



House of Commons
Committee on Standards

Confidentiality in the House's standards system

Sixth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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to be printed 16 June 2020*

HC 474

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Committee on Standards

The Committee on Standards is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

[Chris Bryant MP](#) (*Labour, Rhondda*) (Chair)

[Mrs Tammy Banks](#) (*Lay member*)

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Powers

The constitution and powers of the Committee are set out in Standing Order No.149. In particular, the Committee has power to order the attendance of any Member of Parliament before the Committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

Publications

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Committee staff

The current staff of the Committee are James Camp (Committee Assistant), Laura Crockett (Media Officer), Dr Robin James (Clerk), Stuart Ramsay (Second Clerk) and Laura-Jane Tiley (Second Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Committee on Standards, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3259; the Committee's email address is standards@parliament.uk.

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Confidentiality in the House's standards system

1. The extent to which the investigation of alleged breaches of the House of Commons Code of Conduct is kept confidential has varied over the years. The most recent changes were made on 19 July 2018 when the House adopted a Behaviour Code and an Independent Complaints and Grievance Scheme (ICGS) to deal with allegations of bullying, harassment and sexual misconduct on the part of those who work in or with Parliament. The House accepted the arguments set out in the Delivery Report of the then Leader of the House's working group on this subject, that in order to protect vulnerable complainants, and in order to encourage complainants to come forward, it was necessary to impose a higher degree of confidentiality than had been the case in respect of previous complaints of breaches of the Code.¹ The House also agreed to a proposal from the then Leader, against the advice of the Parliamentary Commissioner for Standards and our predecessor Committee, to extend this new confidentiality regime to existing Code of Conduct complaints.² Since then, the Commissioner and the Committee have observed the new confidentiality restrictions, as required by the House.

2. Those new restrictions have now been in operation for nearly two years. The Commissioner has submitted a paper to us arguing that in certain specific respects they have impeded her work and undermined the effective operation of the standards system. She puts forward four recommendations for improving matters. We publish her paper and its recommendations as an Appendix to this Report.

3. We share the Commissioner's concerns about the operation of the current confidentiality regime. Those concerns are set out with full supporting detail by the Commissioner in her paper appended to this report.

4. **We support the Commissioner's recommendations, which are as follows:**

Deterrents to unauthorised disclosure

- a) **Following an unauthorised disclosure of information, the Commissioner should be empowered—if she thinks it appropriate—to investigate the disclosure; or to ask the relevant manager to investigate and if necessary to ask him/her to consider disciplinary action. She should also have the discretion, if there were a particularly serious breach of confidentiality, to interview witnesses and if appropriate to suspend or discontinue her own investigation, if the disclosure was sufficiently damaging and was instigated by the complainant.**

The power to set the record straight

- b) **While as a general rule, the Commissioner will not disclose to the public or the media the details of an ICGS case either while it is under investigation or afterwards, she should have the discretion in exceptional cases publicly to**

1 UK Parliament, Independent Complaints and Grievance Policy Programme Team, Independent Complaints and Grievance Scheme Delivery Report, published July 2018, paras 59–71

2 Votes and Proceedings, 19 July 2018

correct inaccurate or incomplete information. She might wish for example to confirm whether an investigation is taking or has taken place, and the broad nature of the case. She would only give out minimal information, and would only do so after consulting the parties involved and considering their mental and emotional wellbeing.

Authority to publish a quarterly report about completed ICGS investigations

- c) The Commissioner should be given authority, as part of the wider ICGS reporting arrangements, to issue a quarterly report giving numbers of ICGS investigations,³ themes and outcomes, all in anonymised form, without allowing the complainant to veto publication.

Publishing information about ongoing non-ICGS investigations

- d) The Commissioner should be given authority to publish a list of ongoing non-ICGS investigations and to confirm or deny whether a non-ICGS matter is being looked into, as she did before 19 July 2018.

5. *We recommend that the House take the necessary steps to implement the proposals set out in the previous paragraph. We suggest that a motion along the lines of the following be put before the House:*

That this House reaffirms its commitment to the Independent Complaints and Grievance Scheme (ICGS) and to tackling bullying, harassment and sexual misconduct on the part of anyone who works for or with Parliament; reasserts the importance of confidentiality within the ICGS in order to protect the vulnerable and encourage victims to come forward; but notes the concerns expressed by the Parliamentary Commissioner for Standards, as set out in the Appendix to the Sixth Report of the Committee on Standards, Confidentiality in the House's standards system (HC 474) about the operation of certain aspects of the confidentiality regime set up by the House in its decisions of 19 July 2018; agrees to the recommendations in the Committee's Sixth Report; and accordingly agrees to amend paragraph (12) of Standing Order No. 150, in line three to leave out "statistical" before "information" and to add "and matters under investigation" after "received".

6. The Committee on Standards has responsibility for issues relating to the conduct of Members of the House. We are conscious of our responsibility to ensure that Members are treated on an equal and fair basis in comparison with other people who work for or are associated with the House. It is important that no group within the parliamentary community is treated more favourably—or perceived to be treated more favourably—than any other group. *If the House agrees to our proposals that the Parliamentary Commissioner on Standards should have discretion to investigate disclosure in respect of Members, we urge the House authorities to give all investigating managers a similar discretion in respect of ICGS cases that do not involve Members.*

³ Where information relates to cases of 10 or fewer, exact numbers will not be published.

Appendix: Memorandum from the Parliamentary Commissioner for Standards—Confidentiality in the House's standards system

Paper by the office of the Parliamentary Commissioner for Standards (second revision)

This paper, which is based on one prepared for the Committee's predecessor in summer 2019, sets out the Commissioner's concerns about confidentiality issues in the light of her experience of recent investigations. The paper invites the Committee to recommend changes to the House. Recommendations are summarised at Annex 3.

Background

Before the Independent Complaints and Grievance Scheme was introduced on 19 July 2018

1. Standing Order No. 150 gives the Parliamentary Commissioner for Standards the task of investigating allegations that MPs have breached their Code of Conduct and the associated rules. In the early years of the role, if a Commissioner submitted a formal memorandum to the Committee on Standards, the Committee would publish that along with its own report and the full evidence. In other cases the Commissioner did not publish information, but would respond to media enquiries by confirming whether a complaint had been received and whether it had been dismissed or reported to the Committee on Standards.
2. On 2 December 2010, after a media challenge to the arrangements then in force, the Committee accepted the recommendation of the Parliamentary Commissioner for Standards that the policy had to change, in order to uphold confidence in the system and balance the public right to know with the risk to Member's reputation when a complaint is not upheld. The House agreed a framework for disclosing more information about the Commissioner's investigations. This framework, which remained in force until 19 July 2018, allowed the Commissioner to post a list of current investigations on his webpages, giving the name of the MP and the broad area of the investigation. While an investigation was taking place, if approached by the media or others, his office would confirm whether a complaint had been received and whether it was being investigated, and the broad area covered, but without giving out any further detail. And once the Commissioner had completed his inquiry, the outcome and the evidence would be published. If he submitted a formal memorandum to the Committee, the Committee would (as before) publish that in full, along with the evidence he had considered. In addition, from December 2010, if he rectified a case or decided not to uphold the complaint, he would publish his decision on the Commissioner's webpages, along with the evidence he had considered.

After 19 July 2018

3. On 19 July 2018 the House approved the Delivery Report on the Independent Complaints and Grievance Scheme (ICGS). This extended the Commissioner's remit to allow her to determine allegations of bullying, harassment and sexual misconduct by MPs. These cases are investigated by external case managers under the oversight of the Commissioner, rather than by the Commissioner herself.

4. The authors of the Delivery Report recognised that the ICGS cases could involve particularly sensitive and personal issues. They felt that given the level of media interest, the close relationships within the "Westminster village" and the intense speculation which follows any allegation, to disclose even the name of the MP concerned could on occasion enable the complainant to be identified. It was argued that this would deter complainants from bringing forward allegations of bullying, harassment or sexual harassment. (This concern was largely based on research about sexual violence cases.) For this reason the report made plain that ICGS cases were to be considered under conditions of absolute confidentiality, with no information at all given out during an investigation.

5. The then Leader of the House recommended that the same confidentiality should apply to the Commissioner's other, non-ICGS, cases while they were under investigation. She argued that it would be confusing to have two different regimes for publishing information about investigations into MPs' conduct: one for ICGS cases and one for other types of case. The House approved the change, despite opposition from the Standards Committee and the Parliamentary Commissioner. As a result, to bring these investigations into line with ICGS investigations, from 19 July 2018 the Commissioner ceased to publish any information about Code of Conduct investigations, or to answer media enquiries about them, while they are under way.

6. Once an investigation is completed, the two types of case are treated in different ways. At the end of a non-ICGS cases the Commissioner publishes any decision to rectify the allegation, or not to uphold it. She also publishes the evidence she has considered. In more serious cases she continues to submit a memorandum to the Standards Committee, which publishes this along with the evidence.

7. Completed ICGS cases are handled differently. The decisions of 19 July 2018 gave the Commissioner limited powers to publish information about ICGS cases completed and "remedied". (The relevant paragraphs of the Delivery Report are at Annex 1.) As a result, she has published no information about ongoing or completed ICGS investigations to date. The only authoritative information provided about ICGS complaints and cases completed is in the anonymised statistics which are published retrospectively by the House authorities. These latest statistics (available via <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/independent-complaints-grievances-use-statistics/>, and at Annex 2) do not distinguish between complaints about MPs, where the Commissioner has oversight of the investigations, and those about other respondents such as, for example, parliamentary staff or contractors or the staff of parliamentarians.

The effects of the July 2018 decisions

8. Securing the confidentiality of investigations has always been a challenge. Even before the ICGS was introduced it was hard to stop complainants (whether MPs or others) from publicising an allegation before they sent it to the Commissioner, or during an inquiry. Some told the media prematurely that their allegation was already under investigation, when it was not. In other cases it seems that there was never any intention to submit a formal complaint at all. Any new rules and restrictions would be unlikely to have much effect on the behaviour of people who have not yet engaged with the ICGS or the Commissioner.

9. Against that background it is unsurprising that the July 2018 decisions have not secured confidentiality for investigations. It may be that the arrangements did not give sufficient weight to the other factors at play in a highly politicised environment, where complainants may see advantage in seeking media coverage on their own terms. Although complainants, respondents and witnesses are told explicitly that all correspondence about the inquiry is protected by parliamentary privilege and should be kept strictly confidential, details of several ongoing investigations (both ICGS and others) have reached the public domain. In several ICGS cases it is believed that complainants—the very people whom the ICGS arrangements were designed to protect—were behind the disclosure, encouraged by the media. Such disclosures are concerning, particularly where either of the parties involved are vulnerable, because this can have serious effects on personal wellbeing. Unplanned disclosure leaves both complainants and respondents open to media ambush, and allows no time for supportive measures to be put in place.

10. The information which has appeared in the media about investigations has not always been accurate. In some cases, an MP has asked the Commissioner to correct it by making a public statement that an investigation was or was not under way. This could have helped to support those involved. However, the Commissioner has not been able to do so. The 2018 changes have deprived her of her voice.

11. There are also wider problems. The public are not told whether complaints are being investigated and, if so, what the outcome is. Without evidence that action has been taken, it is easy to assume that there has been none. And since so little information is published, people are unlikely to feel encouraged to participate in the Independent Complaints and Grievance Scheme in particular. It is hard to trust a scheme where both the process and the outcomes are hidden. In summary, the 2018 arrangements have done little to promote the Nolan principles of openness and accountability, or to encourage confidence in the parliamentary standards system.

Recommendations

ICGS investigations

12. The Commissioner supports the principle of confidentiality during ICGS investigations. These cases are different from most other Code of Conduct cases because the complainant is alleging that they have experienced personal detriment. Such allegations are rare in non-ICGS cases. The parties involved are also more likely to be vulnerable.

The Commissioner's office already follows stringent confidentiality procedures to protect personal information. However, she and her staff have taken additional precautions in relation to ICGS cases.

13. The Commissioner believes that there should be stronger safeguards during investigations in order to ensure that all those involved honour the expectation of confidentiality. She welcomes the new procedures under which complainants are advised that any disclosure may undermine the investigation and may lead to it being halted. She was pleased to learn that MPs and witnesses in such cases are now asked to sign an undertaking to keep the investigation confidential until it has concluded.

Deterrents for unauthorised disclosure in ICGS cases

14. The Commissioner would also welcome some deterrent to the unauthorised disclosure of confidential information, which seems to have been a particular problem in relation to ICGS complaints about MPs. If she believed that an MP had been responsible for the disclosure, she might wish to investigate the disclosure itself. If that MP was not already under investigation she might open a new inquiry. Or if that MP was under investigation for possible harassment, and it was established on the balance of probabilities that he/she had disclosed confidential information about the investigation without permission, the Commissioner might need to consider whether this was an aggravating factor.

15. The Commissioner has no authority to investigate the actions of people who are not MPs. If while she was overseeing an investigation of an MP, she obtained evidence suggesting that someone had disclosed confidential information about the case, she might invite that person's line manager to consider disciplinary action. Or, if she believed that the disclosure came from an MP, she might authorise an investigation herself. Whoever the complainant, in particularly damaging cases the Commissioner believes that she should also have the discretion to suspend or discontinue the investigation if it could be established on the balance of probabilities that the disclosure came from the complainant. (The Commissioner already has powers to inquire into the actions of the respondent, who will be an MP.)

Recommendation 1: *Following an unauthorised disclosure of information, the Commissioner should be empowered—if she thinks it appropriate—to investigate the disclosure; or to ask the relevant manager to investigate and if necessary to ask him/her to consider disciplinary action. She should also have the discretion, if there were a particularly serious breach of confidentiality, to interview witnesses and if appropriate to suspend or discontinue her own investigation, if the disclosure was sufficiently damaging and was instigated by the complainant.*

The power to set the record straight in relation to ICGS investigations

16. Under paragraph 71 of the ICGS Delivery Report, the Commissioner already has the power to disclose information about an ongoing case if necessary for safeguarding. She would welcome the additional discretion to disclose information in order to correct misleading information in the media. She believes that it is important to be able to provide an authoritative counter narrative to inaccurate media accounts. She might for example wish to confirm that an allegation was not being investigated, or to correct inaccurate

information about its scope. She would do so only after very careful thought and after consulting all those involved. The decision to set the record straight would be hers and hers alone.

Recommendation 2: *While as a general rule, the Commissioner will not disclose to the public or the media the details of an ICGS case either while it is under investigation, or afterwards, she should have the discretion in exceptional cases publicly to correct inaccurate or incomplete information. She might wish for example to confirm whether an investigation is taking or has taken place, and the broad nature of the case. She would give out only minimal information, and would only do so after consulting the parties involved and considering their mental and emotional wellbeing.*

Authority to publish a quarterly report about completed ICGS investigations

17. The Commissioner would welcome clearer guidelines on publication of completed ICGS investigations. It is important that people know what will be made public and when. At present the picture is unclear. The Commissioner believes that she should normally publish carefully anonymised information about ICGS investigations which she has concluded, including cases where the allegation has not been upheld. The complainant's views need not be paramount; they should not carry more weight than those of others involved in the complaint. As the Committee agreed in 2018, there is an important balance between the disclosure of information about cases, which is needed to promote confidence in the new Scheme, and the need to protect sensitive personal information about individuals.

18. The Commissioner believes that it is important to publish clear information about concluded cases in order to build trust and confidence in the ICGS Scheme. This will enable those who experience harassment, bullying and sexual harassment to come forward knowing they will be treated fairly. The Commissioner would therefore welcome authority, as part of the wider reporting arrangements, to issue a quarterly report giving numbers of investigations,⁴ themes and outcomes, without allowing the complainant to veto publication. She would frame this report in a way which would not make cases identifiable. For example, she would report on whether a complaint related to bullying, harassment or sexual harassment, and whether it was upheld. No names or dates or other identifying information would be given; and themes would be described only as part of a general overview. The Commissioner would however reserve the right, in an exceptional case, to delay publication of information about that case, out of consideration for the mental and emotional wellbeing of those involved, if she considered it advisable.

Recommendation 3: *The Commissioner should be given authority, as part of the wider ICGS reporting arrangements, to issue a quarterly report giving numbers of ICGS investigations,⁵ themes and outcomes, all in anonymised form, without allowing the complainant to veto publication.*

4 Where information relates to 10 or fewer cases, exact numbers will not be published.

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Publishing information about ongoing non-ICGS investigations

19. While this paper focusses on the confidentiality arrangements for ICGS cases, the Commissioner remains concerned about the arrangements for other cases. She is strongly in favour of returning to the arrangements which applied before 19 July 2018. These allowed her to publish lists of those under investigation, and to confirm whether or not she had received a particular allegation.

20. In July 2018 it was suggested that these prohibitions on disclosure might be reconsidered in the six-month review of the Scheme. The Commissioner believes that these restrictions do not help MPs who are under investigation. Rather than ensuring confidentiality for investigations, these restrictions leave MPs open to rumour and speculation. Considered as a whole, the restrictions on publishing information about non-ICGS investigations have done nothing to promote confidence in the House of Commons standards system. The Commissioner takes the opportunity to say that she very much hopes that—almost two years later—the Committee will feel able to press for the House to lift the restrictions quickly and to return to the pre-July 2018 position.

Recommendation 4: *The Commissioner should be given authority to publish a list of ongoing non-ICGS investigations and to confirm or deny whether a non-ICGS matter is being looked into, as she did before 19 July 2018.*

Conclusion

21. The confidentiality arrangements agreed on 19 July 2018 were designed to encourage complainants to come forward without fearing that their identity would be exposed to colleagues and the media. However these arrangements perhaps did not give sufficient weight to the other factors at play in a highly politicised environment, where complainants may see advantage in seeking media coverage on their own terms. The Commissioner believes that further measures are needed to achieve the right balance between confidentiality and public accountability, and to safeguard the wellbeing of all those involved.

22. The Commissioner hopes that her recommendations above will be taken forward. She is confident that these would go a long way to help build confidence in the parliamentary standards system and in the Independent Complaints and Grievance Scheme in particular, while protecting the confidentiality of individuals.

Office of the Parliamentary Commissioner for Standards, June 2020

Annex 1

Paragraph 63 of the July 2018 ICGS Delivery Report

There needs to be some flexibility: a Member is likely to want publication of the fact that a complaint which has attracted widespread media attention has not been upheld but as general principles we consider that for ICGP complaints which are handled confidentially:

- a. There should be no publication of the fact that an investigation has commenced;
- b. If an unpublicised complaint is not upheld, the MP's name should not be published;
- c. In deciding whether to publish details of individual complaints which have proceeded to the stage of

investigation by the Commissioner and have been remedied, the Commissioner should consider: (i). The potential effect on the report and respect any desire for confidentiality on the reporter's part, and (ii). Whether naming the responder is proportionate in relation to the finding, bearing in mind the effect on the responder's reputation.

Annex 2

ICGS statistics to 31 March 2020

1. Calls and emails to the helplines

Date range	Call and emails
19 July – 30 September 2018	51
1 October – 31 December 2018	201
1 January – 31 March 2019	293
1 April – 30 June 2019	238
1 July – 30 September 2019	103
1 October – 31 December 2019	172
1 January – 31 March 2020	201

2. Number of unique callers to the helpline

Date range	Unique callers	Unique callers for non-recent cases*
19 July – 30 September 2018	26	–
1 October – 31 December 2018	86	–
1 January 31 March 2019	82	
1 April – 30 June 2019	91	–
1 July – 30 September 2019	74	–
1 October – 31 December 2019	94	23
1 January – 31 March 2020	87	13

3. Number of investigations commenced in each quarter

Date Range	No. of investigations commenced in the quarter
19 July – 30 September 2018	Fewer than 10
1 October – 31 December 2018	14
1 January – 31 March 2019	10
1 April – 30 June 2019	Fewer than 10
1 July – 30 September 2019	16
1 October – 31 December 2019	22
1 January - 31 March 2020	26

*As of 21 October 2019, the ICGS was available to any member of the parliamentary community, present or former, who wished to raise concerns, seek advice or make a complaint about bullying, harassment or sexual misconduct by MPs, MPs' staff or House of Commons staff, that occurred at any point.

Figures from 1 April 2019 included investigations commenced either by the Independent Investigations Service or by the independent House of Lords Commissioner for Standards for complaints against members of the House of Lords or their staff, following changes to the Lords Codes of Conduct agreed on 30 April. Figures for previous quarters include only investigations commenced by the Independent Investigation Service. When interpreting the figures, it is worth noting that proceeding to an investigation is only one option that may be taken forward.

Annex 3

Summary of recommendations

Deterrents to unauthorised disclosure in ICGS cases

1. Following an unauthorised disclosure of information, the Commissioner should be empowered—if she thinks it appropriate—to investigate the disclosure; or to ask the relevant manager to investigate and if necessary to ask him/her to consider disciplinary action. She should also have the discretion, if there were a particularly serious breach of confidentiality, to interview witnesses and if appropriate to suspend or discontinue her own investigation, if the disclosure was sufficiently damaging and was instigated by the complainant.

The power to set the record straight in relation to ICGS investigations

2. While as a general rule, the Commissioner will not disclose to the public or the media the details of an ICGS case either while it is under investigation or afterwards, she should have the discretion in exceptional cases publicly to correct inaccurate or incomplete information. She might wish for example to confirm whether an investigation is taking or has taken place, and the broad nature of the case. She would give out only minimal information, and would only do so after consulting the parties involved and considering their mental and emotional wellbeing.

Authority to publish a quarterly report about completed ICGS investigations

3. The Commissioner should be given authority, as part of the wider ICGS reporting arrangements, to issue a quarterly report giving numbers of ICGS investigations,⁶ themes and outcomes, all in anonymised form, without allowing the complainant to veto publication.

Publishing information about ongoing non-ICGS investigations

4. The Commissioner should be given authority to publish a list of ongoing non-ICGS investigations and to confirm or deny whether a non-ICGS matter is being looked into, as she did before 19 July 2018.

⁶ Where information relates to 10 or fewer cases, exact numbers will not be published.

Formal minutes

Tuesday 16 June 2020

Virtual meeting

Members present:

Chris Bryant, in the Chair

Tammy Banks	Mark Fletcher
Jane Burgess	Sir Bernard Jenkin
Andy Carter	Dr Arun Midha
Alberto Costa	Paul Thorogood
Rita Dexter	

Draft report (*Confidentiality in the House's standards system*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 6 read and agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Sixth Report of the Committee to the House.

None of the lay members present wished to submit an opinion on the Report (Standing Order No. 149 (8)).

Ordered, That the Chair make the Report to the House.

[The Committee adjourned.]

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page of the Committee's website](#). The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

First Report	Kate Osamor	HC 210
Second Report	Stephen Pound	HC 209
Third Report	Greg Hands	HC 211
Fourth Report	Conor Burns	HC 212
Fifth Report	Mr Marcus Fysh	HC 213