



HOUSE OF LORDS

Conduct Committee

3rd Report of Session 2019–21

Amendments to the rules of conduct

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The Conduct Committee

The Conduct Committee is appointed each session by the House of Lords to keep under review the Code of Conduct, the Guide to the Code, and the Code of Conduct for Members' Staff; and to oversee the operation of the Codes of Conduct and the work of the House of Lords Commissioner for Standards.

Current membership

The members of the Conduct Committee are:

Baroness Anelay of St Johns
Lord Brown of Eaton-under-Heywood
Cindy Butts (lay member)
Mark Castle (lay member)
Andrea Coomber (lay member)
Dr Vanessa Davies (lay member)
Baroness Donaghy
Baroness Hussein-Ece
Lord Mance (Chair)

Further information

The Codes of Conduct and Guide to the Code are available at www.parliament.uk/hl-code, and the Registers of Interests at www.parliament.uk/hlregister.

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Amendments to the rules of conduct

Introduction

1. This report recommends improvements and clarifications to the Code of Conduct for Members of the House, the Guide to the Code of Conduct and the Code of Conduct for Members' Staff.
2. **The House is invited to agree the changes to the Codes of Conduct and the Guide set out below.**

Scope of Code

3. We have identified two issues concerning the scope of the Code.
4. First, the Code as currently drafted applies to members who do not take the Oath, or therefore sign the undertaking to abide by the Code, early on in a new Parliament. This means that, for example, a member who is too ill to update their entry in the Register of Interests could be in breach of the Code. In our view the Code should not apply to members who have not taken the Oath and cannot therefore participate in any parliamentary business or claim any financial support, except insofar as the rules on bullying, harassment, sexual misconduct and use of facilities are concerned.
5. **We recommend swapping the order of paragraphs 4 and 5 of the Code, and making the changes indicated** (additions in **bold**, deletions ~~struck through~~).

“4. Members are to sign an undertaking to abide by the Code as part of the ceremony of taking the oath upon introduction and at the start of each Parliament.

5. This Code applies to all members of the House of Lords who **have taken the oath and signed the undertaking in that Parliament and** are not either:

- (a) on leave of absence;
- (b) suspended from the service of the House; or
- (c) statutorily disqualified from active membership.

However, **all current and retired** members ~~in these categories and retired members~~ are subject to the provisions of paragraph 17 **(standards of conduct) and paragraph 105 (use of facilities and services)** when on the Parliamentary estate or using the facilities of Parliament, **regardless of their membership status.”**

6. Second, there are slight inconsistencies in how the scope of the Parliamentary Behaviour Code is described. The three versions are as follows.

Paragraph 3 of the Code	“Paragraph 17 applies to the standards of conduct expected of members in performing their parliamentary duties and activities whether on the Parliamentary estate or elsewhere.”
Paragraph 17 of the Code	“Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy.”
Paragraph 106 of the Guide	“Members of the House are expected to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy.”

7. The version in paragraph 17 of the Code is the strongest, and **we recommend that the other references are amended to match it, as follows.**

Code

“3. The purpose of this Code of Conduct is:

(a) to provide guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties. Save for paragraphs 17, 18 and 19, the Code does not extend to members’ performance of duties unrelated to parliamentary proceedings, or to their private lives. Paragraph 17 ~~applies to~~ **sets out** the standards of conduct ~~expected~~ **required** of members ~~in performing their~~ **in their treatment of those with whom they come into contact in the course of their** parliamentary duties and activities, whether on the Parliamentary estate or elsewhere.”

Guide

“106. Members of the House are ~~expected~~ **required** to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy...”

8. The third issue is the relationship between the Code’s provisions on (a) bullying, harassment and sexual misconduct, (b) the key right of parliamentarians to speak freely during parliamentary proceedings and (c) the existing prohibition in the Guide to the Code on the Commissioner investigating “policy matters or a member’s views or opinions” (paragraph 119). In our view, it is important that members should be mindful of the impact of their words and actions on others when participating in parliamentary proceedings, but we also believe that it would be helpful for the House to give the Commissioner (and indeed this Committee and its successors) a clear steer about the constitutional importance of freedom of speech in Parliament. **Accordingly, we propose the following additions to the Code of Conduct.**

“17. Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities

(including parliamentary proceedings) with respect and courtesy. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code.

...

23. In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner and the Conduct Committee shall:

- **recognise as a primary consideration the constitutional principle of freedom of speech in parliamentary proceedings, including but not limited to the need for members to be able to express their views fully and frankly in parliamentary proceedings;**
- act in accordance with the principles of natural justice and fairness.”

Registration issues

Compliance with registration requirements

9. Each year, the Registrar of Lords’ Interests conducts an audit of the Register of Lords’ Interests and the Register of Interests of Lords Members’ Staff. All members and their staff are asked to confirm that their entries are correct or to update them (though the requirement to keep the entry up to date does apply year-round). This is followed up by reminders, using a variety of communications methods as necessary, until a response is received. The great majority of people reply in a reasonable timeframe, but a small number still do not reply after more than six months of chasing.
10. **There is no excuse for members and their staff not validating their entries in the Registers of Interests, and so we recommend that an enduring failure to do so should be a breach of the Code. The amendments proposed below set out how this would work in practice.**
11. A small number of members persistently fail to register certain interests, particularly occasional income (most commonly speeches) under category 2, in spite of reminders. We have agreed with the Registrar that in such cases he should write to the member in question and invite them to comply with the registration requirements, warning that a continuing failure to do so may be referred to the Commissioner for Standards. **The proposed text below would enable him to make such a referral.**

Guide

“38A. If the Registrar becomes aware of a failure by a member to register their interests, he/she may write to the member to ask them to comply with the requirements of the Code. In the absence of such compliance, he/she may refer the matter to the Commissioner for Standards.

38B. Members are expected to respond to the Registrar’s annual audit notice within four weeks. Reminders will be sent but irrespective of the sending or receipt of any such reminder, it is a breach of the Code not to respond to the annual audit notice within six weeks of its original sending.”

Staff Code

~~“9. Any change in the interests of members’ staff should be registered within one month of the change. It is the responsibility of members’ staff to keep their entry up-to-date by notifying changes in their registrable interests within one month of each change occurring. Failure to do so is a breach of the Code of Conduct.~~

9A. Members’ staff are expected to respond to the Registrar’s annual audit notice within four weeks. Reminders will be sent but irrespective of the sending or receipt of any such reminder, it is a breach of the Code not to respond to the annual audit notice within six weeks of its original sending.”

Personal clients

12. On 18 July 2019, the House agreed our proposals to introduce more exacting requirements on members to declare clients of companies for which they worked, in place of a blanket requirement to register all personal clients. These new provisions appear to be working well. We wish though to propose two further improvements.
13. The first relates to personal service companies. At present, a member who carries out some work for an organisation (e.g. consultancy, speeches) for which they are paid directly must register that work under category 2 if it exceeds the threshold. By contrast, a member who is paid through a personal service company (a company set up by the member purely to provide his or her own personal services) for the same piece of work does not have to—and indeed cannot—register it because the paying organisation is a client of the personal service company. We therefore propose to amend the Guide to require members to register clients of personal service companies.
14. The second issue relates to work undertaken for foreign governments. At present, the requirements to register and declare work for foreign governments are no different from the requirements in respect of any other organisation. This means that if a member works for a foreign government through a company, they do not have to register it but they do have to declare it in relevant proceedings (as indeed they have to declare any relevant clients of a company for which they work and of which they are aware). We believe that work for foreign governments should be subject to a higher level of disclosure than work for a company or other organisation, due to the potential conflict between differing national interests. We therefore propose that members should be required to register (as well as declare) any work they do for foreign governments, whether freelance or through a company.
15. **The Committee therefore proposes the following amendments to the Guide to the Code.**

51. The amount of remuneration in respect of interests falling within this category is not disclosed. The contract does not need to be deposited with the Registrar. **While clients of companies in which members hold a directorship must be declared in relevant circumstances (see paragraph 89), they do not need to be registered except where:**

- (a) the company is the member’s own intermediary (most commonly a limited company that they control);¹ or

(b) the client is a foreign government to which the member personally provides services.

...

52A. While clients of companies for which members work must be declared in relevant circumstances (see paragraph 89), they do not need to be registered except where:

(a) the company is the member's own intermediary (most commonly a limited company that they control);¹ or

(b) the client is a foreign government to which the member personally provides services.

¹ Also known as a personal service company"

Trusts

16. The registration requirements on members who are beneficiaries of a trust are unclear as currently drafted in paragraph 64 of the Guide. Having carefully considered the different options, we have concluded that holdings of trusts should only be registered if (a) the member is aware of them and (b) they would be registrable if held personally by the member. A trust's holdings in collective investment vehicles, and holdings of stock, gilts, bonds, premium bonds etc., would not generally be registrable.

17. **The Committee proposes the following amendments.**

~~"64. Holdings in a collective investment vehicle (including unit trusts, investment trusts and investment companies with variable capital (ICVCs)) are not generally registrable. Members may, however, consider registration in this category in appropriate cases, such as sector-specific vehicles. Members who are beneficiaries of trusts should treat them in the same way. Holdings in blind trusts are exempt from registration.~~

64A. Holdings in blind trusts are exempt from registration.

64B. Members who are beneficiaries of trusts (including discretionary beneficiaries) should register holdings of the trust which meet the requirements for registration set out above."

Description of organisations in the Register

18. The Guide to the Code states that members, when registering a financial interest in an organisation, should give a broad indication of the nature of its business where this is not self-evident from its name. The Guide does not state explicitly that this applies to non-financial interests registered under category 10, though the Registrar has generally advised that the same requirement should be deemed to apply by analogy.

19. **We believe that this issue should be clarified in a new paragraph.**

"81A. When registering a non-financial interest in an organisation in this category, members should give a broad indication of the organisation or body's business or activity where this is not self-evident from its name."

Declaration issues

Declaration in time-limited proceedings

20. During proceedings where time is very tight (namely oral questions, private notice questions and ministerial statements) the Guide says that “a brief reference to the member’s interests in the Register suffices”, as opposed to the specific declaration normally required. This does not work, however, where the interest is not listed in the Register, for example clients for which the member works, and certain non-financial interests such as patronages of charities. We propose to tighten this up by amending the wording in paragraph 91 to say, “a brief reference to the member’s interests in the Register suffices **where the relevant interest is listed in the Register.**” Thus items which are not in the Register would need a specific declaration.

Declaration of frontbench roles on select committees

21. Traditionally, investigative select committees (i.e. those which look at public policy) are populated by backbench members rather than frontbench members (ministers, whips and opposition spokespeople). However, a large proportion of Liberal Democrat members now speak for the party from the frontbenches, and a number of them are or have been on select committees considering matters relevant to their frontbench brief.
22. In such cases, the Registrar has advised the member that they must declare (orally and in the committee’s reports) their frontbench position when it is relevant to the topic under consideration. The rationale is that a party spokesperson has a duty to promote the party’s policy in their area, and a reasonable person might very well think that this duty could have an impact on the member’s contributions to the committee’s work.
23. **We propose to set out this position explicitly in the Guide, as indicated.**

“Select committees

96. A member serving on a select committee should declare any interests relevant to an inquiry or any other activity undertaken by that committee, **including any role as a party spokesperson.** The declaration should be made in writing to the committee clerk, and orally the first time the member speaks in public in the inquiry. A list of declared relevant interests is also published as an appendix to the committee’s report.”

Other issues

Contact with corrupt or repressive regimes

24. In the 2017–19 session, before the lay members were appointed, the Committee agreed a formal response to a report by the NGO Transparency International entitled *In whose interest? Analysing how corrupt and repressive regimes seek influence and legitimacy through engagement with UK Parliamentarians*.¹ The response said that, once the lay members had been appointed, we would consider “whether any additional wording regarding contact with corrupt and repressive regimes could usefully be introduced”.

1 Links to the report and the Committee’s response can be found on the Committee’s website at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/conduct-committee/news-parliament-2017/conduct-committee-response/>

25. We have now considered this matter carefully and propose to introduce some cautionary wording to the Guide to the Code as follows.

“33A. Members should be especially cautious when coming into contact with representatives of corrupt or repressive regimes, ensuring that they uphold the integrity of the parliamentary process and the reputation of the House of Lords at all times.”

Travel paid for by foreign governments

26. The Committee has considered whether this House should follow the example of the House of Commons by placing restrictions on the ability of members to advocate for foreign governments, non-governmental organisations or other agencies which have funded a visit or provided them with hospitality within the previous six months. The wording proposed below for the Guide to the Code is based on the Commons wording.

“21A. Members may not initiate any parliamentary proceedings or approaches to members of either House, ministers or officials which seek to confer, or would have the effect of conferring, any financial or material benefit on a foreign government, non-governmental organisation (NGO) or other agency which has, within the previous six months, funded a visit they have undertaken or provided them with hospitality. They may however participate in such proceedings or approaches initiated by others, provided that they declare their interest fully and their participation does not seek to confer benefit exclusively on that government or organisation.”

Investigations

27. We propose a number of improvements to that part of the Guide to the Code which sets out how the Commissioner for Standards conducts investigations.
28. First, the order of the paragraphs of the Guide setting out the process of investigation has become muddled. It is therefore proposed to move paragraphs 138, 140 and 142 further down the page so that they appear in a more logical place.
29. Second, the Guide specifies the following in respect of Commissioner’s investigations:
- “147. If the Commissioner’s investigation has uncovered material evidence that is at variance with the member’s version of events, she will put this to the member, who will have a chance to challenge it. Before finalising her report, the Commissioner will also share with the member a draft of those parts of her report dealing with issues of fact, so that the member has an opportunity to comment on it.”
30. It is necessary to amend this paragraph to bring it into line with paragraph 133, which states that “Members, **and in cases involving bullying, harassment or sexual misconduct the complainant**, are given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied” [emphasis added].
31. Third, in operating the revised provisions on appeals, it has become clear that it is necessary for the Chair to see draft reports before they are sent

to the respondent in order that he can fix an appropriate deadline for any appeal. Changes to paragraph 153 of the Guide are proposed to make this clear.

32. The House is invited to agree the following changes to the Guide.

“The investigation: process

137. The Commissioner first informs the member concerned of the nature of the complaint and provides copies of the evidence offered in support of it. She sets out the particular provisions of the Code that appear, either on the basis of the complaint, or her preliminary assessment of the facts, to have been breached, at the same time inviting the member to respond in writing with a full and accurate account of the matters in question.

~~138. In a case involving bullying, harassment or sexual misconduct the complainant may, at the discretion of the Commissioner, withdraw the complaint at any point during the investigation. This would bring the investigation to an end. [text moved to paragraph 143A]~~

139. After considering the member’s written submission, the Commissioner may decide either to dismiss the complaint or to agree remedial action. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. In cases other than those involving bullying, harassment or sexual misconduct, remedial action involves “putting the record straight”, for instance by making an amendment to the Register; the member will also normally be expected to make a formal apology in writing to the Chair of the Conduct Committee. In those cases, if the Commissioner and member agree remedial action, the Commissioner explains the circumstances and remedial action in her report on the case. The Commissioner informs the complainant of the action taken in response to the complaint.

~~140. In cases involving bullying, harassment or sexual misconduct any remedial action recommended by the Commissioner at the end of an investigation will need to be agreed by both the member and the complainant and possibly negotiated through mediation. Remedial action in such cases may include the respondent apologising to the complainant or agreeing to attend appropriate training. [text moved to paragraph 141A]~~

141. In cases involving bullying, harassment or sexual misconduct, if the Commissioner decides to dismiss the complaint, it is at the discretion of the Commissioner, having heard representations from the complainant and the member, whether to publish a report including the name of the member.

141A. In cases involving bullying, harassment or sexual misconduct any remedial action recommended by the Commissioner at the end of an investigation will need to be agreed by both the member and the complainant and possibly negotiated through mediation. Remedial action in such cases may include the respondent apologising to the complainant or agreeing to attend appropriate training. [text moved from paragraph 140]

~~142. At any time during an investigation involving bullying, harassment or sexual misconduct the Commissioner may reach an agreed resolution with both the complainant and the member under investigation. At the Commissioner's discretion, such an agreed resolution can bring the investigation to an end. In this case, it is at the discretion of the Commissioner, having consulted the complainant and the member, whether a report is published on her webpages on the parliamentary website. [text moved to paragraph 143B]~~

143. If the member's written response is not sufficient to enable the Commissioner either to dismiss the complaint or agree remedial action, the Commissioner may pursue the investigation by seeking further information, either from the member concerned or others, including the original complainant, third parties, or public or private bodies. Such information is usually requested in writing in the first instance, though in some circumstances the Commissioner may decide to interview witnesses, either informally or by means of formal oral evidence. The Commissioner holds her meetings with witnesses in private. In the case of informal interviews, a note is made of the meeting and all parties are subsequently asked to confirm its accuracy. In the case of formal oral evidence, a full transcript is taken. The Conduct Committee decides to what extent evidence is published.

143A. In a case involving bullying, harassment or sexual misconduct the complainant may, at the discretion of the Commissioner, withdraw the complaint at any point during the investigation. This would bring the investigation to an end. [text moved from paragraph 138]

143B. At any time during an investigation involving bullying, harassment or sexual misconduct the Commissioner may reach an agreed resolution with both the complainant and the member under investigation. At the Commissioner's discretion, such an agreed resolution can bring the investigation to an end. In this case, it is at the discretion of the Commissioner, having consulted the complainant and the member, whether a report is published on her webpages on the parliamentary website. [text moved from paragraph 142]

144. Where remedial action cannot be agreed between the parties, both the complainant and the respondent may make written representations to the Conduct Committee which will take the final decision on how the case should be resolved.

145. If the complaint concerns non-declaration of a relevant interest and the Commissioner upholds the complaint, she will then examine whether there were other possible instances of non-declaration of that interest in the six years preceding the complaint. If other possible instances arise the Commissioner will invite the member to respond to them. The Commissioner will reach a finding on any such instances identified.

146. The Conduct Committee has the power to send for persons, papers and records and may exercise this power as necessary in support of any investigation by the Commissioner or under her auspices.

Assessing the evidence

147. If the Commissioner's investigation has uncovered material evidence that is at variance with the member's version of events, she will put this to the member, who will have a chance to challenge it. Before finalising her report, the Commissioner will also share with the member a ~~draft of those parts of her report dealing with issues of fact~~ **a summary of the evidence she has obtained upon which her findings will be founded**, so that the member has an opportunity to comment on it. **In cases involving bullying, harassment or sexual misconduct, the Commissioner will provide the complainant with the same opportunities to challenge or comment on the evidence.**

...

Consideration by the Conduct Committee

153. ~~The Committee receives the Commissioner's report and any recommended sanction. The Chair or his/her nominee receives the Commissioner's report initially for the purposes of fixing the deadline and timetable for any appeal; in reaching that decision, he/she may consult and show the report to other members of the Committee. The Commissioner then sends a copy of the report to the member concerned, and in cases of bullying, harassment or sexual misconduct to the complainant, who are informed of the deadline by which they may lodge an appeal to the Committee. The members of the Committee receive a copy of the report at the same time. The deadline and timetable for the appeal may be fixed by the Chair or his/her nominee.~~