a decision that is the Committee's; it should only make a decision where there is—it is what the Court of Appeal does—plainly no other solution than x, when you can go for x, but where it is x and y, you send it back to the Committee.

Q391 **Chair:** Then, any decision—whether the appealed version that still requires a sanction, perhaps a lesser sanction or possibly, I suppose, a higher sanction, or the original decision of the Committee—goes straight to the House for a straight up-down vote without amendment or debate.

Sir Ernest Ryder: That is my recommendation, yes.

Q392 **Chair:** That gets around Andy's point. When I have to speak to a motion in the House, I am always slightly conscious that, apart from anything else, a Minister has to speak to it first. That always seems rather curious. Mostly I try to say exactly what we said in the report.

Sir Ernest Ryder: I understand that difficulty. My quite strong preference, and the view I immediately came to when I listened to Lord

Evans's evidence, is that, if there is ever the suggestion—though one hopes there won't be in future—that an organised group of Members of Parliament can in some sense get around the public interest by having an amendment to a motion, or by having an extended debate on it, the solution is that the House is effectively a jury on that point. It is not giving reasons. It is not a reasoned appellate mechanism. It is not a second appeal, even. It is simply making a decision: "Was this a breach? Is this sanction right?" It is a straightforward yes or no.

Q393 **Sir Bernard Jenkin:** If there is a formal appeal process, I agree with you that the case for the House re-debating the question falls apart, because there has been a complete process. The only reason that there was a recent row about this is because it was contested as to whether there was an appeal process.

Sir Ernest Ryder: I can understand that point. That is why I would wish to characterise what this Committee does not as an appeal but as the full merits-based decision.

Q394 **Sir Bernard Jenkin:** Right. On the question of the IEP or IEP-type panel that hears the case, in the case of bullying and harassment and all that, it is so clearly not a parliamentary matter; parliamentary advice to understand how Parliament works is not necessary. In the case of all these matters of conflicts of interest, Members of Parliament have to navigate conflicts of interest all the time. Some are perfectly acceptable conflicts, and we have procedures and ways of making conflicts transparent. It is when they are mismanaged that we have to adjudicate so often.

I have become a convert on this. I used to think that we wanted a purely quasi-judicial process—to get the MPs out of it. What would you say to the suggestion that even the IEP bit of it—the appeal—should still have access to, say, a senior Member in an advisory capacity, appointed specifically for that case to be on hand to advise the panel and say, "No, no. Wait a minute. That's not what happens in Parliament. This is what happens in Parliament"? We live in a very funny little bubble in Westminster. Parliament is an extraordinary institution. One or two of the lay members may be the first to agree that they are quite surprised sometimes by what they discover about how Parliament works. That understanding is necessary to have a process that is credible with the people who are being adjudicated upon.

Sir Ernest Ryder: The difficulty with that is identifying who those Members should be. If I reflect back probably to the first Joint Committee report on privilege, there was at least a suggestion that Privy Counsellors might be put into that position until somebody thought it through logically and realised that the opportunity for there to be a Conseil d'État within Parliament was perhaps not a decision we should take lightly without having thought it through in advance—just as a judicial tribunal in Parliament is something that one would not take lightly, without thinking it through.

What you have developed at the moment is clean, clinical and relatively easy to operate. Putting advisers into what is effectively a legal appeal is

something I would not do, because you are never going to arbitrate who that should be for the particular circumstances. There will always be somebody who is not going to be happy about that.

There is a process that would work, however. If the IEP needs advice, it should come back to this Committee. That is an absolutely clear point that one could put into the code of procedure: if there is any question about what it is that the IEP is doing in relation to parliamentary function or conduct, it is this Committee that advises, not them.

Q395 **Dr Midha:** I want to pick up the issue of sanction—going to the Floor of the House and passing it without debate, and so on. I can see the logic of that, but it would require an incredible amount of self-discipline on the part of every individual MP. Some MPs might say, "It's the sovereign will of Parliament. I can decide whatever I want to do because I am an elected Member." How do you get around that?

Sir Ernest Ryder: I think the House has been around long enough to understand that there are some things that you have to be disciplined about. Standing Orders reflect that. I am suggesting that we might just tweak 149 and 150 a little to make some things very clear, so that they wouldn't just be in the code of procedure; they would be in the Standing Order. There is the temptation to debate and amend, but, from my perspective, if I was the person at the end of this, having somebody debate my life in public is probably not what I would want to be done. However, having it debated here, in a professional environment, is what I would expect to happen if I accidentally or deliberately passed the threshold of inappropriate conduct.

Q396 **Chair:** It was one of the first debates in this Parliament, actually. When we were setting up the IEP—during the final bits of setting it up—the original notion allowed for a debate and amendment. I tabled the amendment saying that that shouldn't be allowed, and that got carried. I think the House has already sort of half swallowed this pill.

Sir Ernest Ryder: I think it has, and I think it understands why it is important. The no vote on a Division is as important as the yes vote. If the House is saying a straightforward no, that is quite powerful. It is quite appropriate. There will be some things where the House thinks, "This is marginal and too political, and therefore the answer is no."

Q397 **Yvonne Fovargue:** Why would you recommend scrapping the provision for the investigatory panels? I realise that they have never been used, but why would you recommend scrapping them rather than having them as a backstop?

Sir Ernest Ryder: I came to the conclusion that the purpose of the investigatory panel was unclear. It was opaque. Is it meant to be an investigation? What is it actually meant to be? If it is meant to help the investigator, or to be the investigator itself, it is a very cumbersome method of trying to obtain evidence from people. And if you are going to have it, what on earth is the constituency of the investigative panel for it to be fair? An Officer of the House is one thing—operational independence

is guaranteed and you cannot seek to influence her; that is very clear—but who is going to sit on the investigatory panel? What happens if they are split 2-1 or 2-2? And how do they garner evidence in a way that an individual person charged with that cannot?

I was left thinking that this was itself a possible confusion between investigation and first instance decision making. If it is the latter, it is not as good as this Committee because it does not have the balance of public interest reflected in its membership. At the end of the day, I could easily see why it had not been used: it was unclear as to its purpose and it was cumbersome. So with respect, I agree. It should go.

Chair: Grand. Rita, did you want to ask a question?

Q398 **Mrs Dexter:** Yes please. It may be a really simply one. A few minutes ago, the Chair sought to clarify that he understood the steps of the procedure that you recommend. In introducing his question, he said that the Commissioner decides whether there will be an investigation and then appoints an investigator, and so on. When I joined the Committee four or five years ago, the practice of drawing a distinction between the Commissioner and the investigator was not evident. I never heard them described separately in the way the Chair just has, but I routinely hear them described separately now. I don't like it very much. I think it is wrong, in principle, and I am worried about where it will end up. I think it is partly because of what happened with the setting up of the ICGS, where there was a necessity to buy in investigators to undertake the necessary investigations with the appropriate expertise. The House could have simply given £1 million to the Commissioner and she could have employed her own investigators. It could have had the same structure and routines as the investigations into code of conduct complaints. My point is about the new practice, as I see it, of identifying the idea of an investigator separate from the Commissioner. Does it matter, or shall I just give up on this?

Sir Ernest Ryder: It matters in ICGS cases because the investigators are ringfenced, and what the investigators find goes to the Commissioner. That is a division of function in just the same way as, in the non-ICGS cases, what the Commissioner finds comes to the Committee. For exactly the same reasons I have described in the review, that division of function in terms of impartiality is important.

However, in these cases—the non-ICGS cases—the only purpose of having investigators who are not the Commissioner is that the Commissioner will need deputies and delegates to do the work, but she takes total responsibility for what they do. As I understand it, there is no issue about that. It is not that you would be seeking to criticise an investigator. She puts her name to everything that comes here in the memorandum, so you do not have to regard the investigator as being a subset or something different in the cases that we are talking about—the non-ICGS cases.

Q399 **Chair:** Some of the press reporting of your report seemed to suggest that you wanted to limit the powers of the Commissioner—you wanted to cut her back or make it more difficult for her to do her job. I don't think that is

what you intended at all, is it?

Sir Ernest Ryder: It is an incorrect characterisation of what had been said. Without casting aspersions, if the journalist concerned had moved from the recommendations to the body of the review, he or she would have discovered the rationale for the recommendation and would not have made the error.

Chair: That is the most elegant way of telling off a journalist I have come across.

Q400 **Mehmuda Mian:** Sir Ernest, have you thought in your review about whether we do enough to serve the needs of complainants, and particularly lay complainants?

Sir Ernest Ryder: That is a very good point indeed. The Commissioner has powers of her own motion to do things, but it certainly occurred to me more than once, in the short time I had to think about these things, that the third party, who is out there without an MP to talk to, for whatever reason, needs to be considered. I was not asked to consider this aspect, but I do think there is some merit in the longer term in looking at the way in which public complaints can come to the Commissioner.

There has to be a threshold. There has to be a way of the Commissioner saying no. There are two thresholds already built in: it has to be justiciable in relation to a potential breach, and there has to be sufficient evidence to be able to get over the primary threshold. But do members of the public know about the Commissioner's power? I think it is probably quite—not well hidden; that would suggest it was deliberate—an unearthed opportunity that might need to be considered further by the Committee.

Q401 **Chair:** It feels as if quite a lot of members of the public know that the process exists, because it either lands on my desk or on Kathryn's, and sometimes it is a million miles away from anything that is possibly justiciable or evidenced.

Sir Ernest Ryder: I think if that is the case, I am reassured.

Chair: Right. Unless anybody has any further questions—

Q402 **Sir Bernard Jenkin:** Can I just ask one question? It is about something that arose yesterday; it was very interesting. There is a lot of misreporting about the work of this Committee. A judge in a court does not attempt to correct misreporting about a case. Are we in a different case here? Should our website carry corrections to misreports, or are we just getting dragged into a quagmire?

Sir Ernest Ryder: In a quasi-judicial world you get dragged in, and it is impossible ever to see the end point in a world where social media has taken the place it has over print media, so getting a correction is probably not a proportionate issue for this Committee—unless it is a really serious breach that amounts effectively to a contempt of the Committee's process, when a correction by the media organisation may well be the appropriate answer.

Sir Bernard Jenkin: I am sure there have been plenty of those.

Sir Ernest Ryder: But I do take the implication of what you say, Sir Bernard, very seriously. The website has to say enough to explain what you do as well as to give examples of the precedent decisions that inform people about what is a breach and what isn't. I do think there has to be some learning material in that.

Q403 **Sir Bernard Jenkin:** That begs another question: should we have much more precedent material on our website? We tend to work on a sort of corporate memory system.

Chair: The corporate memory is sitting here.

Sir Bernard Jenkin: Possibly the Commissioner herself is more disciplined. Frequently, we find ourselves in new situations and we find we don't have precedents. Should we keep more of a precedent book?

Sir Ernest Ryder: I wondered if, in proposing the code of procedure that I have, more of what you did would end up in *Hansard,* because it would—because you are then doing something that is a code with the authority of the House, so amendments to the code end up being notarised in a more systematic way. Yes, a bit more attention could be paid to how much is disclosed on a website about cases so that the public can understand it—and for that matter, other Members.

Sir Bernard Jenkin: Members of the House—that is where we lack the most engagement.

Sir Ernest Ryder: I think in the modern world there is an expectation about that.

Q404 **Chair:** I think one of the issues is also that, in a sense, the Chair of the Committee, having been elected by the whole House, is to some degree both a servant of the House and accountable to the House, so there is a slightly different accountability structure than there would be for a judge who has made a decision in a court case or a tribunal.

Sir Ernest Ryder: Yes.

Chair: This has been enormously helpful. We are very grateful to you. I cannot speak for the whole Committee, but I am guessing that we will be pretty much going in your direction. We note that it is a package, but it has some options within the package. We are very grateful to you. Thank you very much, Sir Ernest.