

Mr Marcus Fysh - Written Evidence

1. Letter from the Commissioner to Mr Marcus Fysh MP, 24 April 2023 (excerpts relating to confidentiality)

Important information

My inquiries are conducted in private. However, following the decision taken by the House on 21 April 2021, I will shortly publish on my webpages the fact that I am conducting an inquiry about your alleged breach of the Code of Conduct. If contacted, my office will not comment on any aspect of this specific inquiry to third parties. They will answer direct factual questions about the processes I follow, and the standards system more generally, but will not provide any comment or details about the particulars of this inquiry.

This letter and any subsequent correspondence between us in connection with this inquiry is protected by parliamentary privilege. It should be kept confidential until the outcome of my inquiry is published. The same requirement extends to [complainant].

...

Procedure

Please see the Procedural Protocol in relation to the Code of Conduct, which was approved by the House on 18 October 2022. This sets out detailed information about the House's standards procedures, including the procedure I follow

...

2. Procedural Protocol (excerpts relating to confidentiality)

Confidentiality and privilege

Parliamentary privilege and the Commissioner

103. Communications between a member of the public and the Commissioner are not covered by parliamentary privilege unless and until the Commissioner has accepted the matter for investigation.

104. Once the Commissioner has accepted a matter for investigation, the evidence given to that investigation and any related correspondence, including any electronic communication, is covered by parliamentary privilege.

105. A person making an allegation is not protected from legal action (for example, for defamation of character) unless and until the Commissioner decides to begin an investigation. Even then, parliamentary privilege will protect only the material given to the Commissioner. It will not protect anything said to others.

106. Evidence given to the Commissioner and correspondence about the investigation should generally not be made available to anyone other than the Commissioner. If any

related material were to be published or disclosed to anyone else without the Commissioner's agreement, that may be treated as a contempt of the House. Any other material made public may not be covered by parliamentary privilege.

107. Any person asked to give or provide evidence by the Commissioner should cooperate fully and frankly with the Commissioner in the public interest and in the interests of justice. Any attempts to obstruct an investigation may be treated as a contempt of the House of Commons.

...

Confidentiality during a Code of Conduct case

117. From the point that the Commissioner opens an investigation, the Member may only share details of the investigation with:

- a) a very limited number of friends or family members; and/or
- b) a specific whip who can advise and support them during an investigation; and/or
- c) a legal or medical adviser; and/or
- d) a Member's own staff.

118. These conditions apply until the outcome is published, whether by the Commissioner or the Committee. The conditions apply again during the period of an appeal, until the final outcome is published by the Panel.

119. The conditions also apply during the period of a reconsideration by the Committee, in the event that the Panel remit a case following an appeal, until the new outcome is published by the Committee.

120. The Member should ensure that anyone with whom they share information about the investigation or consideration of the case is also aware that the matter remains confidential, and they should not discuss the matter with anyone else.

121. Evidence given to the Commissioner during an investigation, any related correspondence, and any evidence given to the Committee or Panel during their consideration of the case, remains confidential unless and until it is published by the Commissioner, the Committee or the Panel.

122. Individuals who have made allegations of misconduct should also respect the confidentiality of the investigation and should not share information with the media while an investigation is ongoing.

3. Letter from the Commissioner to Mr Marcus Fysh MP, 22 May 2023

Thank you for your letter dated 9 May 2023, and for the information you provided.

In my letter to you of 24 April 2023, I outlined that you could consult with the Group's secretariat in order to answer the questions I had asked, but that you should not discuss

the matter or my investigation with them. In your reply you said you had been “... *working with the Group’s secretariat to make sure that everything is reported and published and to correct any potential deficiencies without discussing your inquiry.*”

Advice from the Registrar

In my initiation letter I also explained that I may seek the advice of the House authorities as part of my investigation. Today I have written to the Registrar of Members’ Financial Interests and a copy of that letter is included for your information (minus the enclosures previously shared with you).

The scope of my inquiry

My initiation letter explained that my inquiries are conducted in private and that our correspondence, which is protected by parliamentary privilege, should be kept confidential until the outcome of my inquiry is published. I also directed you to the [Procedural Protocol](#) which sets out detailed information about the House’s standards procedures, including the procedure I follow for investigations.

On 27 April 2023, the following brief details about my inquiry were published on my website.

Name of MP	Relevant paragraph of the Code of Conduct	Matter under investigation
Mr Marcus Fysh MP (opened 24 April 2023)	Rules on All Party Parliamentary Groups	Rules on income and expenditure statements and publication of mandatory information

I am aware that on 3 May 2023, the BBC website ran a story reporting on my inquiry and stated the following:

... Mr Fysh told the BBC he was held accountable for the APPG’s finances because of his role as its chair, and was checking whether the secretarial services provided to the committee were correctly registered as benefits.

He added that the APPG has had “no income or expenditure” over the past few years due to being “relatively inactive” during the pandemic, and had received secretarial services with a value of about £20,000 a year.

“I am checking whether this [benefits being registered] has been done correctly on the advice of the secretariat prior to my becoming chairman in February 2020 and since - including during Covid-19 when normal annual general meetings could not take place.”

A further article also appeared on the Somerset Live website:

... Responding to the investigation, Mr Fysh said: “The APPG ... has had no income or expenditure and has simply received secretariat services from Ranelagh with a value of around £20k per annum as a benefit in kind, funded by the industry association for suppliers to education in the UK, the British Educational Suppliers Association.

“Such benefits need to be reported along with the provision of various notices of meetings and minutes. I am checking whether this has been done correctly on the advice of the secretariat prior to my becoming chairman in February 2020 and since including during COVID when normal Annual General Meetings could not take place.”

Rule 13 of the Code of Conduct states:

Members must not disclose details in relation to: (i) any investigation by the Parliamentary Commissioner for Standards except when required by law to do so, or authorised by the Commissioner; ...

Further to this, Chapter 7 of the [Procedural protocol](#) sets out details on confidentiality and Parliamentary privilege during a Code of Conduct case and states:

104. Once the Commissioner has accepted a matter for investigation, the evidence given to that investigation and any related correspondence, including any electronic communication, is covered by parliamentary privilege.

106. Evidence given to the Commissioner and correspondence about the investigation should generally not be made available to anyone other than the Commissioner. If any related material were to be published or disclosed to anyone else without the Commissioner’s agreement, that may be treated as a contempt of the House. Any other material made public may not be covered by parliamentary privilege.

117. From the point that the Commissioner opens an investigation, the Member may only share details of the investigation with:

- a) a very limited number of friends or family members; and/or
- b) a specific whip who can advise and support them during an investigation; and/or
- c) a legal or medical adviser; and/or
- d) a Member’s own staff.

In view of this, and using the authority given to me under Standing Order No. 150, I have decided to extend the scope of my inquiry to include a consideration of whether you have breached the requirements of confidentiality set out in paragraph 13 of the Code of Conduct.

Next steps

I would welcome your additional comments on the allegation that your alleged actions have amounted to a breach of rule 13 of the Code of Conduct for Members. I would also be grateful for your answers to the following specific questions:

1. Please provide full details of any information you have disclosed to the media, including a copy of any briefing to the media about this matter.

2. Please provide a full explanation as to why you disclosed details of the investigation to the media.

It would be helpful to receive any evidence to support your response when you reply to this letter. Any other points you wish to make to help me with this inquiry would also be welcome.

Action

I would be grateful to have your response to the questions in this letter by 2 June 2023. Please let me know before that date if you require more time to respond.

I would be grateful if you could send your response electronically to:
standardscommissioner@parliament.uk

Thank you for your cooperation with this matter.

22 May 2023

4. Email from Mr Marcus Fysh MP to the Commissioner, 2 June 2023

I apologise if I have breached any rules in respect of your investigation. That was certainly not my intent and no disrespect or prejudice to it whatsoever was meant. I have not had a conversation with the Education APPG's secretariat or anyone else other than to identify relevant documents, correspondence and publications, and to meet ongoing obligations I believe I have of complying with the Rules as to APPGs, ensuring their compliance and upholding the principles of transparency and openness to which I am obliged.

I have directed the APPG's operation without reference to your inquiry. I understood I could consult with the secretariat in order to answer the questions asked and it did not occur to me that my other obligations might have been suspended or that it might not have been the right thing to do to try to meet them without making reference to your inquiry. That said with hindsight I can see that I might more wisely have consulted and discussed the detail of that with you despite having several very pressing issues to deal with at the same time that week, and for not having done so I am very sorry.

Next Steps:

1, The briefing I gave the local BBC reporter on the 2nd May around 5.30pm was,

"The APPG promotes discussion of issues in education and, while it has necessarily been relatively inactive due to Covid restrictions over the past few years, it has engaged with the work of the Children's commissioner, the roll out of technical education, and the need for more attention and funding for children with Special Educational Needs. It has had no Income or Expenditure and has simply received secretariat services from Ranelagh with a value of around £20k per annum as a benefit in kind, funded by the industry association for suppliers to education in the UK, the British Educational Suppliers Association. Such benefits need to be reported along with the provision of various notices of meetings and minutes and I am checking whether this has been done correctly on the advice of the secretariat prior to my becoming Chairman in February 2020 and since including during COVID when normal Annual General Meetings could not take place."

This was also the statement given shortly afterwards to Somerset Live who had given notice of a story.

The BBC's reporter responded with the question, "So you as Chair would be held accountable for the activities and reporting of the APPG as a whole?" to which I replied, "That is how the system works."

2, I am sorry for not having discussed the press notices of reporting on the investigation with you and what I might say publicly, for example in respect of publicly available information. It all occurred very rapidly with notice of only an hour or so that the BBC in Somerset was going to run bulletins about your publication of the investigation into income and expenditure statements and reporting under the APPG Rules. I sought to give information about the APPG that was already in the public domain and my activity as Chairman thinking again of a duty I thought I had to be open and transparent while not referring to your inquiry.

2 June 2023

5. Letter from the Commissioner to Mr Marcus Fysh MP, 27 June 2023

Further to your emails of 2 June and 15 June 2023, I now have sufficient information to conclude my inquiries, and I have outlined my decisions below.

APPG for Education

[Details redacted as matter has been rectified]

Rule 13 of the 2023 Code of Conduct for Members

In your email of 2 June 2023, you provided details about statements made to media outlets on 3 May 2023, in relation to my ongoing Code of Conduct inquiry into the APPG for Education. Thank you for this information, I now have sufficient information to reach an opinion on whether you breached rule 13 of the 2023 Code of Conduct for Members of Parliament ("the Code")¹.

My Decision

When I first wrote to you on 24 April 2023, initiating the inquiry into the APPG for Education, my letter explained that inquiries are conducted in private and should be kept confidential². My letter also referred to the Procedural Protocol in respect of the Code³, which sets out the limited circumstances in which a Member may share details of an investigation; this does not include providing media statements.

I am of the view that contrary to rule 13 of the Code, on 3 May 2023 you issued press notices which included confidential details about my investigation. As a breach of rule 13 of the Code cannot be concluded by rectification, I must refer this matter to the Committee on Standards.

1 <https://publications.parliament.uk/pa/cm5803/cmcode/1083/1083.pdf>

2 The full text is set out in WEP item 1

3 [Procedural Protocol in respect of the Code of Conduct](#)

I enclose a copy of the draft Memorandum to the Committee, which includes my analysis and conclusions in this matter, along with the written evidence on which I have relied. This is in accordance with the arrangements in the [Procedural Protocol in relation to the Code of Conduct](#), agreed by the House on 18 October 2022.

There are three things I should explain about the draft memorandum. The first is, as I am sure you are aware, that the content of my memorandum is a matter for me alone. However, I would welcome your comments on its factual accuracy.

Secondly, while I have included my draft analysis, I should emphasise that this might change in the light of any comments you make on the factual accuracy of the memorandum.

Thirdly, you will note that the draft memorandum makes recommendations only to the Committee and the decision in this matter lies with the Committee. The Committee will offer you an opportunity to submit further evidence or make representations before they reach a decision. This is in line with the Committee's procedural protocol.

If you think I should consider redacting any material from the memorandum, please identify the material and explain why you think it should be redacted. I will consider carefully any such request.

Please could you send me your comments as soon as possible and by no later than 4pm on 4 July 2023. I would be grateful if there is no delay to this response so the matter can be sent for conclusion to the Committee as soon as possible.

The Clerk would then let you know when a date has been arranged for the Committee to consider the memorandum and he will send you a copy of the final text shortly before the Committee meeting.

In the meantime, our correspondence about this inquiry remains protected by parliamentary privilege and you should continue to keep this matter strictly confidential.

27 June 2023