

Stephen Flynn - Written Evidence

1. Email from the complainant to the Commissioner, 19 July 2023

I wish to complain about the use of HoC stationery by Stephen Flynn MP, for political purposes, contrary to the rules on use of the stationery. Mr Flynn used this to communicate with the press lobby in Parliament.

This occurred today. Evidence is attached.

Photo 1



Photo 2



19 July 2023

2. Letter from the Commissioner to Mr Stephen Flynn MP, 1 August 2023

Following receipt of an allegation I have received from [the complainant] about your conduct, I have decided to open a formal inquiry into your compliance with paragraph 8 of the House of Commons Code of Conduct for Members (“the Code”). I enclose as an appendix a copy of [the complainant’s] submission and the attachments sent with it.s

The scope of my inquiry

My inquiry will focus on whether you have breached paragraph 8 of the Code by failing to comply with the Rules for the use of House of Commons stationery. If the scope of my inquiry changes, I will update you in writing.

The relevant rules of the House

The overarching rules of conduct are found in the Code. Paragraph 8 of the Code states:

Excepting modest and reasonable personal use, Members must ensure that the use of facilities and services provided to them by Parliament, including an office, is in support of their parliamentary activities, and is in accordance with all relevant rules.

The Rules for the use of House of Commons stationery state:

a) The stationery is to be used for Parliamentary duties; it is not for outside business use.

...

c) The stationery is not to be used for party political campaigning.

Next steps

I would welcome your comments on the allegation that your alleged actions have amounted to a breach of paragraph 8 of the Code of Conduct for Members. I would also be grateful for your answers to the specific questions below. It would be helpful to receive any evidence to support your responses when you reply to this letter. Any other points you wish to make to help me with this inquiry would also be welcome.

1. Were the compliments slips purchased with IPSA funding or obtained using your House-provided stationery allocation?
2. Did you take any advice from the House authorities before circulating this flyer? If so, please share that advice with me.
3. How many of these flyers did you distribute and who were the recipients? What was your intention in circulating these flyers?
4. Have you previously used House-provided stationery for similar flyers? If so, please share those flyers with me.

5. Do you accept that this use of House-provided stationery was not in pursuit of a parliamentary duty and was instead party-political campaigning? If you do not accept this, please outline why.

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 [the complainant].

The Members' Services Team (MST) can support and signpost you and/or your staff to appropriate support services. You can contact them confidentially on [contact details redacted] for a range of issues, including support with handling the impact of media attention.

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.

While I do not, at this stage, know whether it will be necessary to interview you about this matter, it would be open to you to be accompanied at any such interview. I am, of course, very happy to meet with you at any stage if you would find that helpful.

I should say now, as a matter of courtesy, that I may seek the advice of the House authorities and others as part of this inquiry. If I do so, I will share that correspondence with you.

Information provided to me during the course of my inquiry will be retained, and disposed of, in accordance with the House of Commons' Authorised Records Disposal Policy.

Potential outcomes

Inquiries are generally concluded in one of three ways.

1. If the evidence does not substantiate the allegation, I will report that I consider there has been no breach of the Code. If the allegation is particularly serious or the investigation raises matters of wider interest or relevance, I may decide nevertheless to submit a memorandum to the Committee on Standards, which the Committee will consider and then submit its own report to the House.
2. If the evidence demonstrates a breach of the rules, I may, in circumstances defined by Standing Order No. 150, report that I consider there has been a breach of the Code, and conclude the inquiry using the rectification procedure, without making a referral to the Committee on Standards.

For inquiries that either result in a not upheld outcome or a rectification of the breach of the Rules, the investigation material, including our correspondence, will be published on the Parliament website, and the Committee will be notified.

3. If I consider there has been a breach of the Code, and
- it is either unsuitable for the rectification procedure; or
 - you do not accept my opinion that there has been a breach of the Code; or
 - you do not take (or do not agree to take) any remedial action required; or
 - the investigation raises issues of wider importance

I must make a referral to the Committee on Standards. The Committee will then decide whether there has been a breach of the Code. My memorandum to the Committee will be published as an appendix to the Committee's own Report.

Regardless of the outcome of my inquiry, I must emphasise that all the relevant evidence, including our correspondence, will be published when this inquiry is concluded. I routinely redact the personal data of third parties unless it is relevant to my decision(s) and/or opinion(s). Please tell me if you provide sensitive material that you think I should redact. I will consider carefully any such request.

Action

I would be grateful to have your response to this letter as soon as possible and no later than 9 August 2023. Please let me know before that date if you require more time to respond.

If you would prefer me to communicate with you by email, or via a different postal address, please give the details when you reply to this letter. It would also be helpful if you were willing to provide a telephone number through which I might contact you.

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

Thank you for your cooperation with this matter.

Enclosure 1: The complainant's email and attachments of 19 July 2023 (see item 1 above)

1 August 2023

3. Letter from Mr Stephen Flynn MP to the Commissioner, 9 August 2023

Thank you for your letter dated 1 August 2023. I welcome the opportunity to set out my position on the use of parliamentary stationery with a purchase value of twenty-eight pence.

The compliment slips supported my parliamentary activities within Paragraph 8 of the Code of Conduct for Members of the UK Parliament. Their use falls squarely within an MP's duties under the Rules for the use of House of Commons stationery.

As identified in the tweet produced as Photo 2 in your letter, UK Parliament compliment slips were overprinted with a message to complement mugs distributed to lobby journalists, which were produced to complement the question I had prepared to ask the Prime Minister in the chamber.

The question I asked on 19 July 2023 was—

The two-child benefit cap introduced by the Conservative party has left 250,000 children living in poverty. Does the Prime Minister take comfort in knowing that the heinous legacy of that policy will no longer be protected just by Conservative Members but by Labour Members too?

[Hansard, House of Commons, Vol 736, Col 902]

This was followed up with a supplementary question asking—

Voters in Scotland are used to child poverty under the Tories—they almost expect it—but they do not expect child poverty support from the Labour party. If we look very closely right now, there is a shiver running along the Labour Front Bench looking for a spine. [Interruption.] Does this not tell us something much bigger: that for children living in poverty in Scotland, Westminster offers them no real change and no real hope?

The mugs provided to journalists had the slogan ‘Controls on Family Sizes’ and ‘What’s the Point of Labour?’ printed on them. The compliments slip referenced the mugs and directly linked to my parliamentary activity on the same day.

The mugs, of course, were a play on the infamous Labour campaign mug from 2015 on ‘Controls on immigration’ – a sorry episode in itself.

Due to this policy having a direct impact on increasing child poverty levels in my constituency, and across Scotland and the UK, along with the deplorable rape clause, I had hoped that the Labour Party would oppose the Government rather than support it. Sadly, I was wrong.

Alongside the mug, and in attempting to highlight the horror of this policy, I sought to make direct reference to the comments of Dame Jackie Bailie, Deputy Leader of Labour’s Branch Office in Scotland, who previously commented in 2018 that—

“The cap reminds me of Communist China’s morally abhorrent one-child policy.”

I did this through the use of overprinted A6 compliment slips bearing my name and the content—

“The Labour Party has a new range of mugs in production. They’re made in China, just like Sir Keir Starmer’s latest policy...”

Again, this was directly related to the questions I was due to ask at Prime Minister’s questions on the heinous two-child benefit cap and the fact that the Labour Party now agree with the Conservatives about the need to retain this policy.

In all of this, and in terms of the stationary rules, I was representing and furthering the interests of the public, scrutinising and holding Government (and Official Opposition) to account and monitoring, stimulating and challenging the Executive as well as promoting understanding of party policies. I can advise that many affected constituents have contacted me since this policy was first implemented.

In answer to your specific questions, the slips were obtained from stationery available on the parliamentary estate. I did not take any advice from the House authorities at the time as I believed (and still believe) that there could be no doubt that they were within both the code of conduct and the stationary rules. Thirteen compliment slips were distributed with the mugs to members of the media. They play a key role in our democracy in promoting public understanding of party policies. I retain one version of the overprinted slip.

I have never overprinted a compliment slip in a similar manner before. I do not accept as accurate the description of the slip as a “flyer”. Its content can only be understood against the message on the mug and the questions I asked at Prime Minister’s questions that day.

For all of these reasons already given, I do not for a moment accept that this use of House-provided stationery was not in pursuit of a parliamentary duty and was instead party-political campaigning. The contrary is clearly and unequivocally the case.

In concluding, I am obliged to note that in recent times the UK Parliament has dealt with very many serious breaches relating directly to member’s behaviour, not least that of a Prime Minister lying to the chamber and lying to the public.

Whilst fully accepting the public interest in the use of public money and the public interest in my own activities as the Leader of the Second Opposition Party, I have to admit some difficulty in understanding how the Commissioner could have considered under Rule 24 and 27(c) of the Procedural Protocol in respect of the Code of Conduct that an investigation into the use of stationery valued (as purchase price) at twenty-eight pence could ever be proportionate.

Indeed, I’m sure the public will determine that there are much more important matters at play in society right now – be they the impact of the two-child cap and the tacit support of the Labour Party for that policy, the cost of living crisis, the energy price crisis, the Tories crashing the economy, the appalling impact of Brexit, unlawful COVID contracts, or indeed the continued denial of Scotland’s democratic right to determine its future by Westminster.

I respect the independence of your position as Commissioner, but you will forgive me, I hope, as a politician for feeling the need to express my dismay again at Westminster priorities affecting the daily lives of the constituents I was elected to represent.

9 August 2023

4. Letter from the Commissioner to the Clerk of the Journals, 10 August 2023

I would like to ask your advice on a complaint I have recently received about Mr Stephen Flynn MP. In essence, the allegation made by the complainant is that Mr Flynn has breached paragraph 8 of the Code of Conduct for Members by misusing a small quantity of House-provided stationery.

I enclose a copy of my letter to the Member, dated 1 August 2023, which includes the submission from the complainant as an attachment, and Mr Flynn's reply to me of 9 August 2023.

It would be helpful to know how you would have advised Mr Flynn if he had sought your advice before using the House-provided stationery in this way. It would also be helpful to understand the factors you would have taken into account when giving that advice please.

It would be very helpful to have your reply by 17 August 2023 if possible please.

Enclosure 1: Letter from the Commissioner to Mr Stephen Flynn MP, 1 August 2023, see item 2 above.

Enclosure 2: Letter from Mr Stephen Flynn MP to the Commissioner, 9 August 2023, see item 3 above.

10 August 2023

5. Letter from the Commissioner to Mr Stephen Flynn MP, 10 August 2023

Thank you for your letter of 9 August 2023 and for the information you have provided.

In my initial letter to you, I said that I may seek the advice of the House authorities as part of my investigation. Today I have written to the Clerk of the Journals, [name redacted], for her advice (you will be aware that the Clerk of Journals is noted in the Guide to the Rules as the source of "safe harbour" advice for the use of House-provided stationery). Attached is a copy of that letter for your information.

Once I have received the Clerk's reply, I will share her advice with you for your comments. In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential please.

Enclosure 1: Letter from the Commissioner to the Clerk of the Journals, 10 August 2023, see item 4 above.

10 August 2023

6. Letter from the Clerk of the Journals to the Commissioner, 1 September 2023

Thank you for your request for information on the use of House of Commons compliments slips by Stephen Flynn MP. I apologise for the delay in response caused by annual leave.

You have said:

It would be helpful to know how you would have advised Mr Flynn if he had sought your advice before using the House-provided stationery in this way. It would also be helpful to understand the factors you would have taken into account when giving that advice...

If my advice had been sought about this use of stationery, I would have said it was my view that it was inappropriate. The stationery rules prohibit the use of stationery for party political campaigning. This is one of the fundamental principles that the Committee on Standards has laid down in its recent review of the rules. I would have said this was clearly party-political campaigning, even if sent to members of the press lobby so that they could report the message, rather than directly to the public.

Members' roles are of course inherently political, and there is a wide area of political discussion in which it is perfectly proper to use House stationery. Conveying ideas to the press is not in itself inappropriate. For example, in almost all cases it would be perfectly reasonable to use a simple compliments slip to accompany a publication written by the Member concerned. Using such a slip to accompany a printout of an exchange at oral questions or to Hansard to ensure that recipients were aware of it is also likely to be a reasonable use of such stationery, although that would depend on content and context.

This use does not fall into those categories. The communication accompanied mugs bearing the slogan "What's the point of Labour?" and the package was designed as an eye-catching way to put across a party-political message. While the questions asked in the House may have been on the same lines, there was no reference in the communication to any question to the Prime Minister (which had not been asked at the time the mugs were distributed).

In any event, even if the link had been explicit, asserting that something is connected to a proceeding does not automatically mean it cannot be party political campaigning. By analogy, while the privilege which covers words said within the Chamber is absolute, it does not automatically extend to repetition of those words outside the Chamber.

I hope this response is helpful.

1 September 2023

7. Letter from the Commissioner to Mr Stephen Flynn MP, 4 September 2023

In my letter of 10 August 2023, I explained that I would be seeking the advice of [name redacted], Clerk of the Journals. I have now received her advice, and I enclose a copy of her response for your comments.

It would be helpful to have your comments regarding her advice by **13 September 2023** please. In the meantime, our correspondence remains protected by parliamentary privilege, and I would ask that you continue to maintain the strict confidentiality of the inquiry.

Enclosure 1: Letter from the Clerk of the Journals to the Commissioner, 1 September 2023, see item 6 above.

4 September 2023

8. Letter from Mr Stephen Flynn MP to the Commissioner, 15 September 2023

Thank you for your letter dated 4 September 2023 enclosing the advice of the Clerk of the Journals.

I find this a rather artificial exercise. As I believed (and still believe) the position to be entirely clear, I did not seek advice from the clerks. The question then is a simple one of whether there was a breach of the rules. This is a matter initially for your determination. I adhere to the position set out fully in my previous correspondence.

Instead of engaging in correspondence on those submissions, I have been asked to comment on a view about what might have hypothetically been said to me had I hypothetically believed that the rules were not clear and had then hypothetically sought advice on their application. If I had taken the hypothetical advice, for instance, I might have supplied the mugs after Prime Minister's Questions, rather than before – but as a hypothetical that does not advance in any way, shape or form, the proper consideration of this matter. The agreed facts take us to where we are, and these facts must then be applied using the text of the agreed rules.

Members of the UK Parliament require some certainty on the rules. The rules should speak for themselves – and it should not be a question of what advice I might have received on what the clerks believed the rules to mean had I sought it. Legal certainty demands that rules are clear – and that Members of the UK Parliament are entitled to proceed on that basis; bearing in mind the overarching principle, which can be taken from the canons of statutory interpretation, that there can be no sanction imposed in the case of doubtful rules.

The rules provide that stationery is to be used for Parliamentary duties. The compliment slips were used for that purpose. There is no breach.

The view given in the advice is in terms of whether the use was “inappropriate” or “appropriate”. That is a different and lower test to one of breach of the rules. “*You can do it – but I wouldn't personally do it*” is very different from “*No, you can't do that*”. A determination in this matter can only be about a breach of the rules – if it is about anything else, the wrong answer will have been provided to the wrong question.

The letter from the Clerk of the Journals does not answer the essential question here – which is whether the stationery was used for Parliamentary duties. That is principal (a) set out in the Rules for the use of House of Commons stationery. A semi-colon follows this core principle to emphasise that a corollary of the requirement for use in parliamentary duties is the prohibition on the use for outside business. “*Outside business*” includes “*partly political campaigning*”. This is rightly emphasised in paragraph (c) because of past abuse.

Rather than answering the core question, the letter from the Clerk of the Journals deals solely with whether the stationery was used for party political campaigning. There is no

critique of whether there was use for “*Parliamentary duties*”. There is an acceptance that “*Member’s roles are of course inherently political*”, but no follow through consideration on whether activities connected to work in the chamber are inherently parliamentary rather than fall within “*party political campaigning*”.

The letter is correct in emphasising that the prohibition on the use of stationery for party political campaigning is a fundamental principle that the Committee on Standards has laid down – but the core question is whether the stationery was used for Parliamentary duties. That question has neither been asked nor answered in the letter.

The letter creates two categories of allowed use in communicating with the press, and then in the antepenultimate paragraph explains that the use in my case didn’t fall into those categories – but these categories appear nowhere in the rules, and again the core question of use for Parliamentary duties is not asked. The message of “*What’s the point of Labour?*” is something of equal character and resonance in the chamber and outwith the chamber.

The position that whether the mugs were distributed before or after has any relevance to a breach of the stationery rules appears does not fully understand that the question in the chamber and the mugs were always part of the same package – as Photo 2 in your original correspondence fully appreciated.

If one follows the logic in the letter, the use of “*the Tories*” and “*the Labour Party*” rather than “*His Majesty’s Government*” or “*His Majesty’s Official Opposition*” in a parliamentary context turns parliamentary activities into political campaigning. Having accepted the inherently political nature of Member’s duties (and I would say particularly in connection with Prime Minister’s Questions), the Clerk of the Journals has failed to follow that logic in accepting that “*Parliamentary duties*” in principle a) includes referencing “*the Labour Party*” as well as “*His Majesty’s Official Opposition*”.

My position therefore remains that there has been no breach.

15 September 2023

9. Letter from the Commissioner to Mr Stephen Flynn MP, 20 September 2023

Thank you for your letter of 15 September 2023 and your comments on the advice provided by the Clerk of the Journals. Having considered the evidence, I now have sufficient information to consider whether or not there has been a breach of the Code of Conduct in relation to your use of House-provided stationery.

My decision

I have considered our correspondence, the published Rules for the use of House of Commons stationery, and the advice from the Clerk of Journals. It is my decision that your use of House-provided stationery was not in line with the House’s rules and amounted to a breach of paragraph 8 of the Code of Conduct. However, for the reasons outlined below, I do not intend to refer this matter to the Standards Committee for consideration. Instead, I have decided to offer you the opportunity to conclude this matter using the rectification process provided by Standing Order No. 150.

Rationale

On 19 July 2023 you distributed a small number of House-provided compliments slips inside branded mugs to the press lobby. The slips read:

“The Labour Party has a new range of mugs in production. They’re made in China, just like Sir Keir Starmer’s latest policy...”

Paragraph 8 of the Code of Conduct states:

Excepting modest and reasonable personal use, Members must ensure that the use of facilities and services provided to them by Parliament, including an office, is in support of their parliamentary activities, and is in accordance with all relevant rules.

Paragraph c) of the House’s Rules for the Use of House of Commons Stationery states:

The stationery is not to be used for party political campaigning. Party political logos or emblems may not be used on House stationery.

As you say in your letter to me of 15 September 2023, “Members of the UK Parliament require some certainty on the rules. The rules should speak for themselves...”. In this case I am satisfied that the Rules do speak for themselves by establishing a clear and simple principle that House-provided resources should not be used for party- political campaigning.

In your letter to me of 9 August 2023 you argue that the use of these compliments slips was “in pursuit of a parliamentary duty” and was not party-political campaigning. I do not agree. As the Clerk of the Journals says in her advice, the mugs and compliments slips were a package “designed as an eye-catching way to put across a party-political message”. You argue that there was a substantive link to Questions you were asking in the House that day. As the Clerk of the Journals says in her letter: “asserting that something is connected to a proceeding does not automatically mean it cannot be party-political campaigning”.

As you rightly say, Members are entitled to have the rules of the House interpreted and applied in a simple and non-technical way. Giving the stationery rules their natural meaning, I am confident: (i) that the mug and compliments slip packages clearly fell within the natural language meaning of the expression “party-political campaigning” used in paragraph c) of the Rules; and (ii) that the packages did not form part of any parliamentary proceedings, nor was there any other feature that made them fall within any natural language meaning of the phrase “parliamentary duties” used in paragraph a) of the Rules.

In your letter to me of 9 August 2023 you value the compliments slips at £0.28 and question how I could have considered that an investigation into the use of stationery of that value “could ever be proportionate”. Paragraph 8 of the Code of Conduct provides a modest-and-reasonable-use threshold for personal use, but not for other purposes. There is no exception for minor use for party-political campaigning (perhaps to avoid arguments about precisely when an expense ceases to be trivial and to avoid uncertainty which, as you say, is unhelpful for Members). The Rules make it a point of absolute principle that stationery provided by the House at public expense should not be used for party-political campaigning, and it is not for me to invent a minimum-value threshold not provided for by the Rules.

For the reasons given, in my opinion your use of House-provided stationery was not in accordance with the Rules laid down by the House and therefore amounted to a breach of paragraph 8 of the Code.

Next Steps

As I explain above, Standing Order No. 150 allows me to conclude an inquiry using the rectification process rather than by making a referral to the Committee on Standards.

I believe this case is right for rectification, partly because I have no evidence that this was a deliberate or premeditated breach of the rules, and partly because the amount involved was small.

For the purposes of rectification, a Member is required to have acknowledged and apologised for their breach of the rules, and to have taken any steps necessary to rectify their breach.

For you to rectify this breach of the rules, I will require:

- a) confirmation you have accepted my opinion;
- b) a clear acknowledgement that you have breached the rules; and
- c) an apology for that breach.

(For misuse of facilities I normally also require repayment of the cost: on this occasion, as the amount of stationery used was so small, I am satisfied that it would be pointless to require repayment, which would cost more to administer than the amount repaid.)

You can satisfy paragraphs (a) to (c) above by way of your formal response to this letter. If you are content for me to conclude the inquiry in this way, please write to me with the above information by **29 September 2023**.

If you agree to my proposal, I will share my written evidence pack with you, so that you can check its factual accuracy before publication. I will also report the outcome to the Committee on Standards in due course as a matter of routine.

If you do not accept my opinion and decision, you should tell me the reasons for that by reply. After which, I will refer this matter to the Committee on Standards for their consideration. I will give you the opportunity to see and comment on a draft of my report to the Committee, but the content of it would, in the final analysis, be for me alone.

In the meantime, our correspondence remains protected by parliamentary privilege, and I must ask that you continue to maintain the strict confidentiality of the inquiry.

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

20 September 2023

10. Letter from Mr Stephen Flynn to the Commissioner, 3 October 2023

Thank you for your letter of 20 September 2023.

I do not agree that this case is “right for rectification”. That requires there to have been a breach of the rules – and there has been no such breach.

The First Question and Your Rationale

The rationale you provide for your decision does not stack up to scrutiny.

Your correctly quote, but do not correctly apply, Paragraph 8 of the Code of Conduct as your stated rationale. This identifies that Members must ensure that facilities and services provided to them is in support of their parliamentary activities and in accordance with all relevant rules.

The first question that you must ask, therefore, is whether the use of the compliments slips were in support of my parliamentary activities.

You have not actually answered this question at any point in correspondence, but have instead answered some other questions not asked by the rules. Your correspondence has focussed on a later paragraph in the stationery rules – which is plainly aimed at campaigning directed at voters using taxpayer-funded parliamentary resources.

The clear and simple principle in the rules is that resources should only be used for parliamentary activities. That’s why MPs are elected. Resources can’t be used for campaigning with voters. That’s for parties and candidates to fund themselves. And that’s why communications to voters which are a disguised (or not so disguised) form of campaigning are not permitted in the rules.

As I submitted previously, if your position is taken to its logical conclusion, then no parliamentarian can use the words “Labour Party” or “Conservative Party” in correspondence to anyone and must instead use “His Majesty’s Official Opposition” or “His Majesty’s Government”. You have not addressed that submission in your decision letter.

The First Straw Man Deconstructed

Part of your rationale includes the position that –

As the Clerk of the Journals says in her letter: “asserting that something is connected to a proceeding does not automatically mean it cannot be party-political campaigning.”

This is nothing more than a straw man argument. I have not simply asserted that this is connected to a proceeding – I have, by my submissions to you, established that it was connected to parliamentary proceedings. There is no other sensible reading of the facts. The connection is obvious from the second photograph in your original correspondence when the author of a Tweet correctly guessed that the mugs were being handed out

“Ahead of PMQs”. It is, not merely asserted, but actually self-evident, that the use of the compliments slips were in support of my parliamentary activities in the chamber on 19 July 2023.

By characterising my position as assertion, you have rather given the game away that the arguments in my correspondence have not been properly considered – or, indeed, not considered at all. And in holding that the “eye-catching” nature of the mug and accompanying slip had any bearing on its nature under the rules is to create a world where boring politics is good, but eye-catching and engaging politics to put forward a message of importance to my constituents is not.

The Second Straw Man

You conclude under the rules that the packages “did not form part of any parliamentary proceedings”. I have never asserted that the use of the compliments slip forms part of some sort of official “proceedings in parliament”, as understood under parliamentary law, the Claim of Right or the Bill of Rights. I have simply shown the clear connection to my questions at Prime Ministers Questions on the same day.

The principal test is whether the use was “in support of [my] parliamentary activities” under Paragraph 8 of the Code of Conduct. In my case, there was also use in fulfilment of my “Parliamentary duties” under the stationery rules.

I absolutely consider it the case that it is my duty to use my best endeavours to get the two-child cap removed from the statute book. I consider that I would be neglecting my duties to my constituents and the wider population to act otherwise. The Clerk of the Journals and your good self may hold a different view – but I sought to give prominence to this issue in the way I did because I feel strongly about this issue and felt duty bound to raise it again at Prime Ministers Questions with materials used in advance to highlight the issue.

It is my bone fide reasonable belief in what my parliamentary duties entails that matters here. My constituents will be aghast if it turns out that advocating for them in the way I did is against Westminster rules.

The Third Straw Man

Your letter refers to my questioning in my letter of 9 August 2023 of the proportionality of the investigation. It then immediately goes on to present and dismiss another “straw man” argument – that the use of these compliments slips fell into the modest and reasonable use exemption. I never made that argument. My letter very precisely referenced the Procedural Protocol under which you are obliged to work. This requires you to be satisfied that any investigation is proportionate and that if it is disproportionate given the nature and/or relative seriousness of the allegations to not initiate an investigation.

The antepenultimate paragraph in my letter was as follows–

Whilst fully accepting the public interest in the use of public money and the public interest in my own activities as the Leader of the Second Opposition Party, I have to admit some difficulty in understanding how the Commissioner could have considered under Rule 24 and 27(c) of the Procedural Protocol in respect of the Code of Conduct that an investigation into the use of stationery valued (as purchase price) at twenty-eight pence could ever be proportionate.

You have rather given matters away on proportionality by not actually seeking repayment of the purchase price of the compliments slips.

Assuming that a proper analysis of the case, a measure of common sense, and a real understanding of the concept of 'proportionality' is not forthcoming, I await sight of the draft report to the Committee on Standards.

3 October 2023

11. Letter from the Commissioner to Mr Stephen Flynn MP, 10 October 2023

I enclose a copy of the draft of my memorandum to the Committee, along with the written evidence on which I have relied. This is in accordance with the arrangements under paragraph 55 of 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. The Clerk will 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.

I would be grateful to have your comments as soon as possible and by no later than 17 October 2023 please. If I don't hear from you by this date, I will assume that do not wish to make any comments and will pass the finalised memorandum to the Committee.

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

10 October 2023

12. Email from Mr Stephen Flynn to the Commissioner, 17 October 2023

Nothing to add.

Thanks,

17 October 2023