

CONDUCT COMMITTEE CONSULTATION ON PAID PARLIAMENTARY ADVICE AND SERVICES

INTRODUCTION

1. The Conduct Committee is carrying out the first full review of the Code of Conduct's provisions on paid parliamentary advice and services since they were agreed in 2009-10. These provisions can be found in paragraphs 9 and 16 of the Code of Conduct, and paragraphs 15 to 31 of the Guide to the Code of Conduct.¹ The review encompasses paid advocacy, lobbying and parliamentary consultancy.
2. The House of Lords is a House of unsalaried, part-time members, who are explicitly encouraged to maintain their outside interests and to bring their expertise to bear on parliamentary proceedings. We are not proposing, therefore, any further restrictions on the jobs members can hold outside Parliament. But recent conduct cases and the experience of the Registrar of Lords' Interests in advising members have shown both that some members are unclear about the rules, and that they could be reworded in a way which removes any room for doubt about their meaning. This is an inherently complex area, but **our intention is to express the rules as clearly and logically as possible, so that members, the public and other stakeholders understand them and the integrity of the parliamentary process is upheld.**
3. The Committee seeks written submissions addressing the seven key questions set out below, as well as any wider points which consultees may wish to make, by **Wednesday 17 May**. Text which the Committee proposes to delete is ~~struck through~~, and new text is in **bold**. Submissions should be emailed to lordsconduct@parliament.uk.
4. Once the Committee has considered the consultation responses, final proposals will be brought to the House for debate and agreement.

¹ www.parliament.uk/hl-code.

THE CODE PROVISIONS

5. The Code currently contains three related but distinct sets of rules governing this area which are quoted below. The more detailed provisions in the Guide to the Code are discussed in the next section.

A - Exercising parliamentary influence

“Members of the House must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence.” [Code para 9(c)]

B - Parliamentary advice or services

“Members of the House must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.” [Code para 9(d)]

C - The exclusive benefit rule

“A member must not seek by parliamentary means to confer exclusive benefit on an outside body or person (a) in which he or she has a financial interest (including by way of salary, fees, shareholding or other arrangement) or (b) in return for payment or reward.” [Code para 16]

6. The Committee believes that the overlap between these rules may cause confusion. We therefore seek views on whether they should be consolidated into a single paragraph.

QUESTION 1: do you agree that the existing provisions in paragraphs 9 and 16 of the Code should be consolidated into one stand-alone paragraph, as follows?

XX. Members of the House must not:

- (a) seek by parliamentary means to confer an exclusive benefit on an outside organisation or person in which they have a financial interest (e.g. salary, shareholding); or**
- (b) seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.**

THE GUIDE PROVISIONS

Parliamentary advice

1. Paragraph 19 of the Guide states:

“The prohibition from accepting payment in return for parliamentary advice means that members may not act as paid parliamentary consultants, advising outside organisations or persons on process, for example how they may lobby or otherwise influence the work of Parliament. The following is not parliamentary advice:

- advice on public policy and current affairs;
- advice in general terms about how Parliament works; and
- media appearances, journalism, books, public lectures and speeches.”

2. The House of Commons, which until recently permitted MPs to offer paid parliamentary consultancy, has now adopted this exact wording and it makes sense for the two Houses to be in line. Nonetheless, the Committee seeks views on the following assumptions.

- The phrase “the work of Parliament” covers parliamentary proceedings, parliamentary work undertaken by members and staff of both Houses, and governmental work carried out by ministers and officials. It does not extend to the work of other parliaments and legislatures, nor to local authorities.
- The wording on what does *not* constitute parliamentary advice means that members may advise on public policy, legislation and, in general terms, the workings of Parliament, but they may not leverage their inside knowledge by offering tactical advice on influencing ministers, parliamentarians and officials on a particular issue.

3. Members may in certain circumstances offer parliamentary advice or services to organisations in which they have a financial interest; this is discussed below.

QUESTION 2: do you think that the scope and description of the rules on parliamentary advice are clear?

Parliamentary services

Definition of parliamentary services

4. Paragraph 21 of the Guide defines parliamentary services in the following terms.

“The prohibition on accepting payment in return for parliamentary services means that members may not, in return for payment or other incentive or reward, assist outside organisations or persons in influencing members of either House, ministers or officials. This includes seeking by means of participation in proceedings of the House to confer exclusive benefit upon the organisation or person; or making use of their position to lobby, or to help others to lobby, members of either House, ministers or officials, by whatever means. A member may never provide parliamentary services in return for payment or other incentive or reward (regardless of whether the member intends to register and declare the interest).”

5. The current wording is not intended to be comprehensive (“includes...”) but the Committee believes that it could be improved. In particular, it should make clear that accepting a financial inducement to pursue or not pursue a particular course of action in the core work of the House is prohibited across the board, not only where an exclusive benefit is sought. The guidance should also state in terms that members should not accept an inducement to provide ‘ancillary’ services which fall outside the core work of the House but which can only be offered by a parliamentarian.

QUESTION 3: do you support replacing paragraph 21 of the Guide with the following new paragraph? Is there anything that is unclear?

“The prohibition on paid parliamentary services means that members may not accept, or agree to accept, payment or other reward in return for doing or not doing something in the performance of their parliamentary duties and activities. This prohibition applies regardless of whether the member registers or declares the interest. In this context, “parliamentary duties and activities” include, but are not limited to, (i) participation in any parliamentary proceeding, (ii) all types of interaction with members of either House, ministers or officials, and (iii) ancillary services such as setting up an all-party parliamentary group, hosting a parliamentary reception or sponsoring a security pass. Providing ancillary services in exchange for payment or other reward may exacerbate the seriousness of any breach of the rules on the use of facilities which may have been committed simultaneously.”

Provision on travel and hospitality

6. Paragraph 22 of the Guide, regarding members participating in proceedings where they have benefited from related travel or hospitality, was adopted in 2020 to bring the House of Lords into line with the House of Commons. The House of Commons has recently modified this provision as part of a package of wider changes to their Code of Conduct. This Committee has, though, concluded that the provision is superfluous as it is just one example of accepting an inducement to do or not do something in the course of parliamentary duties and activities, which is already prohibited (see above).

QUESTION 4: do you agree that paragraph 22 of the Guide should be omitted?

Outside roles and parliamentary advice and services

7. Members are in some cases uncertain how far they can (a) meet or contact parliamentarians, ministers or officials on behalf of, or (b) provide parliamentary advice to, an organisation or person in which they have a financial interest.
8. Paragraph 20 of the Guide says this:

“Although a member may never provide parliamentary advice in return for payment, a member may exceptionally give parliamentary advice to an organisation or person with whom the member has a financial interest, provided that the member can demonstrate that:

- he or she does not receive payment or benefit in return for the provision of parliamentary advice or services. The member should, if challenged, be able

clearly to show that the payment or benefit is provided in return for some non-parliamentary advice or service which the member provides; the member should, where possible, ensure that contractual agreements specifically exclude the provision of parliamentary advice or services; and

- the payment or benefit which the member does receive is not substantially due to membership of the House, but is by reason of personal expertise or experience gained substantially outside Parliament; and that the member was, or would have been, appointed to the position without being a member of the House.”

9. The Committee believes that this paragraph could be clarified in three areas.

- Explicitly applying the provision to parliamentary services as well as parliamentary advice, allowing members who satisfy its two conditions to carry out these activities when this is clearly incidental to their core role.
- Replacing the word “exceptionally” with “on occasion”.
- Requiring members relying on it to show that any payment or benefit is received by reason of personal expertise or experience gained substantially outside **the House** rather than outside **Parliament**. Otherwise the provision could prevent a Lords member who was formerly an MP from taking any job which they have been offered by virtue of their experience as a minister or backbencher in the Commons.

QUESTION 5: Do you agree that paragraph 20 should be redrafted as follows?

Although a members may never **accept or agree to accept payment or other incentive or reward in return for providing parliamentary advice or services**, ~~provide parliamentary advice in return for payment, a member may exceptionally give parliamentary advice to an organisation or person with whom the member has a financial interest, provided that the member can demonstrate that:~~ **they may on occasion provide parliamentary advice or services to an organisation or person in which they have a financial interest, provided they can demonstrate that the following two conditions are met.**

- ~~he or she does~~ **They do** not receive payment or benefit in return for the provision of parliamentary advice or services. ~~They member~~ should, if challenged, be able clearly to show that the payment or benefit is provided in return for some non-parliamentary advice or service which ~~they member~~ provides; **and** ~~they member~~ should, where possible, ensure that contractual agreements specifically exclude the provision of parliamentary advice or services **as part of the role;** ~~and~~
- ~~£The~~ **The** payment or benefit which the member does receive is not substantially due to membership of the House, but is by reason of personal expertise or experience gained substantially outside ~~Parliament~~ **the House**; and that ~~they member was were~~, or would have been, appointed to the position without being a member of the House.

The exclusive benefit rule

The core rule

10. If the proposal in Question 1 is agreed to, the “exclusive benefit rule” will state:

“Members of the House must not seek by parliamentary means to confer an exclusive benefit on an outside organisation or person in which they have a financial interest (e.g. salary, shareholding).”

11. Paragraph 25 of the Guide implies that “parliamentary means” equates to proceedings of the House, which tallies with the wording in the House of Commons Code, but the Committee believes this should be made more explicit. We also believe, though, that the rule should extend to bodies appointed by the House or one of its committees whose work is not generally deemed to constitute formal proceedings of the House – e.g. the Restoration and Renewal Client Board and the Audit Committee.

QUESTION 6: do you agree that paragraph 25 of the Code should be amended as follows?

The ‘exclusive benefit’ principle would mean, for instance, that a member who was paid by a pharmaceutical company would be barred from seeking to confer benefit exclusively upon that company by parliamentary means. ~~The way in which the benefit is conferred should be interpreted broadly.~~ **“Parliamentary means” in this context refers to participation in the core work of the House.** All proceedings of the House are included, for instance:

- tabling a motion or an amendment to legislation;
- voting in a division;
- speaking in debate;
- asking written or oral questions; and
- deliberation within a select committee **or other body appointed by the House or one of its committees.**

The rule’s application to representative organisations

12. Paragraph 28 of the Guide states:

“A member who has a financial interest in, or receives a financial benefit from, a representative organisation, such as a trade association, trade union, staff association, professional body, charity or issue-related lobby group, may not advocate measures for the exclusive benefit of that organisation or the trade, industry or interest that it represents; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership (e.g. a campaign for special tax relief, or for a specific programme of development). But the member may speak or act in support of a campaign that is of interest to the representative organisation, but is also of wider application (for instance, in the case of a charity for cancer research, a campaign for the prohibition of smoking).”

The Committee believes that the paragraph could be improved in two ways.

13. First, the words “charity” and “issue-related lobby group” should be omitted, as they are not generally representative organisations in the same sense as the other bodies mentioned in this paragraph, and are already appropriately covered by the main exclusive benefit rule. Accordingly, it will also be necessary to choose a different example which does not involve a charity.
14. Second, the concept of a campaign which “is also of wider application” could be explained more clearly. The Committee believes that the following wording would be easier for members to understand: “a campaign that is of interest to the representative organisation, but which would also have benefits significantly beyond the sector which it represents”. This would complement the core rule which allows members working for a company to take part in matters relating to the wider sector.

QUESTION 7: do you agree that paragraph 28 of the Guide should be amended as follows?

A member who has a financial interest in, or receives a financial benefit from, a representative organisation, such as a trade association, trade union, staff association, **or** professional body, ~~charity or issue-related lobby group~~, may not advocate measures for the exclusive benefit of that organisation or the trade, industry or interest that it represents; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership (e.g. a campaign for special tax relief, or for a specific programme of development). ~~But~~ **The member may, however, speak or act in support of a campaign that is of interest to the representative organisation, but is also of wider application (for instance, in the case of a charity for cancer research, a campaign for the prohibition of smoking) which would also have benefits significantly beyond the sector which it represents (for instance, in the case of an association of automobile manufacturers, a campaign for increased provision of electric vehicle charging points).**

APPENDIX B – PROPOSED REVISED TEXT OF CODE/GUIDE PROVISIONS

Amended sections are highlighted in yellow

CODE

9. Members of the House:

- (a) must comply with the Code of Conduct; and
- (b) should act always on their personal honour in the course of their parliamentary duties and activities.

...

XX. Members of the House must not:

- (a) seek by parliamentary means to confer an exclusive benefit on an outside organisation or person in which they have a financial interest (e.g. salary, shareholding); or
- (b) seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.

GUIDE

External roles and participation in parliamentary proceedings

12. Members of the House of Lords have a wide range of outside interests and careers and the House thrives on their expertise. The Code in no way seeks either to curtail these interests or careers, or to discourage members from drawing on the knowledge and expertise so gained in their parliamentary work. It is thus entirely appropriate for a member of the House also to work in any non-parliamentary sphere of activity, for example as chairman or director of a company; as a member or chief executive of a non-departmental public body; as an officer of a trade union; as a doctor or lawyer. Moreover, it is not only permissible, but desirable, that such members, having declared their employment and other interests, should contribute to debate on issues to which these interests are relevant. [Currently para 17]
13. At the same time, in their parliamentary work, and whenever they act in their capacity as parliamentarians, members are required to base their actions solely upon consideration of the public interest. Members thus have a responsibility to maintain a clear distinction between their outside interests and their parliamentary work. [An abbreviated version of what is currently para 18]
14. In accordance with paragraph 17 of the Code a member with a relevant interest is free to take part in the public business of the House subject to:
- the exclusive benefit rule and the rule on paid parliamentary services (paragraphs XX(a) and XX(b) of the Code);
 - the rules on the registration and declaration of interests (paragraphs 12–15 of the Code); and
 - the resolution of any conflict between personal and public interest in favour of the public interest (paragraph 8 of the Code).

15. More generally, a member who is unsure whether or not to participate in parliamentary proceedings in relation to which they have relevant interests should consider the following factors.

- The nature of the proceeding itself. There would, for instance, be more latitude in the case of a general debate than in proposing or voting on an amendment to legislation. Members with financial interests that are relevant to private legislation should exercise particular caution, and seek advice before deciding to participate in proceedings on that legislation.
- The nature of the member's intended contribution. A speech urging Government investment in a sector in which the member had a financial interest might be open to misconstruction, whereas a speech canvassing issues of more general interest would not.

16. Members may consult the Registrar on these matters, but as paragraph 33 of the Code makes clear, "the final responsibility for deciding whether or not to participate in proceedings to which that interest is relevant rests with the member concerned."

The exclusive benefit rule

17. Paragraph XX(a) of the Code says that members "must not seek by parliamentary means to confer an exclusive benefit on an outside organisation or person in which they have a financial interest (e.g. salary, shareholding)".

18. The 'exclusive benefit' principle would mean, for instance, that a member who was paid by a pharmaceutical company would be barred from seeking to confer benefit exclusively upon that company by parliamentary means. "Parliamentary means" in this context refers to participation in the core work of the House. All proceedings are included, for instance:

- tabling a motion or an amendment to legislation;
- voting in a division;
- speaking in debate;
- asking written or oral questions; and
- deliberation within a select committee or other body appointed by the House or one of its committees.

19. The nature of the "exclusive benefit", on the other hand, should be interpreted narrowly. The same member would not be debarred from tabling an amendment, speaking or voting on matters relevant to, for instance, the pharmaceutical sector as a whole; National Health Service spending on drugs; or Government policy on drug licensing and patents.

20. The term "outside body" includes any client of such a body.

21. A member who has a financial interest in, or receives a financial benefit from, a representative organisation, such as a trade association, trade union, staff association or professional body, may not advocate measures for the exclusive benefit of that organisation or the trade, industry or interest that it represents; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership (e.g. a campaign for special tax relief, or for a specific programme of development). The member may, however, speak or act in support of a campaign that is

of interest to the representative organisation, which would also have benefits significantly beyond the sector which it represents (for instance, in the case of an association of automobile manufacturers, a campaign for increased provision of electric vehicle charging points).

22. A member who seeks to confer benefit on an organisation in which he or she has a financial interest, but who considers that this does not constitute an “exclusive benefit”, should make it clear in debate how he or she is acting not only in the interest of the organisation, but also the wider sector or community of which that organisation forms a part. In such circumstances, the member should also take particular account of paragraph 8 of the Code, which requires them to base their actions on consideration of the public interest.

Parliamentary advice and services

23. Paragraph XX(b) of the Code states that members must not “seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services”.
24. The prohibition from accepting payment in return for parliamentary advice means that members may not act as paid parliamentary consultants, advising outside organisations or persons on process, for example how they may lobby or otherwise influence the work of Parliament. The following is not parliamentary advice:
- advice on public policy and current affairs;
 - advice in general terms about how Parliament works; and
 - media appearances, journalism, books, public lectures and speeches.
25. The prohibition on paid parliamentary services means that members may not accept, or agree to accept, payment or other reward in return for doing or not doing something in the performance of their parliamentary duties and activities. This prohibition applies regardless of whether the member registers or declares the interest. In this context, “parliamentary duties and activities” include, but are not limited to, (i) participation in any parliamentary proceeding, (ii) all types of interaction with members of either House, ministers or officials, and (iii) ancillary services such as setting up an all-party parliamentary group, hosting a parliamentary reception or sponsoring a security pass. Providing ancillary services in exchange for payment or other reward may exacerbate the seriousness of any breach of the rules on the use of facilities which may have been committed simultaneously.
26. Although members may never accept or agree to accept payment or other incentive or reward in return for providing parliamentary advice or services, they may on occasion provide parliamentary advice or services to an organisation or person in which they have a financial interest, provided they can demonstrate that the following two conditions are met.
- They do not receive payment or benefit in return for the provision of parliamentary advice or services. They should, if challenged, be able clearly to show that the payment or benefit is provided in return for some non-parliamentary advice or service which they provide; and they should, where possible, ensure that contractual agreements specifically exclude the provision of parliamentary advice or services as part of the role.

- The payment or benefit which the member does receive is not substantially due to membership of the House, but is by reason of personal expertise or experience gained substantially outside the House; and that they were, or would have been, appointed to the position without being a member of the House.

27. Members may work for or hold financial interests in organisations such as representative bodies, trade associations or organisations involved in parliamentary lobbying on behalf of clients (such as public relations and law firms). However, in accordance with paragraph XX(b) of the Code of Conduct, members themselves are prohibited from personally offering parliamentary advice or services to clients, both directly and indirectly.

Exemptions

28. Paragraph XX of the Code (the rules on exclusive benefit and parliamentary advice and services) does not apply to the Lords Spiritual, to ministers of the Crown, or to members or employees of public bodies (whether commercial or non-commercial in character) in relation to those specific roles. Members and employees of public bodies may take part in proceedings affecting the bodies of which they are members or employees, subject to the usual rules on declaration of interests and the principles of ministerial accountability (including the 'Addison Rules') set out in the Companion.
29. Paragraph XX of the Code also does not apply to members of the House acting as counsel on behalf of clients before private bill committees or the Committee for Privileges and Conduct. Nor do they apply to members appearing personally or on behalf of outside organisations as witnesses before select committees of either House.