

Memorandum to the Procedure Committee from the Clerk of the House  
on barring MPs from the precincts

I want to begin by acknowledging the seriousness of the concerns that have been raised with the Committee concerning the safety of women on the estate, and particularly the concerns of staff who have personally experienced sexual misconduct. I know that it has been very difficult for some staff to be aware that Members of Parliament who are under investigation for sexual misconduct, or in some cases for sexual offences, are continuing to attend Parliament, or have the right to continue to attend Parliament, while those investigations take place. I am committed to ensuring that the Commons is a safe place to work, and the Commission has endorsed withdrawal of House services from MPs when appropriate. But for reasons I explain in more detail below, I think that a bar on MPs attending the House while under investigation not only raises constitutional and practical difficulties, it could have the perverse effect of moving an MPs' interactions with others from a relatively safe and public space to one where there is far less policing and support.

The Women and Equalities Committee has rightly identified the key areas to consider, recommending that:

[...] the House of Commons Procedure Committee seek fuller advice from the House's procedural and legal advisers on the issues around balancing protecting people, in Parliament and constituencies, from harm, and constituents' rights to political representation. The Procedure Committee should consider, in the light of this advice, whether to inquire into this matter further and bring forward recommendations, taking into account the need to:

- maintain confidentiality for complainants and respondents;
- maintain a presumption of innocence and ensure fair investigations; and
- mitigate any undue risk of vexatious allegations. (Paragraph 111)

The first point is that Members are elected by their constituents; they are not employees. It is a fundamental constitutional right for Members who have been elected by their constituents to represent them here, and no-one outside the House itself has power to curtail that right.

The House, of course, retains its powers to suspend and expel Members, but it exercises those powers only after a thorough investigation and on a recommendation from the Committee on Standards or the Independent Expert Panel. While I would of course like to see all investigations conducted as quickly as possible, it is important that such investigations, whether conducted by the police or the ICGS are fair and thorough. This is essential to secure justice for victims, as well as justice for anyone facing accusations: I do not want cases to fail because the investigation was rushed or faulty. The need for a fair and thorough process can mean investigations last for months, and a small number of cases have taken over a year. The impact of suspension on those the MP represents could be extremely significant.

It would be open to the House either to resolve that any member who is under investigation should not attend the House, or to pass a resolution requiring a named Member not to attend. But there are two important counter-considerations: the first is the need to ensure continued representation for the excluded Member's constituents. and the second is the question of fairness to the individual, as the fact of the investigation does not necessarily mean that the allegation will be proved true. (Members of the committee will recall that an unnamed MP was arrested in 2020 on suspicion of rape, but that the police dropped the case and he was not charged.)

Members at Westminster do not simply take part in debates, or vote in divisions; a great deal of what they do involves informal collaboration with colleagues. If the political will was there, it would be possible to find ways for Members to participate in the formal proceedings of the House without

coming onto the precincts, but no one should be under any illusion that remote participation or proxy voting would ensure that Members banned from the House could be fully effective.

Questions have been raised about the equivalent situation in employment. First, an employer would not necessarily know of any investigation, so it is perfectly possible that no action would be taken. If the employer was aware, an employee might be suspended during an investigation if necessary to protect the organisation or other staff, but only if necessary: ACAS advice is that suspension should be a last resort, and its appropriateness will depend on the nature and seriousness of the allegation and the employee's role (and whether other options, such as relocation or home working, are available). The suspension would be on full pay to reflect that the allegation had not yet been proved true. It would indeed be possible to suspend a Member from Parliamentary duties on full pay, but that would leave constituents and the constituency without representation within Parliament and would provide questionable value for public money, especially in the case of a long investigation.

But the analogy does not hold completely good, because Members also act as employers for their staff. While they could be barred from the precincts, there is no provision to bar them from their constituency offices, which are provided through IPSA. The effect of a ban would be to ensure that a Member was unable to work in a public space, which is well policed, where services can be restricted if appropriate and where there is support for anyone who might be affected by any unacceptable behaviour, but would be able to work in the constituency, where the team would be far smaller and there would be less visibility, and fewer sources of support.

There is also a further difficulty: just as employers may not know about investigations into their staff, it may not be widely known that a Member is being investigated. ICGS investigations are kept strictly confidential and besides the investigator and the Parliamentary Commissioner for Standards only the complainant, the respondent and the witnesses will have detailed information about any individual case, although it is possible that both complainant and respondent might have sought other support, as permitted by the policies. Confidentiality is important for both parties, but a provision that a Member would be banned from the precincts if the fact of an investigation was known to be underway gives an incentive to breach that confidentiality. If a Member's name is known, the Member concerned may feel the need to defend themselves in public, which raises concerns about preserving the confidentiality of the complainant, even if they are not directly identified.

In the event that a Member is arrested, the police will contact the Clerk of the House to confirm the arrest, but following the report of this Committee in 2015 the arrest is no longer reported to the House unless the Member in question wishes it to be reported. If a Member has been questioned without being arrested, there will be no publicity until he is charged by the police – and none at all if no charge is made. The lack of publicity between arrest and charge is not unique to MPs; it is now standard practice not to name a suspect unless charged, following a number of high profile press stories which caused great damage to innocent people. The requirement that the House or House authorities are informed of the arrest of MPs is very old indeed. The reason for this was to ensure that the House was aware that a Member might not be able to attend proceedings, and so that the House could take action if the arrest had been made for political reasons.

It is certain that not all complaints to the police or the ICGS result in a finding that the respondent is guilty of a crime or misconduct. While every complaint must be taken seriously and wrong doing should be punished, it is not beyond the realms of possibility that some complaints might be vexatious. Introducing a ban on attendance in the House when a complaint had been made would certainly increase the incentive for vexatious complaints.

As the Speaker's letter to ParliGender acknowledged, the Commission is also not in a position to mandate Valuing Everyone training for Members. As you know, there is no job description for Members: it is for each individual to determine how best to carry out their responsibilities to their constituents. That includes freedom to decide what, if any, training to attend. Again, the House could mandate it for all its Members by resolution. If the Committee were minded to recommend making the training mandatory, it would also need to recommend (or ask the Committee on Standards to recommend) an appropriate sanction for failure to attend training. Voluntary uptake of training is high, and the Committee may wish to note that the names of Members who do not attend are already published.

Let me conclude by reiterating my commitment to ensuring the House is a safe and respectful work place. If the Committee does decide to undertake the inquiry suggested by the Women and Equalities Committee I would be delighted. Equally, I would understand if the Committee considers it already has the information needed to take a view.