



House of Commons
Committee on Standards

**The House of Commons
and the criminal law:
protocols between
the police and
the Parliamentary
Commissioner for
Standards and
the Committee
on Standards**

Tenth Report of Session 2019–21

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

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Committee on Standards

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

Current membership

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

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

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Powers

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

Publications

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Committee staff

The current staff of the Committee are Jim Camp (Committee Operations Officer), Paul Connolly (Media Relations Manager), Robin James (Clerk), and Stuart Ramsay (Second Clerk).

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Report

1. In 2008 our predecessor body, the Committee on Standards and Privileges, reported that the Committee and the then Parliamentary Commissioner for Standards had agreed a statement with the Metropolitan Police Commissioner relating to the handling of complaints against Members of Parliament which might also raise questions of criminal liability. The Committee commented that “we were concerned to ensure that there should be no misunderstanding between the House and the police on their respective role in these circumstances, and that any arrangements in place worked effectively in the public interest”.¹ The statement was set out as an appendix to the Committee’s report.

2. The arrangements set out in the 2008 statement remained in place until 2013, when they were superseded by a formal protocol agreed between the Committee on Standards and the then Commissioner, on the one hand, and the Metropolitan Police Service (MPS), on the other. The protocol was published as an appendix to a report by the Committee.² The Committee noted that the protocol was concerned with operational matters; it added in its report a more detailed commentary on the relationship between the inquiries conducted by the Commissioner and the Committee and those conducted by the police, and to deal with some issues relating to the effect of parliamentary privileges on court proceedings.³

3. The 2013 protocol has recently been replaced by two protocols, agreed separately between the Commissioner and the police, and the Committee and the police. The text of the two protocols, which are now in force, is set out in appendices to this report.

4. The two new protocols are the result of a joint approach to the police by the Commissioner and Committee following decisions made by the House in January 2019. Those decisions, which implemented a November 2018 report by the Committee, emphasised the Commissioner’s operational independence. The Committee’s report had stated that:

58. [...] the Commissioner has raised with us one provision in the protocol [with the MPS] which she considers is inappropriate. Paragraph 3.5 of the protocol states that “The Parliamentary Commissioner for Standards and the police will communicate information to each other in confidence”, except in two sets of circumstances, one of which is that “if the Parliamentary Commissioner considers that their investigations have uncovered evidence of possible criminality which should be referred to the police s/he will consult with the Committee on Standards”.

59. We agree with the Commissioner’s view that this provision is inappropriate, as infringing on her independence. We cannot conceive of circumstances in which, if she or any future Commissioner were to consider that they had uncovered evidence of possible criminality that ought to be drawn to the attention of the police, it would be proper for the Committee to impede her from doing so.

1 [Committee on Standards and Privileges, Eighth Report of Session 2007–08, The Complaints System and the Criminal Law \(HC 523\)](#), published 30 April 2008, para 1

2 [Committee on Standards, Seventh Report of Session 2013–14, The House of Commons Code of Conduct and the Criminal Law \(HC 903\)](#), published 9 December 2013

3 *Ibid.*, para 2

60. Both we and the Commissioner propose to discuss with the Metropolitan Police possible revisions to the 2013 protocol. These would include a redrafting of paragraph 3.5 to make clear that the Commissioner does not require the permission of the Committee to make a referral of a case to the police. A further option under consideration is the replacement of the present trilateral protocol with two bilateral protocols (Commissioner/police and Committee/police), the better to assert the Commissioner's independence from the Committee.

61. In the period until a new agreement or agreements with the Metropolitan Police are in place, we wish to make clear that, notwithstanding the provision in paragraph 3.5 of the 2013 protocol, we do not regard the Commissioner as being under any obligation to seek the Committee's approval before referring a case to the police on grounds of suspected criminality.⁴

5. The House agreed to approve the Committee's report, which also contained a recommendation for removal of the requirement for the Commissioner to consult the Committee on Standards before beginning inquiries into former Members, or into allegations concerning events which occurred more than seven years earlier, as well as a general statement that "We believe there should be no exceptions to the general principle that the Committee does not seek to direct the Commissioner's operational decision-making."⁵

6. In accord with the House's decision to approve the previous Committee's proposals, we and the present Commissioner have discussed with the MPS and agreed with them the attached protocols. The aim, as stated in the Committee's November 2018 report, is to assert and reinforce the Commissioner's operational independence. Other than as described above, the new protocols do not reflect any substantive change in the relationships between the police and the Commissioner and Committee. The aim of the protocols remains to ensure (in the words of the previous Committee) that "that the administration of justice is not impeded by actions taken by the Committee or the Commissioner".⁶

7. In one respect the text of the new protocols will need to be interpreted in the light of a recent decision by the House. In July 2020 the House approved the creation of an Independent Expert Panel (IEP) to hear cases referred to it by the Commissioner, and appeals, under the Independent Complaints and Grievance Scheme (ICGS). Responsibility for such cases and appeals has been removed from the Committee on Standards. References in the protocols to the former role of the Committee in this regard should therefore be interpreted as references to the role of the IEP. The IEP, once it is nominated and operational, may of course wish to review its own relations with the police and to draw the House's attention to any changes it may consider desirable.

8. We have produced this report in order to put the new protocols on the public record in an easily accessible way, and to draw the House's attention to them.

4 [Committee on Standards, Fifth Report of Session 2017–19, Implications of the Dame Laura Cox report for the House's standards system: Initial proposals \(HC 1726\)](#), published 10 December 2018, paras 58–61

5 [Ibid.](#), para 56; [Votes and Proceedings, 7 January 2019](#)

6 HC (2017–19) 1726, para 57

Appendix 1: Protocol between the Parliamentary Commissioner for Standards and the police

1. Purpose

1.1 The purpose of this protocol is to record formally the agreement between the Metropolitan Police Service (MPS), and the Parliamentary Commissioner for Standards (PCS) in respect of enquiries into the conduct of Members of Parliament (MPs or Members) which may involve criminal matters. It replaces an existing statement agreed between all parties in 2013, which formed an Appendix to the Standards Committee's Report 'The House of Commons Code of Conduct and the Criminal Law'.

1.3 The protocol is intended to ensure that:

- The public can have confidence in the arrangements for dealing with criminal conduct by Members;
- the administration of justice is not impeded by actions undertaken by the Parliamentary Commissioner or by parliamentary investigations;
- parliamentary investigations and the Commissioner's determinations are not unnecessarily impeded or delayed;
- there is transparency about the relationship between the House's disciplinary system and the criminal justice system.

1.4 The protocol sets out high-level principles and commitments. It covers:

- (i) enquiries into possible breaches of the Code of Conduct or the Parliamentary Behaviour Code by Members, which also raise questions of criminality; and
- (ii) enquiries by police into the conduct of a Member which may also relate to the House's disciplinary processes or to the Independent Complaints and Grievance Scheme

1.5 It does not cover other relationships between investigating and prosecuting authorities and the House authorities, such as the protocol on searches on the Parliamentary Estate, contacts with the Office of Speaker's Counsel or the requirement to notify the arrest or detention of a Member to the Speaker.

1.6 This protocol also does not cover criminal allegations made against Members wholly unconnected to their role as Members. It is likely that the force covering the area where the offence took place will investigate these.

1.7 The MPS will investigate criminal allegations made against Members where these are connected to their parliamentary duties. If it is felt necessary, the MPS will facilitate communication between the Parliamentary Commissioner and other forces.

2. Roles and Responsibilities

2.1 The Metropolitan Police Service has responsibility for investigating criminal conduct within its jurisdiction, for liaising with the NPCC and other police forces to ensure that they are aware of this protocol, and for advising on any necessary liaison with police in other jurisdictions.

2.2 The Parliamentary Commissioner for Standards is independent and is responsible for investigating complaints that MPs have breached the Code of Conduct, and for advising on the interpretation of the Code and Guide to the Rules. He/she is personally responsible for deciding whether or not to open investigations into whether a Member has breached this Code. The Commissioner can him/herself resolve some complaints but in more serious cases he/she submits a memorandum, which outlines the investigation and his or her findings, to the Committee on Standards, who can recommend a penalty.

2.3. The Commissioner has a slightly different role in relation to complaints brought under the Parliamentary Behaviour Code. Independent case managers investigate these. The Commissioner oversees the investigations and determines the complaints. In more serious cases she would submit a formal memorandum to the Committee, or to a subcommittee of that Committee.⁷

2.4 The Committee on Standards oversees the work of the Parliamentary Commissioner but is not involved with individual investigations, except that it may ask for further information or enquiries to be made when the Parliamentary Commissioner has submitted the results of a Code of Conduct investigation. It considers the Parliamentary Commissioner's memorandum on such investigations and reports its views, including any recommendations as to penalty, to the House of Commons. In cases under the Independent Complaints and Grievance Scheme, the Committee's role has yet to be fully determined. It is likely that the Committee, or a subcommittee of it, would consider any appeals.⁸

3. Principles and Communication

3.1 Except in the context of participation in proceedings in Parliament, Members are in the same position as anyone else in respect of alleged criminal behaviour.

3.2 The Code of Conduct for Members is not part of the criminal law. Many actions prohibited by the Code fall far short of criminal behaviour. It is nonetheless possible that there could be overlap between an investigation under the Code of Conduct or the parliamentary Behaviour Code, and police investigations into criminal offences. As a general principle, criminal proceedings against Members take precedence over the House's own disciplinary proceedings.

3.3 It is agreed that principles of co-operation, honesty and transparency underpin this protocol.

7 Note: This provision has been superseded by the decision of the House to transfer responsibility for Independent Complaints and Grievance Scheme matters from the Committee to a newly created Independent Expert Panel – see Committee on Standards, Tenth Report of Session 2019–21, *The House of Commons and the Criminal Law: protocols between the police and the Parliamentary Commissioner for Standards and the Committee on Standards* (HC 883), para 7 [October 2020].

8 See footnote 7 above.

3.4 The police will endeavour to inform the Parliamentary Commissioner if they are assessing or investigating a possible breach of the criminal law by a Member in order to establish whether the alleged conduct is also being investigated as a possible breach of the Code of Conduct or the Parliamentary Behaviour Code. However, it is acknowledged that there may be occasions where police do not share this information for operational reasons.

3.5 The Parliamentary Commissioner for Standards and the police will communicate information to each other in confidence. This will not prevent the Commissioner from seeking legal advice, or the advice of the Clerk to the Standards Committee.

3.6 The police may inform the Parliamentary Commissioner if they consider that a Member may have breached the Parliamentary Behaviour Code or the Code of Conduct even if their investigations have not resulted in criminal charges.

3.7 Should the police inform the Parliamentary Commissioner that they have started a formal criminal investigation into the conduct of a Member who is under investigation for a possible breach of the Code of Conduct or the Parliamentary Behaviour Code, or an assessment, the Parliamentary Commissioner and the police will discuss in confidence whether it is appropriate for the Parliamentary Commissioner's inquiry to be suspended.

3.8 The police will inform the Commissioner if they consider that any assessment of or investigation into possible criminal conduct by an MP will cause a significant delay to the Parliamentary Commissioner's work or if they wish the Committee⁹ to suspend consideration of any memorandum submitted to it by the Parliamentary Commissioner.

3.9 The police will be mindful of the need to avoid undue delay to the House's disciplinary process and undertake to communicate regularly with both the Parliamentary Commissioner, when appropriate, to update him/her on ongoing investigations.

4. Review and Signatures

4.1 This protocol will be reviewed at least once every Parliament or upon the request of any party involved.

4.2 Signed

Nick Ephgrave QPM, Assistant Commissioner, Metropolitan Police Service

28 August 2020

Kathryn Stone OBE, Parliamentary Commissioner for Standards

11 September 2020

9 Note: or the Independent Expert Panel – see footnote 7 above.

Appendix 2: Protocol between the Committee on Standards and the police

1. Purpose

1.1 The purpose of this protocol is to record formally the agreement between the Metropolitan Police Service (“the MPS”) and the House of Commons Committee on Standards (“the Committee”) in respect of enquiries into the conduct of Members of Parliament (MPs or Members) which may involve criminal matters. It replaces an existing statement agreed between the Committee, the police and the Parliamentary Commissioner for Standards (“the Commissioner”) in 2013, which formed an Appendix to the Committee’s Seventh Report of Session 2013–14, *The House of Commons Code of Conduct and the Criminal Law (HC 903)*, published on 9 December 2013. The new protocol will complement a protocol agreed between the Commissioner and the MPS.

1.2 The protocol is intended to ensure that:

- The public can have confidence in the arrangements for dealing with criminal conduct by Members;
- the administration of justice is not impeded by actions undertaken by parliamentary investigations;
- parliamentary investigations are not unnecessarily impeded or delayed;
- there is transparency about the relationship between the House’s disciplinary system and the criminal justice system.

1.3 The protocol sets out high-level principles and commitments. It covers:

- (i) enquiries into possible breaches of the Code of Conduct or the Parliamentary Behaviour Code by Members, which also raise questions of criminality; and
- (ii) enquiries by police into the conduct of a Member which may also relate to the House’s disciplinary processes or to the Independent Complaints and Grievance Scheme (ICGS).

1.5 It does not cover other relationships between investigating and prosecuting authorities and the House authorities, such as the protocol on searches on the Parliamentary Estate, contacts with the Office of Speaker’s Counsel or the requirement to notify the arrest or detention of a Member to the Speaker.

1.6 This protocol also does not cover criminal allegations made against Members wholly unconnected to their role as Members. It is likely that the force covering the area where the offence took place will investigate these.

1.7 The MPS will investigate criminal allegations made against Members where these are connected to their parliamentary duties. If it is felt necessary, the MPS will facilitate communication between the Commissioner and other forces.

2. Roles and Responsibilities

2.1 The Metropolitan Police Service has responsibility for investigating criminal conduct within its jurisdiction, for liaising with the NPCC and other police forces to ensure that they are aware of this protocol, and for advising on any necessary liaison with police in other jurisdictions.

2.2 The Parliamentary Commissioner for Standards is independent and is responsible for investigating complaints that MPs have breached the Code of Conduct, and for advising on the interpretation of the Code and Guide to the Rules. He/she is personally responsible for deciding whether or not to open investigations into whether a Member has breached this Code. The Commissioner can him/herself resolve some complaints but in more serious cases he/she submits a memorandum, which outlines the investigation and his or her findings, to the Committee on Standards, which can recommend a penalty.

2.3. The Commissioner has a slightly different role in relation to complaints brought under the Parliamentary Behaviour Code. Independent case managers investigate these. The Commissioner oversees the investigations and determines the complaints. In more serious cases he or she would submit a formal memorandum to the Committee, or to a sub-committee of that Committee.¹⁰

2.4 The Committee on Standards oversees the work of the Parliamentary Commissioner but is not involved with individual investigations, except that it may ask for further information or enquiries to be made when the Commissioner has submitted the results of a Code of Conduct investigation. It considers the Commissioner's memorandum on such investigations and reports its views, including any recommendations as to sanction, to the House of Commons. In cases under the ICGS as set up by the House of Commons on 19 July 2018, the Committee is responsible for considering appeals. The Committee has set up a Sub-Committee on ICGS matters to consider these matters.¹¹

3. Principles and communication

3.1 Except in the context of participation in proceedings in Parliament, Members are in the same position as anyone else in respect of alleged criminal behaviour.

3.2 The Code of Conduct for Members is not part of the criminal law. Many actions prohibited by the Code fall far short of criminal behaviour. It is nonetheless possible that there could be overlap between an investigation under the Code of Conduct or the Parliamentary Behaviour Code and police investigations into criminal offences. As a general principle, criminal proceedings against Members take precedence over the House's own disciplinary proceedings.

3.3 It is agreed that principles of co-operation, honesty and transparency underpin this protocol.

10 Note: This provision has been superseded by the decision of the House to transfer responsibility for Independent Complaints and Grievance Scheme matters from the Committee to a newly created Independent Expert Panel – see Committee on Standards, Tenth Report of Session 2019–21, *The House of Commons and the Criminal Law: protocols between the police and the Parliamentary Commissioner for Standards and the Committee on Standards* (HC 883), para 7 [October 2020].

11 See footnote 10 above.

3.4 The following arrangements have been agreed between the police and the Parliamentary Commissioner:

- (a) The police will endeavour to inform the Commissioner if they are assessing or investigating a possible breach of the criminal law by a Member in order to establish whether the alleged conduct is also being investigated as a possible breach of the Code of Conduct or the Parliamentary Behaviour Code. However, it is acknowledged that there may be occasions where police do not share this information for operational reasons.
- (b) The Commissioner and the police will communicate information to each other in confidence. This will not prevent the Commissioner from seeking legal advice, or the advice of the Clerk of the Standards Committee.
- (c) The police may inform the Commissioner if they consider that a Member may have breached the Parliamentary Behaviour Code or the Code of Conduct even if their investigations have not resulted in criminal charges.
- (d) Should the police inform the Commissioner that they have started a formal criminal investigation into the conduct of a Member who is under investigation for a possible breach of the Code of Conduct or the Parliamentary Behaviour Code, or an assessment, the Commissioner and the police will discuss in confidence whether it is appropriate for the Commissioner's inquiry to be suspended.
- (e) The police will inform the Commissioner if they consider that any assessment of or investigation into possible criminal conduct by an MP will cause a significant delay to the Commissioner's work or if they wish the Committee to suspend consideration of any memorandum submitted to it by the Commissioner.
- (f) The police will be mindful of the need to avoid undue delay to the House's disciplinary process and undertake to communicate regularly with the Commissioner, when appropriate, to update him/her on ongoing investigations.

3.5 It is expected that in the majority of cases where there is any police involvement with parliamentary investigations into alleged breaches of the Code of Conduct for Members or the Parliamentary Behaviour Code, the relevant contacts will be between the police and the Commissioner.

3.6 However, when the Committee is considering a matter referred to it by the Commissioner or an ICGS appeal, in some circumstances it may be necessary for there to be contacts between the Committee and the police.¹² These will, as far as possible and where appropriate, mirror the arrangements between the police and the Commissioner set out in paragraph 3.4 above and in the protocol between those two parties.

3.7 The Clerk of the Committee will be the channel for communications between the police and the Committee. The Clerk will also be the channel for any advice the police may seek on parliamentary privilege insofar as it relates to the interaction between police investigations and the Committee.

12 See footnote 10 above.

3.8 The Committee and the police will communicate information to each other in confidence, except that the Committee may seek legal advice or advice from the Commissioner.

3.9 The police will inform the Clerk of the Committee if they consider that any assessment of or investigation into possible criminal conduct by an MP will cause a significant delay to the Committee's work or if they wish the Committee¹³ to suspend consideration of any memorandum submitted to it by the Commissioner.

3.10 The police will be mindful of the need to avoid undue delay to the House's disciplinary process and undertake to communicate regularly with the Clerk of the Committee when appropriate to update him or her on ongoing investigations.

4. Review and Signatures

4.1 This protocol will be reviewed at least once every five years or upon the request of any party involved.

4.2 Signed

Nick Ephgrave QPM, Assistant Commissioner, Metropolitan Police Service

7 September 2020

Chris Bryant MP, Chair, House of Commons Committee on Standards

20 October 2020

13 Note: or the Independent Expert Panel – see footnote 10 above.

Formal minutes

Tuesday 20 October 2020

Virtual meeting

Members present:

Chris Bryant, in the Chair

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

Draft report (*The House of Commons and the Criminal Law: protocols between the police and the Parliamentary Commissioner for Standards and the Committee on Standards*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 8 read and agreed to.

Two papers were appended to the Report.

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

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

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

Ordered, That embargoed copies of the Report be made available in accordance with Standing Order No. 134.

[The Committee adjourned.]

List of Reports from the Committee during the current Parliament

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

Session 2019–21

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Eighth Report	David Morris	HC 771
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