



House of Commons
Committee on Standards

Precautionary exclusion: response to the House of Commons Commission's consultation

Fifth Report of Session 2022–23

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

*Ordered by the House of Commons
to be printed 7 February 2023*

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

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

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

[Andy Carter MP](#) (*Conservative, Warrington South*)

[Alberto Costa MP](#) (*Conservative, South Leicestershire*)

[Rita Dexter](#) (*Lay member*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr, Carrick and Cumnock*)

[Yvonne Fovargue MP](#) (*Labour, Makerfield*)

[Sir Francis Habgood](#) (*Lay member*)

[Sir Bernard Jenkin MP](#) (*Conservative, Harwich and North Essex*)

[Dr Michael Maguire](#) (*Lay member*)

[Mehmuda Mian](#) (*Lay member*)

[Victoria Smith](#) (*Lay member*)

[Paul Thorogood](#) (*Lay member*)

[Sir Charles Walker MP](#) (*Conservative, Broxbourne*)

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

© Parliamentary Copyright House of Commons 2022. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament/.

Committee reports are published on the Committee's website at www.parliament.uk/standards and in print by Order of the House.

Committee staff

The current staff of the Committee are Paul Connolly (Media Relations Manager), Arvind Gunnoo (Committee Operations Officer), Dr Robin James (Head of staff team), Stuart Ramsay (Acting Clerk), Silas Scott (Senior Media Relations Officer), and Wafia Zia (Second Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Committee at the Committee's email address, standards@parliament.uk. The telephone number for general enquiries is 020 7219 6615.

Contents

Report	3
Appendix 1: Committee on Standards submission to the House of Commons Commission's consultation	4
Is precautionary exclusion necessary?	4
Are the Commission's proposals proportionate?	4
Are the Commission's proposals workable?	5
Other issues	7
ICGS complaints as a threshold	7
Constituency offices	7
Summary of our proposal	8
Formal minutes	9
Witnesses	10
Published written evidence	11
List of Reports from the Committee during the current Parliament	12

Report

1. On 5 December 2022, the House of Commons Commission published proposals to introduce a risk-based “precautionary exclusion” for Members charged with a violent or sexual offence.¹
2. The Commission propose a scheme, where, if a Member was charged with a violent or sexual offence, a small group of senior House officials would undertake a formal risk assessment, to consider whether a Member should be barred from accessing the parliamentary estate and from taking part in parliamentary funded travel. The final decision would be taken by a panel of two senior Members and one non-Member (who would have been nominated by the Speaker and approved by the House). Mr Speaker would then implement the Panel’s decision. The Commission’s detailed proposals are published on its webpages.² This Committee was invited to respond to the consultation on the proposals.
3. Six of the elected Members of this Committee are also members of the Committee of Privileges. The Committee of Privileges has indicated that it is content for this Committee to respond on matters relating both to standards and to parliamentary privilege.
4. To inform our response, we invited written evidence on this issue,³ and took oral evidence from comparable outside bodies, Members representing backbench party groups, and Trades Unions representing members of the Parliamentary community. We have also heard informally from other internal House stakeholders. We are grateful to all those who gave evidence to us.
5. Our response to the Commission’s consultation is published as an appendix to this report.

1 The Commission’s consultation was published online at: <https://committees.parliament.uk/committee/348/house-of-commons-commission/news/174867/commission-launches-consultation-on-precautionary-exclusion-of-mps/>

2 <https://committees.parliament.uk/committee/348/house-of-commons-commission/news/174867/commission-launches-consultation-on-precautionary-exclusion-of-mps/>

3 The terms of reference are published on the Committee’s webpages.

Appendix 1: Committee on Standards submission to the House of Commons Commission's consultation

1. The Committee on Standards is grateful for the opportunity to respond to the Commission's consultation on proposals to introduce precautionary exclusion for MPs. In responding to the Commission's proposals, we have considered three questions: whether the proposals for precautionary exclusion are, in our view, (a) necessary; (b) proportionate; and (c) workable.

2. We propose a modified version of the Commission's proposal. A summary of our proposal can be found at the end of this submission.

Is precautionary exclusion necessary?

3. Our starting point is the safety of all those who work on or attend the Parliamentary estate. The House has a responsibility to ensure they are safe; to demonstrate that it takes the safety of those on the estate seriously; to be an exemplar of good working practices; and to maintain the reputation of the House.

4. Any action taken by the House must not compromise criminal proceedings or undermine the fundamental principle that one is innocent until proven guilty.

5. The current informal process is inadequate. We note that the Commission states that informal, voluntary agreements by Members not to access the estate have "not always been honoured".

6. The House should therefore draw up and adopt a formal process for deciding what risk mitigation measures are necessary and proportionate when an MP is the subject of criminal proceedings. We note, as the Commission does, that other passholders would have their access to the estate withdrawn if they were subject to a criminal investigation which indicated they posed a risk to the safety of others on the estate. We therefore conclude that the measures available to the House should include precautionary exclusion for Members, where necessary.

Are the Commission's proposals proportionate?

7. We suggest some modifications to the Commission's proposal to ensure the scheme operates proportionately.

8. First, we propose that the power to exclude Members from the precincts should form only one part of a wider, formalised risk mitigation process. The evidence we heard from comparable bodies, including the police, suggests that interim suspension is normally a last resort. We note that the House Service may, as a management action, already exclude Members from services which do not prevent them from carrying out their role as Members (for example, removing access to bars or restaurants; or a requirement that they contact particular offices by email or phone rather than in person). We suggest that this principle could be extended further. The House Service could, for example, if it were

thought necessary and appropriate, move the MP's member of staff to an office shared with other staff, or allocate the MP an office which has a higher degree of visibility. Subject to IPSA contractual requirements (which we discuss further below), the MP could be required to allow their staff to work from home. Exclusion from the precincts and/or a ban on parliamentary funded travel should only be used where these steps (or combinations of them) would not sufficiently mitigate the risk.

9. Second, a number of witnesses observed to us that the crucial balance is between the right of Members to undertake their constitutional duties and to represent their constituents; and the safety of those on the estate. Given that the Government of the day arises from the confidence of the House, which can be tested in votes on the floor of the House, whether or not a Member is able to vote may have significant ramifications, depending on parliamentary arithmetic. If a Member excluded from the precincts were unable to vote, this would significantly increase the risk of attempted interference with or influence over an exclusion process. We therefore consider that, at a minimum, Members excluded from the precincts for purely precautionary reasons must be able to vote, whether by proxy, or by a process of electronic voting as implemented during the Covid-19 pandemic. This should apply whether or not the House decides to extend proxy voting to cover a wider range of circumstances. We acknowledge that this measure would make it more likely that a Member subject to exclusion would be publicly identified, but, in our view, this consideration is outweighed by other factors.

10. We would also encourage the Commission to consider if there are any further ways in which excluded Members' continued participation in proceedings could be facilitated.

11. Lastly, we have considered the constitutional question of how far it is proper and proportionate to delegate the House's power to exclude Members from the precincts. Currently Members are only excluded if they are suspended from the service of the House, and that suspension is clearly punitive. But it is vital that any precautionary exclusion must be considered as a neutral act and not punitive or judicatory. At present, the House takes the decision as to whether or not a Member should be suspended; and has not previously been prepared to delegate this (except to the Speaker in respect of the remainder of a single day's sitting, under Standing Order No. 43). Given that exclusion from the precincts would have a significant impact on how far Members can participate in proceedings and carry out their duties, we recognise that the House will wish to retain control over exclusion.

12. We therefore propose that the exclusion should be binding and confidential if the Member consents (i.e., if they agree to the exclusion, their pass is deactivated, and they cannot later withdraw their consent to this); but if the Member does not initially consent, that the House should be invited to approve their exclusion from the precincts on a simple motion which is taken forthwith, without amendment or debate. In practice, Members would have a significant incentive to agree, given the likely publicity of a decision by the House; but the principle would be preserved that only the House could take a decision on exclusion from the precincts to which a Member did not consent.

Are the Commission's proposals workable?

13. The Commission's proposed threshold (where a Member is charged with a violent or sexual offence) is too high. Indeed, it arguably prevents the process from being properly 'precautionary', since a formal charge would be likely to come at a relatively late stage. We

note that the Clerk of the House is already notified when a Member is arrested; whereas other bodies often rely on self-reporting of an arrest or charge. It is conceivable that the circumstances in which a Member is arrested could provide a weight of evidence that easily meets a risk-based threshold for exclusion.

14. In addition, we do not see why specific offences, or classes of offence, would need to be named given that this would be the threshold only for a risk assessment, not the exclusion itself: if a Member were to be arrested for an offence where the safety of others was not in question (such as traffic offences), no reasonable risk assessment would recommend their exclusion from the estate.

15. The Commission's proposals for decision-making are, in our view, overly cumbersome. We heard that, in comparable bodies, decisions on interim suspension are taken relatively quickly and by a very small number of people (often only one decision-maker acting on advice). Furthermore, the more actors (and senior actors) involved in the process, the more likely the impression could be given that the process is a disciplinary one, or one that is making a judgment of guilt, rather than an assessment of risk.

16. We therefore propose that any arrest of a Member should prompt the Clerk of the House to (a) consider whether the nature of the offence suggests that a risk assessment would be appropriate and (b) if so, to undertake a risk assessment, with the benefit of any specialist advice required (we note that none of the House officials listed in the consultation would, by virtue of their role, need to have expertise in sexual violence, for example). We would expect that, often, a risk assessment may indicate that no further steps need to be taken; or that the risks could be mitigated with an enhanced set of management actions detailed above. The tests under the risk assessment could include (a) the nature of the offence; (b) the weight of evidence; (c) the stage of the criminal proceeding; (d) the Member's compliance with any previous risk mitigation measures.

17. Where the risk assessment indicates that a bar on participating in parliamentary funded travel and/or exclusion from the precincts would be appropriate, the decision to do so (subject to the Member's final consent) should sit with a panel of three persons appointed by the Speaker, following advice and a recommendation from the Clerk of the House. Those appointed to the panel should have experience in assessing evidence and dealing with individual cases, which is why we suggest that the make-up of the Panel should be a Member and a lay member from the Committee on Standards, and a member of the Independent Expert Panel (who would recuse themselves from any case related to the Member concerned that might subsequently come before the Committee on Standards or the IEP).

18. In line with practice by comparable bodies, we suggest that the measures, including exclusion from the precincts, should be subject to review at regular intervals and when there is a change in circumstances (such as the Member being subject to police bail or charged).

Other issues

ICGS complaints as a threshold

19. We understand that under the Commission's proposed scheme, ICGS complaints (regardless of seriousness) would not be able to trigger a risk assessment that could lead to exclusion from the precincts. We recognise the importance of confidentiality in the ICGS scheme, but note that, in similar schemes, safeguarding concerns (for example) might be significant enough to override confidentiality requirements. In addition, we have heard concerns that individuals may be reluctant to make a complaint about a Member to the ICGS because they know that a Member will be able to continue to access the estate during any investigation. The Commission may wish to consider whether ICGS complaints should trigger a risk assessment where a full investigation is opened (that is, it has passed the initial assessment stage) and the behaviour complained of would reasonably be thought also to constitute a criminal offence.

Constituency offices

20. Our witnesses recognised the difficulties inherent in attempting to restrict access to constituency offices, given these are not within the House's control in the same way as access to the precincts. Although IPSA's policies fall outside the remit of the Commission, we understand that IPSA-fundable staff posts must have contracts that meet IPSA's requirements.⁴ One such contractual requirement could be that Members' staff have a right to work from home (and not to attend a constituency office) where this is requested as a part of a risk mitigation plan; or during any period their Member is subject to an exclusion from the precincts.

4 One condition of IPSA's paying staff costs is that "a contract of employment that complies with the model contract of employment published by IPSA from time to time has been signed by the relevant parties": see IPSA, *The Scheme of MPs' Staffing and Business Costs 2022–23* (HC 1111)

Summary of our proposal

Box 1: Summary of our proposal

Step 1: Clerk of the House is notified of the arrest of a Member.

Step 2: Clerk of the House decides if it is appropriate to undertake a risk assessment; and if so, makes a risk assessment, with any specialist advice required.

Step 3: Risk assessment considers whether an enhanced set of mitigating measures would be sufficient to address the risk. If the risk assessment concludes that a Member should be excluded from the precincts and/or parliamentary funded travel, the Clerk makes a recommendation to the panel.

Step 4: Panel of a Member and lay member of the Committee on Standards, and a member of the Independent Expert Panel decide whether the Member should be excluded.

Step 5: If they do, Member is invited to agree to the exclusion.

Step 6: If the Member agrees, the exclusion (and/or travel ban) is binding and their pass is deactivated (in the case of exclusion from the precincts). If not, the House is invited to agree the exclusion (and/or travel ban).

Step 7: Exclusion is reviewed at regular intervals and whenever circumstances change.

Formal minutes

Tuesday 7 February 2023

Members present:

Sir Chris Bryant, in the Chair

Tammy Banks

Andy Carter

Alberto Costa

Rita Dexter

Allan Dorans

Yvonne Fovargue

Sir Bernard Jenkin

Dr Michael Maguire

Mehmuda Mian

Victoria Smith

Paul Thorogood

Sir Charles Walker

Precautionary exclusion: response to the House of Commons Commission's consultation

Draft report (*Precautionary exclusion: response to the House of Commons Commission's consultation*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 5 read and agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Fifth 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.

Adjournment

The Committee adjourned.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 24 January 2023

Sara Jagger, Director of Legal and Enforcement, Bar Standards Board; **The Rt Revd John Inge**, Bishop of Worcester, Church of England; **Michael Allen**, Detective Chief Superintendent, Professional Standards Branch; **Edward Dobson**, Senior Advisory Lawyer, Church of England

[Q1–61](#)

Tuesday 24 January 2023

Sir Graham Brady MP, Member, House of Commons; **Peter Grant MP**, Member, House of Commons; **John Cryer MP**, Member, House of Commons

[Q62–103](#)

Ken Gall, President of House of Commons Trade Union Side, UK Parliament; **Jawad Raza**, National Officer, The FDA Trade Union; **Max Freedman**, Chair, Unite Parliamentary Staff Branch

[Q104–166](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PRE numbers are generated by the evidence processing system and so may not be complete.

- 1 Childs, Professor Sarah and Mott, Dr Helen ([PRE0001](#))
- 2 Horne, Alexander ([PRE0004](#))
- 3 McCullough, Jenny ([PRE0002](#))
- 4 Parsons, Simon ([PRE0003](#))

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.

Session 2022–23

Number	Title	Reference
1st	New Code of Conduct and Guide to the Rules: promoting appropriate values, attitudes and behaviour in Parliament	HC 227
2nd	Code of Conduct: Procedural Protocol	HC 378
3rd	New Guide to the Rules: final proposals	HC 544
4th	Andrew Bridgen	HC 855

Session 2021–22

Number	Title	Reference
1st	Boris Johnson	HC 549
2nd	Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers	HC 582
3rd	Mr Owen Paterson	HC 797
4th	Review of the Code of Conduct: proposals for consultation	HC 270
5th	Daniel Kawczynski	HC 1036
6th	Review of fairness and natural justice in the House's standards system	HC 1183
7th	All-Party Parliamentary Groups: improving governance and regulation	HC 717

Session 2019–21

Number	Title	Reference
1st	Kate Osamor	HC 210
2nd	Stephen Pound	HC 209
3rd	Greg Hands	HC 211
4th	Conor Burns	HC 212
5th	Mr Marcus Fysh	HC 213
6th	Confidentiality in the House's standards system	HC 474
7th	Sanctions in respect of the conduct of Members	HC 241
8th	David Morris	HC 771
9th	Dr Rosena Allin-Khan	HC 904

Number	Title	Reference
10th	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
11th	ICGS investigations: Commons-Lords agreement	HC 988
12th	Sanctions and confidentiality in the House's standards system: revised proposals	HC 1340