



HOUSE OF LORDS

Conduct Committee

1st Report of Session 2019–21

Progress report and 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
- Baroness Donaghy
- Baroness Hussein-Ece
- Lord Mance (Chair)
- Cindy Butts (lay member)
- Mark Castle (lay member)
- Andrea Coomber (lay member)
- Dr Vanessa Davies (lay member)

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.

Contact details

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Progress report and amendments to the rules of conduct

Introduction

1. This is our first report since the House appointed our four lay members. Since then, we have met regularly to work on ensuring that the Code effectively applies the Independent Complaints and Grievance Scheme (ICGS) to members of the House and members' staff, and to make progress on related issues and recommendations from the independent inquiry by Naomi Ellenbogen QC¹ into bullying and harassment in the House of Lords. We have also been working on another of our key responsibilities: keeping under review the Code of Conduct for Members of the House of Lords, the Guide to the Code of Conduct, and the Code of Conduct for House of Lords Members' Staff.²
2. This report provides an update on our work to date and proposes a number of changes and improvements to the Codes and the Guide to which we seek the House's agreement. **The textual changes to the Codes and Guide are set out in Appendix 2.**

Lay members

3. The four lay members were appointed by the House on 29 October 2019. The lay members are appointed with the same speaking and voting rights as Lords members, so all members participate in committee proceedings on an equal footing. The biographies of the lay members are set out in Appendix 3.

The Independent Complaints and Grievance Scheme and the Ellenbogen report

4. In April 2019 the House agreed to amend the Codes of Conduct and the Guide to the Code to incorporate the Parliamentary Behaviour Code and include specific processes for reporting and investigating complaints of bullying, harassment or sexual misconduct. Since then, Naomi Ellenbogen QC reported on bullying and harassment in the House of Lords and the Six Month Review Report of the Independent Complaints and Grievance Scheme by Alison Stanley³ was published.
5. In July 2019, the Lord Speaker wrote to us in his capacity as Chair of the House of Lords Commission highlighting those recommendations in the Ellenbogen report relating to the Code of Conduct and ICGS that fall within the Committee's remit, as well as those recommendations where responsibility is shared between the Conduct Committee and the Commission. Our first task as a fully constituted Committee was to prioritise work on those recommendations.

1 An Independent Inquiry into Bullying and Harassment in the House of Lords, Report by Naomi Ellenbogen QC, 10 July 2019: <https://www.parliament.uk/documents/lords-committees/house-of-lords-commission/2017-19/ellenbogen-report.pdf>

2 See www.parliament.uk/hl-code.

3 Independent 6-month Review of the UK Parliament Independent Complaints and Grievance Scheme, Report by Alison Stanley CBE FCIPD, 31 May 2019: <https://www.parliament.uk/documents/Conduct%20in%20Parliament/ICGS%20six-month%20review%20-%20FINAL%20REPORT.pdf>

6. One important recommendation made in the Ellenbogen Report was to establish a Steering Group for Change to provide advice to the Lords Administration and Commission on the response to that report. The Steering Group is chaired by Baroness Donaghy, who is also a member of this Committee, which provides an important link between our work on the Codes and Guide and the wider work on progressing the recommendations in the Ellenbogen report.

Valuing Everyone training

7. Another key recommendation from the Ellenbogen report relates to Valuing Everyone training, a Parliament-wide training programme designed to help ensure that everyone working at Parliament is able to recognise bullying, harassment and sexual misconduct, and feels confident taking action to tackle and prevent it. All members of the Committee have attended the training. The training is mandatory for all Lords staff but at present is voluntary for members.
8. **We strongly encourage all members of the House to attend the Valuing Everyone training**, and at each meeting we receive an update on the number of members of the House who have attended or are booked to attend. We have set a target that 50 per cent of members of the House should have attended the training by the summer recess 2020. **We take this opportunity to make clear our expectation that all members need to attend in due course. We will review progress against the target and if necessary consider making non-attendance a breach of the Code of Conduct or attaching other sanctions.**

Appeals

9. The changes made to the Code of Conduct in April 2019 included for the first time a right of appeal for complainants. This applies only to cases of bullying, harassment or sexual misconduct. We have reviewed the provisions in the Code and Guide relating to appeals to create more transparency about how the appeals process will work and to ensure the processes work fairly and effectively for both respondents and complainants. As a result we recommend the following changes to the appeals processes set out in the Code and the Guide.
10. There is currently no specified timetable in the Code or Guide for submitting an appeal to the Conduct Committee or for the determination of that appeal. We think that this lack of guidance is an omission, particularly as the Code now gives a right of appeal in complaints of bullying, harassment or sexual misconduct to complainants who may not be a member of the Parliamentary community. Each appeal will have its own circumstances and factors which may impact on the timescale, so we do not propose to set a fixed timetable. **We recommend that paragraph 152 of the Guide to the Code be amended to state that the deadline and timetable for the appeal should be fixed by the Chair of the Committee or his or her nominee.**
11. Paragraph 155 of the Guide to the Code specifies that any appeal must be in writing and should set out the grounds for the appeal and any such supporting material as the appellant thinks appropriate, but does not provide any further guidance for appellants on submitting appeals. We think it would be helpful for further practical guidance for appellants to be published to supplement the provisions in the Guide to the Code. **We recommend that**

paragraph 155 of the Guide to the Code is amended to state that the Conduct Committee may publish guidance on appeals.

12. Under the system operated by our predecessor Committee, the former Privileges and Conduct Committee, appellants had a right to present their appeal against the Commissioner's findings in person, and the appeal was heard and determined by the full Committee. We think it may be disproportionate and intimidating for appellants to have their appeals heard by nine people, particularly in cases of bullying, harassment or sexual misconduct. **We recommend that paragraph 155 of the Guide to the Code be amended so that for any complaint:**
 - (a) **An appeal is first received on the papers, and the decision on whether to hear from the appellant(s) is one for the Committee rather than the appellant(s);**
 - (b) **Any hearings which do take place should be heard and decided by a panel of at least five members of the main Committee made up of a minimum of three Lords members and two lay members (the Committee's quorum);**
 - (c) **The Chair of the Committee or his or her nominee may make further provisions about the procedures to be followed in each appeal.**
13. Paragraph 154 of the current Guide says that when reviewing a proposed sanction in the absence of an appeal, the Committee "invites representations from the member concerned". It does not, however, make similar provision in respect of the Commissioner or, in bullying, harassment or sexual misconduct cases, the complainant. This is an omission. **We recommend that this wording be amended to make clear that the Committee can invite representations on sanctions from the Commissioner, and in cases of bullying, harassment or sexual misconduct, the complainant.**
14. The changes to the Guide made in April 2019 made provision for the first time for a complainant in a case of bullying, harassment or sexual misconduct to appeal to the Conduct Committee against the Commissioner's decision to dismiss their complaint following preliminary assessment. There has not yet been any such appeal. The provisions in the Guide do not set out any grounds for such an appeal, nor make any provision for how such an appeal should be determined. **We recommend that paragraph 128 of the Guide to the Code be amended to set out the process for making and determining an appeal against the Commissioner's preliminary assessment.**
15. In bullying, harassment or sexual misconduct cases, paragraph 141 of the Guide requires the complainant as well as the respondent to agree to a case being settled by remedial action. If the respondent does not agree, then paragraph 150 allows the remedial action to be imposed as a sanction. But the Guide does not specify what happens if the member accepts remedial action proposed by the Commissioner, but the complainant does not. In such circumstances, we think that the Conduct Committee should make the final decision and that the complainant and respondent should be able to make representations to the Committee. **We recommend that a new paragraph 144A is inserted into the Guide to the Code to make clear that 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.

16. The list of possible sanctions in paragraph 150 of the Guide includes some of the most serious sanctions, such as suspension, which, because of requirements of statute⁴ and the House's internal rules, must be agreed by the whole House. It also contains others, such as requiring a member to make a personal statement of apology in the House or to take action to regularise the position, where it is harder to understand the case for the whole House being asked to agree the sanction. **We recommend that paragraph 150 of the Guide to the Code be amended so that the sanctions requiring the member to take action to regularise the position (for example a letter of apology or training) or to make a personal statement of apology in the House can be imposed by the Conduct Committee without the need to refer them to the House. We also recommend consequential changes to paragraph 22 of the Code of Conduct and paragraph 4 of the Guide to the Code.**
17. The Code does not currently make it clear that it is a breach of the Code for a member to refuse to abide by a decision of the Committee or the House in respect of a sanction. We think this should be addressed. **We recommend that new paragraph 161A be inserted into the Guide to the Code to make it explicit that a member must comply with any sanction imposed by the Conduct Committee or the House, and that any failure to do so shall constitute a breach of the Code of Conduct.**

Restrictions on access to House services during investigations and training

18. There is currently no provision in the Code of Conduct which empowers the Commissioner to restrict access to relevant services by a member while under investigation for a complaint of bullying, harassment or sexual misconduct. Nor does the Code enable the Commissioner, following an investigation, to make it a condition of remedial action which includes training that the member must adhere to specific restrictions on their access to the facilities and services of the House until the training is complete. Since the publication of recent Commissioner reports, we have been made aware of concern that although members have been found to have breached the Code and agreed to attend training to address their behaviour, they are still able to access the services and facilities of the House and come into contact with House staff, including in particular the complainants, during the period of training. We do not think this is right.
19. **We therefore recommend amendments to paragraphs 20 and 21 of the Code of Conduct to:**
- (a) **Allow the Commissioner to restrict access to relevant services and facilities by a member while under investigation for a complaint of bullying, harassment or sexual misconduct;**
 - (b) **Allow the Commissioner to make it a condition of remedial action which includes training that the member must adhere to specific restrictions on their access to the facilities and services of the House until the training is complete;**

⁴ The House of Lords (Expulsion and Suspension) Act 2015, s. 1(1).

- (c) **Make it a breach of the Code of Conduct for the member to ignore such restrictions on their access to the facilities and services of the House during investigations into bullying, harassment or sexual misconduct, and during any training which is being undertaken as part of remedial action.**

Restrictions on access to House services as a sanction

20. When she finds a member in breach of the Code, two of the sanctions which the Commissioner can recommend are denial of access for a specified period to (a) the system of financial support for members and (b) the facilities of the House. These sanctions were approved in January 2014 on the recommendation of the House Committee. The report specifically limited the “facilities” in question to the following: dining and banqueting facilities; car parking; the Library, including research services; ICT equipment, supplies, network accounts and support; bookable meeting rooms; individual desk space; personalised stationery; and pre-paid postage envelopes. It is therefore not currently possible to deny a member access to a select committee, the Table Office, the Legislation Office or any other parliamentary services which are closely linked to the business of the House.
21. In some cases of bullying, harassment or sexual misconduct, the House may feel it appropriate to restrict access to certain parliamentary services for a period. This might range from not being able to access a service in person but being able to do so by email, through to not being able to access a service at all, through to removal from a select committee. These are all matters within the House’s power. Assuming that the member could still access at least one kind of proceeding of the House (e.g. sitting and speaking in the Chamber), such sanctions would constitute a sanction which falls short of full suspension or expulsion.
22. **We therefore recommend amendments to paragraph 150 of the Guide to the Code to extend the sanction of restricting access to the facilities of the House to include access to parliamentary services.**

Mitigating evidence to inform decisions on sanction

23. Under previous versions of the Code of Conduct, the Commissioner’s role was only to determine whether the Code had been breached. At this point, if remedial action was inappropriate, she would report to the Sub-Committee on Lords’ Conduct. The Sub-Committee would then consider the Commissioner’s report before recommending a sanction to the Committee for Privileges and Conduct.
24. Under the current Code, the Commissioner is responsible for both determining a breach and recommending a sanction, with the Conduct Committee acting as the appellate body. This removal of an intermediate body between finding and recommended sanction means there is a need to provide an opportunity for the respondent in a case where a breach has been found to present material to be taken into account in ensuring the sanction the Commissioner recommends is proportionate to the circumstances.
25. **We therefore recommend a new paragraph after paragraph 148 in the Guide to the Code to give the respondent in a conduct case the opportunity to present mitigating evidence to inform decisions**

on sanctions, in addition to the evidence presented during the investigation.

Ongoing work

26. There are a number of other areas we continue to work on as priority issues and where we recognise the importance of working across the two Houses. These include keeping the definitions of bullying, harassment and sexual misconduct up-to-date and putting in place appropriate processes across the two Houses to investigate complaints about the conduct of members of the House of Lords which relate to their time as members of Parliament or a member of the Parliamentary community. We will make recommendations on these issues in future reports.
27. We will continue to review how the processes for investigating complaints of bullying, harassment and sexual misconduct are working. In due course, we will take account of recommendations arising from the planned 18-month review of the ICGS. We also recognise the importance of maintaining consistency of approach in how ICGS applies to all those in the Parliamentary community. We are supported in this by the bicameral ICGS Director and her team.

Other changes to the Codes of Conduct and the Guide to the Code

Investigation of non-recent complaints

28. At present, for non-ICGS cases, the Code requires complaints to the Commissioner to be made within four years of the conduct in question, other than “in exceptional circumstances” where the Commissioner must make a request to this Committee. For the Committee to agree, it must be satisfied that “there is a strong public interest in the matter being investigated”. The time restriction is even tighter for ICGS cases: an individual may only submit a complaint if it relates to conduct which took place since the start of the last Parliament in June 2017.⁵ Any allegations of bullying, harassment or sexual misconduct before that date could be made under the “personal honour” provision of the Code of Conduct, but this is a more obscure route than the well-publicised ICGS and is not supported by the dedicated ICGS helplines.
29. In response to a recommendation by Dame Laura Cox, the House of Commons agreed to remove the time limit on ICGS complaints. Since October 2019, therefore, it has been possible to make ICGS complaints about conduct predating June 2017 against anybody in the parliamentary community *except* members of the House of Lords, their staff, and the staff of the House of Lords Administration. We propose to follow the example of the Commons by removing this arbitrary time limit on ICGS complaints against Lords members and their staff. The House of Lords Administration is responsible for taking forward this matter in respect of staff of the House.
30. If the June 2017 restriction is removed, then by default the Commissioner would need the Conduct Committee’s agreement to look at ICGS cases which date back more than four years, in the same way as she does for other alleged Code breaches.

5 As specified in the Independent Complaints and Grievance Scheme Delivery Report, published July 2018: <https://www.parliament.uk/documents/news/2018/1/%20ICGP%20Delivery%20Report.pdf>.

31. In our view there is merit in retaining the requirement for the Lords Commissioner to seek our agreement before looking at old cases, given that in some instances it may be unreasonable to expect complainants or respondents to recollect the facts accurately, but we think that the cut-off should be a longer period of six years for all complaints under the Code of Conduct. We note in passing that the House of Commons has abolished the requirement for their Commissioner to seek the agreement of the Standards Committee before looking at historic cases under the Code, including ICGS cases, and we will continue to keep this matter under review.
32. There is a further associated change which we recommend. At present, when the Commissioner finds that a member has failed to declare an interest, she also looks back four years to see if there were any other incidences of non-declaration of that interest. We propose that in future she should be able to look back six years rather than four.
33. **We recommend that the Commissioner for Standards should be able to consider any complaints under the Codes of Conduct, including complaints of bullying, harassment or sexual misconduct, which relate to conduct alleged to have taken place less than six years before the complaint is made. The necessary changes are in paragraphs 122, 139 and 145 of the Guide to the Code. Where complaints refer to conduct alleged to have taken place more than six years before the complaint, the Commissioner would need to seek the agreement of the Conduct Committee before proceeding.**

Imprisonment of members

34. We propose to close a loophole in the current provisions for dealing with members of the House who have been sentenced to imprisonment for criminal offences. At the moment, a member who is imprisoned indefinitely or for more than one year after 14 May 2014 – regardless of when the offence was committed or whether they were a member of the House at the time of the offence – loses their membership of the House under the provisions of the House of Lords Reform Act 2014 (in the case of sentences imposed outside the United Kingdom, this is subject to a resolution of the House). A member who is imprisoned for up to and including one year, or given a suspended sentence of any length, can be sanctioned under the Code of Conduct regardless of when the offence was committed. But owing to a lacuna in the drafting, a member who is imprisoned for over a year for offences committed before 14 May 2014 does not lose their membership and is not technically in breach of the Code of Conduct.
35. **We recommend amending paragraph 18 of the Code of Conduct and paragraph 164 of the Guide to the Code, and adding a new paragraph 165A to the Guide, to ensure that all members sentenced to imprisonment can be sanctioned under the House’s rules, regardless of the length of the sentence, when the offence was committed or whether they were members of the House at the time of the offence.**

Amendments concerning House of Lords Members’ Staff

36. We propose a number of clarifications relating to members’ staff.
37. **First, we recommend that the application of the Code of Conduct for House of Lords Members’ Staff to the staff of the various whips’**

offices be clarified by amending paragraph 1 and adding a new paragraph 1A. The Code should apply to the staff of the opposition whips' offices, but not to the staff of the Government Whips' Office (who are civil servants and special advisers, and therefore subject to the Civil Service Code or Code of Conduct for Special Advisers respectively) or the staff of the Convenor's office (who are employees of the House of Lords Administration on temporary loan and subject to the same rules and processes as other House staff). It is important to note that all these groups of staff are nonetheless still subject to the ICGS and investigation by external investigators.

38. Second, while members' staff (like members themselves) are obliged to co-operate with Commissioner investigations into their own conduct, there are no explicit provisions to oblige them to co-operate with investigations into their sponsoring member, or to oblige sponsoring members to co-operate with investigations into their staff. **We recommend that both omissions are rectified by adding wording to paragraph 24 of the Code of Conduct and a new paragraph 13A to the Code of Conduct for Members' Staff.**
39. Third, **we recommend adding new paragraphs 13B and 14A to the Code of Conduct for Members' Staff to give the Commissioner and the Conduct Committee the discretion not to publish reports about members' staff in certain circumstances.** It is right that reports about members should always be published, because they are accountable to the public for the performance of their parliamentary duties and activities. Members' staff are not accountable to the public to the same degree; rather, they are accountable to their sponsoring member. We therefore consider that in some circumstances the effect of publishing a report about the conduct of a member of staff would be disproportionate to the breach, particularly where remedial action has been agreed. We do consider that the sponsoring member should normally be notified of the breach, however.
40. Fourth, **we recommend adding a new paragraph 15A to the Code of Conduct for Members' Staff to give the Conduct Committee the power to sanction members' staff without recourse to the House.** Currently the Code of Conduct for Members' Staff describes the enforcement process simply by reference to the procedures set out in the main Code, "*mutatis mutandis*". With regard to members, the Conduct Committee may only recommend to the House that a sanction be imposed (although see paragraph 16, above). Yet the House is not an appropriate forum for a disciplinary sanction for a member of staff to be decided and such a process would be disproportionate. To date the power to sanction members' staff has not been exercised, and now is an opportune moment to improve the process. A right of appeal to this Committee with its independent lay members surely satisfies the requirements of natural justice.

APPENDIX 1: DECLARATION OF INTEREST

Lord Mance

International Judge, Singapore International Commercial Court

Chief Justice, Astana International Financial Centre (AIFC) Court

Occasional remuneration and travel expenses from other foreign governments for lectures etc.

APPENDIX 2: PROPOSED AMENDED TEXT OF THE CODE OF CONDUCT FOR MEMBERS OF THE HOUSE, GUIDE TO THE CODE OF CONDUCT AND CODE OF CONDUCT FOR MEMBERS' STAFF

Code of Conduct

[Paragraphs 1–16 unamended]

17. 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. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code. ~~The bullying, harassment and sexual misconduct provisions apply to behaviour that took place after 21 June 2017 (the start of the 2017 Parliament). Behaviour that took place before this date may still constitute a breach of the personal honour provision if undertaken in the performance of the member's parliamentary duties and activities.~~
18. A member sentenced to imprisonment in the United Kingdom, **whether the sentence is suspended or not**, for a term of up to and including one year, ~~or given a suspended sentence of imprisonment in the United Kingdom of any length,~~ shall be deemed to have breached the Code.; ~~such~~ **If the sentence does not engage the provisions of the House of Lords Reform Act 2014**, a case shall be referred to the Conduct Committee for it to recommend a sanction.
19. A member sentenced to imprisonment outside the United Kingdom, whether the sentence is suspended or not, shall be presumed to have breached the Code; such a case shall be referred to the Conduct Committee for it to consider whether the presumption should apply in that case and, if it should, for the Committee to recommend a sanction.

Enforcement of the Code of Conduct

20. A House of Lords Commissioner for Standards is appointed to investigate alleged breaches of this Code, or of the rules governing members' financial support or use of parliamentary facilities. Any such investigation is conducted in accordance with procedures set out in the Guide to the Code of Conduct, **and during the investigation the member must adhere to any restrictions on their access to the facilities and services of the House which the Commissioner may impose. The Commissioner may also inform the complainant and the relevant senior managers of any such restrictions.**
21. After investigation the Commissioner makes a report of her findings. If the member is found not to have breached the Code, or if the member and the Commissioner have agreed remedial action, the report is normally published only on the Commissioner's webpages. **The Commissioner may make it a condition of any agreement on remedial action which includes training that the member must adhere to specific restrictions on their access to the facilities and services of the House until the training is complete, and the member must adhere to any such restrictions so agreed. The Commissioner may inform the relevant senior managers of any such restrictions.** The Commissioner has discretion to submit a report ~~in such instances~~ **on cases resolved through remedial action** to the Conduct Committee. If the member is found to have breached the Code and remedial

action is inappropriate or has not been agreed, the Commissioner's report including any recommended sanction goes to the Conduct Committee. The member concerned has a right of appeal to the Conduct Committee against the Commissioner's findings and any recommended sanction. In a case of bullying, harassment or sexual misconduct, the complainant has a right of appeal to the Conduct Committee against the Commissioner's findings.

22. The Conduct Committee, having ~~heard~~**considered** any appeal, and having agreed any appropriate sanction, reports its conclusions ~~and recommendations~~ to the House. **For the most serious sanctions**, the final decision rests with the House.
23. In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner and the Conduct Committee shall act in accordance with the principles of natural justice and fairness.
24. Members shall co-operate, at all stages, with any investigation into their conduct, **or that of any member of staff they sponsor**, by or under the authority of the House.
25. No member shall lobby a member of the Conduct Committee in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.

[Paragraphs 26–28 unamended]

Guide to the Code of Conduct

Introduction

[Paragraphs 1–3 unamended]

4. The procedure for enforcing the Code of Conduct is described later in this Guide. In summary, responsibility for investigating alleged breaches of the Code rests with the House of Lords Commissioner for Standards, who is an independent officer appointed by the House as a whole. Following her investigation, the Commissioner reports to the Conduct Committee her findings of fact in cases where she has upheld the complaint and remedial action has not been agreed with the member concerned. The Commissioner also recommends an appropriate sanction. The member concerned has a right of appeal against both the Commissioner's findings and any recommended sanction. In a case of bullying, harassment or sexual misconduct, the complainant has a right of appeal to the Conduct Committee against the Commissioner's findings. Having heard **considered** any appeal, and having agreed any appropriate sanction, the Conduct Committee reports to the House and, **for the most serious sanctions**, the final decision rests with the House. In cases where the Commissioner has dismissed the complaint or where remedial action has been agreed, the Commissioner's reports are normally published only on the Commissioner's webpages on the parliamentary website. However, she has discretion to submit such a report to the Conduct Committee.

[Paragraphs 5–116 unamended]

Preliminary assessment

117. The Commissioner conducts a preliminary assessment of all complaints. The Commissioner will not without good reason consider either anonymous complaints or ones where the complainant is not prepared to have their name and complaint disclosed to the member whose conduct is criticised. She screens out complaints which fall outside the scope of the Code. She may choose not to consider complaints which are clearly trivial or vexatious, or which substantially repeat allegations which have already been the subject of inquiry (unless there is significant fresh evidence in their support). In making her preliminary assessment, the Commissioner considers the criteria in the following two paragraphs.
118. Matters within the Commissioner's remit include:
- failure to register relevant interests;
 - failure to declare relevant interests in the course of parliamentary business, including committee proceedings;
 - breach of the rules on financial inducements and parliamentary influence and on paid advocacy;
 - breach of the rules on the use of facilities and services and on financial support;

- breach of the requirement that members should always act on their personal honour;
- behaviour that amounts to bullying, harassment or sexual misconduct in the course of parliamentary duties or activities; and
- breach by members' staff of the Code of Conduct for Members' Staff.

119. Matters not within the Commissioner's remit include:

- policy matters or a member's views or opinions;
- the funding of political parties;
- alleged breaches of the separate code governing the conduct of Government ministers as ministers; and
- members' non-parliamentary activities.

120. Save for the exceptions in paragraph 4 of the Code of Conduct, the Commissioner may not investigate a complaint about a former member of the House. If a member is under investigation when the member leaves the House the investigation terminates at that point.

121. If a member applies for leave of absence in order to avoid an impending investigation (or while an investigation is under way), the request may be refused. If the Commissioner decides to investigate a complaint about a member who is on leave of absence (in respect of conduct that occurred when the member was not on leave), the leave may if necessary be ended with immediate effect.

122. The complaint must usually be made within ~~four~~ **six** years of the conduct complained of. In exceptional circumstances the Commissioner may investigate conduct which occurred more than ~~four~~ **six** years before a complaint is made, provided that the Conduct Committee agrees and that it is satisfied that there is a strong public interest in the matter being investigated.

123. The complaint must also be supported by evidence sufficient to establish a *prima facie* case that the Code has been breached.

124. The Commissioner may continue an investigation into an alleged breach of the Code if the police or another agency are investigating a related allegation of criminal misconduct, but in such circumstances the Commissioner will not finalise her report on the case until the criminal process concludes. Before finalising her report the Commissioner will take account of any relevant issues which arose during the criminal process. An investigation will be suspended if related proceedings (criminal or civil) become sub judice (within the meaning of the House's sub judice resolution).

125. Following her preliminary assessment, the Commissioner informs both the complainant and the member concerned whether or not she will investigate the complaint. Where the Commissioner dismisses a complaint of bullying, harassment or sexual misconduct at preliminary assessment, she has the discretion not to disclose this information or to withhold the identity of the complainant. If she has decided that the complaint does not merit investigation, she provides the complainant with a brief explanation of her reasons for dismissing the complaint. For most complaints, the Commissioner

publishes a webpage setting out basic information about a case when she has decided to investigate a complaint. However, for complaints involving bullying, harassment or sexual misconduct, basic information will not be published on the website unless or until a report is published.

Anonymity

126. Where complaints relate to bullying, harassment or sexual misconduct the identity of the complainant will be shared where necessary with those directly involved in the investigation but will not usually be made public during the investigation, or on publication of the report, unless the complainant desires otherwise. This may involve some redaction in reports. Those involved in the investigation are under an obligation to protect the identity of the complainant and a failure to do so may constitute a breach of the Code as well as a contempt of the House.
127. When a member is being investigated in relation to allegations of bullying, harassment or sexual misconduct the identity of that member will not usually be made public until the publication of any report at the conclusion of proceedings (see paragraph 125).
128. Where allegations relate to bullying, harassment or sexual misconduct the complainant has a right to appeal to the Conduct Committee if their complaint is dismissed by the Commissioner after preliminary assessment. **The appellant must state in writing their reasons for appealing, addressing why they believe that the Commissioner has not correctly followed the guidance set out above. The Commissioner should in turn provide the Committee with a full account of her reasons for dismissing the complaint, and that account shall be shared with the complainant. The respondent shall be informed of the appeal and given an opportunity to make a written submission to the Committee. The Chair of the Committee or his/her nominee may make further provisions about the procedures to be followed in each appeal. If the appeal is upheld, the Commissioner shall commence a full investigation; if it is dismissed, both the appellant and the respondent shall be informed.**

[Paragraphs 129–136 unamended]

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.
139. ~~If a complaint alleging a breach of the personal honour provision involves bullying, harassment or sexual misconduct, the process of investigation, reporting and appeal is the same as that followed for a case of bullying, harassment or sexual misconduct that occurred after 21 June 2017.~~

140. 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.
141. 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.
142. 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.
143. 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.
144. 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.
- 144A. 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 ~~four~~**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, so that the member has an opportunity to comment on it.

148. If, having considered the member's comments, the Commissioner considers that there remain significant contested issues of fact, she will prepare her own account of the facts of the case, drawing attention to those points which are contested.

148A. After preparing her own account of the facts of a case, the Commissioner will consider whether the Code has been breached. If she finds that the Code has been breached and that remedial action is inappropriate, she will inform the member of the breaches she has found with a summary of the relevant parts of her report. The member will then be invited to present any material they would wish the Commissioner to take into account when considering her recommended sanction.

149. The Commissioner usually reports her findings in the following form:

- summary of the initial complaint and of the relevant elements of the Code of Conduct;
- brief account of the key facts in the case, with references to evidence as appropriate and with any contested points of fact highlighted;
- her findings with reasons as to whether or not the Code has been breached; and
- any evidence, written and oral.

Sanctions

150. In cases where the Commissioner upholds a complaint, the Commissioner makes recommendations to the Conduct Committee on any sanction that ~~the House should apply~~ **should be applied**. These recommendations are included in her reports. The options available to the Commissioner include:

- no action or sanction is appropriate.
- no further action is appropriate because both parties have come to their own resolution through mediation or otherwise and this resolution has been agreed by the Commissioner.
- ~~the Conduct Committee should recommend to the House that the member be required~~ **require the member** to take action to regularise

the position (for example a letter of apology or training) **where this has not been agreed as remedial action.**

- the Conduct Committee should ~~recomm~~ **recommend to the House that require** the member ~~be required~~ to make a personal statement of apology in the House.
- the Conduct Committee should recommend to the House that the member be suspended from the House. If the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then, the suspension may be for any specified period of time. If the conduct occurred before 26 June 2015 and was public knowledge before then, the suspension may be for a specified period of time not longer than the remainder of the current Parliament.
- the Conduct Committee should recommend to the House that the member be denied access for a specified period of time to the system of financial support for members and/or denied access for a specified period to the facilities **and services** of the House, **including services closely related to parliamentary proceedings and membership of select committees.** These sanctions can be applied for any period of time and may be applied in addition to other sanctions.
- the Conduct Committee should recommend to the House that the member be expelled from the House. This recommended sanction is available if the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then.

151. In deciding upon the sanction to recommend and in particular whether in respect of conduct occurring before 26 June 2015 to recommend suspension for a particular period longer than the remainder of the current Parliament or, more severe still, expulsion, the Commissioner should bear in mind the retrospective effect of the House of Lords (Expulsion and Suspension) Act 2015 and that, the longer ago the conduct occurred, the more certain the Commissioner should be of the need for such a sanction before recommending it.

Consideration by the Conduct Committee

152. The Committee ~~considers~~ **receives** the Commissioner's report and any recommended sanction. ~~The task of the Committee is to hear any appeal against the Commissioner's findings or recommendations.~~ The ~~Committee~~ **Commissioner** 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 deadline and timetable for the appeal may be fixed by the Chair or his/her nominee.**
153. **The task of the Committee is to hear any appeal against the Commissioner's findings or recommendations. The appeal process is described below.** If there is no appeal to the Conduct Committee in the event of a complaint being upheld, the Committee initially considers the sanction recommended by the Commissioner. If it endorses the sanction, it reports to the House accordingly. Alternatively, it can decide that the

recommended sanction needs further consideration. If so, it **may** then invite representations ~~from the member concerned~~ on the question of sanction **from the member concerned, the Commissioner and/or, in bullying, harassment or sexual misconduct cases, the complainant.** Having heard those representations, the Committee decides whether to endorse, reduce or increase the recommended sanction.

154. [amended text of 154 now in paragraph 153]

Appeals

155. Any appeal must be in writing, and should set out the grounds for the appeal and such supporting material as the appellant thinks appropriate. **The Committee may from time to time publish guidance to assist appellants in this process.** The appeal may be against either the Commissioner's finding or, in the case of a member, the recommended sanction. ~~A meeting will be scheduled to hear the appeal and the appellant will be given an opportunity to appear in person, if they so wish.~~ **The Committee may agree to hear from the member and/or complainant(s) in person, and to. The Committee may also take evidence from the Commissioner. **Any such hearings shall take place before a panel of at least five committee members (with a minimum of three Lords members and two lay members). The Chair of the Committee or his/her nominee may make further provisions about the procedures to be followed in each appeal.****

156. On appeal, the Committee will not reopen the Commissioner's investigation. The grounds for appeal are limited to the following:

- the Commissioner was plainly wrong in her finding;
- points of process;
- the emergence of significant new evidence; or
- the severity of the sanction.

On appeal a recommended sanction may be endorsed, reduced or increased.

Report to the House

157. Where a case is referred to the Conduct Committee by the Commissioner, the Committee reports the case to the House.

158. Where a complaint is upheld, the Conduct Committee must seek the agreement of the House if it is proposed that the member ~~be required to take action to regularise the position or that the member~~ be sanctioned by suspension or expulsion, or that the member be denied access to the system of financial support or the facilities **and services** of the House.

159. In all cases where there has been an appeal to the Conduct Committee, the Committee will publish a report either upholding or dismissing the appeal. The report from the Commissioner is annexed to the Committee's report.

160. When the Committee reports a case to the House, the Committee clerk should show the member the report shortly before publication and send the complainant the report on publication. For cases involving bullying,

harassment or sexual misconduct the Committee clerk should show both the complainant and the member the report shortly before publication.

161. When the Conduct Committee reports to the House on an individual case, the report and any resolution relating to sanction are decided without debate.

Compliance with sanctions

- 161A. **Members must comply with any sanction imposed by the Conduct Committee or the House. Any failure to do so shall constitute a breach of the Code of Conduct.**

Imprisonment of members

162. A member of the House of Lords who is sentenced to be imprisoned indefinitely or for more than one year ceases to be a member of the House and is no longer subject to the House's Code of Conduct.
163. The following paragraphs apply in cases where a member who has been sentenced to imprisonment continues to be a member of the House and therefore is subject to the Code.
164. A member sentenced to imprisonment in the United Kingdom, **whether the sentence is suspended or not**, ~~for a term of up to and including one year (or given a suspended sentence of imprisonment in the United Kingdom of whatever length)~~ is deemed to have breached the Code. **If the sentence does not engage the provisions of the House of Lords Reform Act 2014, then** ~~the case is then~~ referred to the Conduct Committee for it to recommend a sanction. The Committee may defer its consideration of a sanction if an appeal is lodged in the courts.
165. A member sentenced to imprisonment outside the United Kingdom (whether the sentence is suspended or not) is presumed to have breached the Code. The case is then referred to the Conduct Committee for it to consider whether the presumption should apply in that case and, if it should, what sanction to recommend. The member has the right to make representations to the Committee, and the Committee may take other evidence. If the sentence is for imprisonment for a term of more than one year, the Committee will defer its consideration of the case until any motion in the House that the member should cease to be a member is disposed of.
- 165A. **These provisions apply regardless of whether the member was a member of the House at the time of the offence, though they only apply to sentences imposed after a member's introduction. Where the Conduct Committee considers the breach to be sufficiently serious as to warrant expulsion or suspension, it is bound by the provisions of Standing Order 12 (Expulsion or suspension of a member).**

Code of Conduct for House of Lords Members' Staff

1. This Code of Conduct for Members' Staff applies to staff who have a parliamentary photo-pass or email account sponsored by a member of the House of Lords for the purpose of providing parliamentary secretarial or research assistance to the member. The same Code of Conduct applies to members' spouses or partners who provide such assistance **and the staff of the opposition whips' offices.**
- 1A. **The Code does not apply to staff working in the Government Whips' Office or the staff of the office of the Convenor of the Crossbench Peers. The former are civil servants and special advisers and therefore fall under the Civil Service Code or the Code of Conduct for Special Advisers. The latter are employees of the House of Lords Administration on temporary loan and are subject to the same rules and processes as other House staff. Both sets of staff are however still subject to the Independent Complaints and Grievance Scheme and investigation by external investigators.**

[Paragraphs 2–12 unamended]

Enforcement

13. The House of Lords Commissioner for Standards investigates alleged breaches of this Code. Any such investigation is conducted in accordance with the procedures set out in the Guide to the Code of Conduct for Members of the House of Lords, *mutatis mutandis*.
- 13A. **Members' staff shall co-operate at all stages with any investigation into their conduct, or that of their sponsoring member, by or under the authority of the House.**
- 13B. **The Commissioner shall publish a report into any breach of the Code resolved by remedial action except where she considers this to be disproportionate to the breach. In the event of the Commissioner not producing a report in such circumstances, the Commissioner will typically inform the relevant sponsoring member of the complaint, her finding and any action agreed. Where remedial action is not appropriate or agreed, the Commissioner will report to the Conduct Committee.**
14. The Conduct Committee shall consider reports by the Commissioner into alleged breaches of this Code in accordance with the procedures set out in the Guide to the Code of Conduct for Members of the House of Lords, *mutatis mutandis*.
- 14A. **The Conduct Committee shall publish a report of its findings except where it considers this to be disproportionate to the breach. In the event of the Conduct Committee not producing a report in such circumstances, the Committee will typically inform the relevant sponsoring member of the complaint, its finding and any action taken.**
15. Where a member's staff is found in breach of this Code and the case is not suitable for remedial action to be agreed between the Commissioner and the

individual (or between the Commissioner and the member), the sanctions that may apply include:

- suspension of the individual's pass;
- withdrawal of the individual's pass;
- cancellation of the individual's email account.

15A. The Conduct Committee may impose sanctions on members' staff on its own authority and without recourse to the House.

16. Nothing in this Code affects the right of Black Rod or the Yeoman Usher to remove a pass at any time for security-related or other reasons.
17. Nothing in this Code affects the right of the Parliamentary Digital Service to cancel an email account at any time for security-related or other reasons.

APPENDIX 3: BIOGRAPHIES OF LAY MEMBERS

Cindy Butts

Cindy Butts has over 20 years of experience improving access to justice and tackling inequality. She currently has a portfolio career which includes being a Commissioner at the Criminal Cases Review Commission, a Lay Member of the House of Commons Speaker's Committee for the Independent Parliamentary Standards Authority, a Lay Member of the Press Recognition Panel's Nominations Committee, and also appoints judges on behalf of the Judicial Appointments Commission.

Cindy previously served as a Commissioner at the Independent Police Complaints Commission. Prior to this she was the Deputy Chair of the Metropolitan Police Authority where she had responsibility for setting the strategic direction of the Metropolitan Police Service.

Mark Castle OBE

Mark Castle is the Chief Executive of the Field Studies Council, an environmental education charity, which he joined from the charity, Victim Support. Prior to that he was Chief Executive of the Association of Police and Crime Commissioners, which he joined directly from the British Army. He is a lay council member of the Royal College of Veterinary Surgeons and was a lay member of the Sentencing Council for England and Wales from 2015 to 2019.

Mark was born in Irvine, Ayrshire. He joined the British Army from school in 1978 and in a career that spanned 31 years he trained and taught at the Royal Military Academy, Sandhurst, graduated from the Army Staff College and commanded his regiment, the King's Own Scottish Borderers. During his service he travelled extensively and served on operations in Northern Ireland, Bosnia, and Iraq.

Andrea Coomber

Andrea Coomber has been the Director of JUSTICE since February 2013. An Australian qualified barrister and solicitor, before joining JUSTICE she was the Legal Director at INTERIGHTS, focussing on international human rights litigation, particularly equality cases. Andrea earlier lived and worked in human rights in New Delhi, Geneva and Cairo. She has a BA and LLB from the University of Western Australia and an LLM in Public International Law from the London School of Economics. Andrea is a trustee of the British and Irish Legal Information Institute and serves on the Advisory Boards of the Initiative for Strategic Litigation in Africa and of the Climate Litigation Network. Andrea is an Honorary Master of the Bench of Middle Temple. She Signs using British Sign Language.

Dr Vanessa Davies

Dr Vanessa Davies was the Director-General of the Bar Standards Board (BSB) from January 2011 to January 2020.

Prior to joining the BSB, Vanessa was the deputy Chief Executive and Director of Operations at Refugee and Migrant Justice (RMJ), which was one of the largest legal aid charities in the UK.

Vanessa's early professional career was as a linguist in Higher Education, and then as a senior civil servant at the Foreign and Commonwealth Office. She was

Director of the Diplomatic Service Language Centre and subsequently, a Group Director overseeing a range of services in support of UK foreign policy.

Vanessa left the world of languages in 2005 and trained for the Bar. She is an unregistered barrister, and a Bencher of Inner Temple. At the BSB, she led the modernisation of regulation of the Bar following the Legal Services Act of 2007 and focussed particularly on the transformation of legal education and training, regulatory operations and professional disciplinary processes, and governance.