



HOUSE OF LORDS

Conduct Committee

1st Report of Session 2021–22

Further amendments to the Code of Conduct

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Conduct Committee

The Conduct Committee reviews and oversees the Codes of Conduct and the work of the House of Lords Commissioner for Standards. Recommended changes to the Codes are reported to the House and take effect when agreed by the House.

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Further amendments to the Code of Conduct

Introduction

1. In this report we recommend further relatively minor improvements and clarifications to the Code of Conduct for Members of the House of Lords and the Guide to the Code of Conduct. The intention is to improve the drafting of the Code, better reflect the intentions of existing provisions, and make relatively small additions to the Code to facilitate its operation.
2. **The House is invited to agree the changes to the Code of Conduct and the Guide set out below.**

Commissioners for Standards

3. On 26 May, the House approved the appointment of two Commissioners for Standards, whereas previously there has only been one. Paragraph 20 of the Code introduces the role of the Commissioner. As well as updating the paragraph to reflect that there can be more than one Commissioner, we propose adding a line to make it clear that Commissioners decide on complaints independently of one another.
4. **We recommend amending paragraph 20 of the Code as set out in the appendix.**

Valuing Everyone training

5. Further to previous decisions of the House, members are required to attend mandatory training established by the House to raise awareness of, and to prevent, bullying, harassment and sexual misconduct. Arrangements for providing such training are overseen by the Lords ICGS Implementation Lead who will report to the Commissioner where they have reason to believe that a member has failed to meet this requirement.
6. **We recommend amending paragraph 114 of the Guide to the Code as set out in the appendix.**

Late registration of interests

7. When an interest registered in the Register of Interests ceases, it is marked with the date of cessation and then removed from the Register altogether after a year has elapsed from the date of cessation. This creates a perverse incentive in the Guide to the Code whereby, if a member first registers an interest so late that it has already ceased, the interest is in the Register for less time after cessation than if they had properly registered the interest in the first place. We think it would be fairer to specify that an interest which is registered late and has already ceased by the time it is disclosed should remain on the Register for one year from the date of disclosure, rather than from the date of cessation.
8. **We recommend closing the loophole described above.**
9. **The necessary changes are included in the appendix at paragraphs 46, 79 and 85 of the Guide to the Code.**

Anonymity

Complainants

10. The Guide to the Code of Conduct already provides that where a complaint of bullying, harassment or sexual misconduct is dismissed at preliminary assessment, the Commissioner has the discretion not to disclose this information to the member concerned or, if she does make any such disclosure, to anonymise the complainant. However, the wording of this provision in paragraph 133 is less clear than it ought to be.
11. **We recommend minor drafting improvements to paragraph 133 of the Guide to the Code.**
12. **The proposed changes are included in the Appendix.**
13. In cases of investigations into complaints of bullying, harassment and sexual misconduct, paragraph 134 of the Guide to the Code says:

“Where complaints relate to bullying, harassment or sexual misconduct the identity of the complainant will be shared where necessary with those directly involved in the investigation but will not usually be made public during the investigation, or on publication of the report, unless the complainant desires otherwise.”
14. Anonymisation of the complainant is therefore the default position, subject to the complainant’s views.
15. However, placing the choice regarding anonymity with the complainant could risk other parties involved in the investigation who ought to be anonymous, such as witnesses, becoming identifiable.
16. **In order to ensure the Commissioner is able to protect the anonymity of all those involved in investigations where necessary, we recommend amending paragraph 134 of the Guide to the Code to provide the Commissioner with discretion to impose anonymity on the complainant.**
17. **Our proposed amendments are set out in the appendix as paragraph 134.**

Witnesses

18. Currently, the Guide to the Code of Conduct includes no provisions relating to the right of witnesses involved in the Commissioner’s investigations not to have their identities made public.
19. For investigations to be effective and for the Commissioner to have access to the best evidence possible, it is essential that witnesses feel able to come forward without having their identities released into the public domain. This is the case for investigations into complaints of bullying, harassment and sexual misconduct as well as other parts of the Code.
20. **We therefore recommend inserting a provision into the Guide to the Code of Conduct to allow the Commissioner the discretion to anonymise witnesses in her reports.**

21. **Our proposed amendments are set out in the appendix as paragraph 134A.**

Respondents

22. Paragraph 147 of the Guide to the Code describes what should happen where the Commissioner dismisses a complaint of bullying, harassment or sexual misconduct after considering a member's written submission:

“In cases involving bullying, harassment or sexual misconduct, if the Commissioner decides to dismiss the complaint, it is at the discretion of the Commissioner, having heard representations from the complainant and the member, whether to publish a report including the name of the member.”

23. The drafting of this provision is unclear. It may be read to mean that the Commissioner has discretion not to publish a report at all, or that a report is always published but the Commissioner may anonymise the member.
24. As this provision appears in the Guide to the Code in the context of complaints dismissed on the basis of written submissions only, it is also unclear whether it is also intended to apply where the Commissioner dismisses a case after a full investigation.
25. The provision was inserted into the Guide to the Code following the report of our predecessor committee, the Committee for Privileges and Conduct, that introduced the bullying, harassment and sexual misconduct provisions into the Code.¹ That report set out responses to a series of questions on which members of the House had been consulted. On this issue the report said:

“Consultation question 3: reporting the name of a member who has been investigated and cleared of a breach of the Code of Conduct in relation to a complaint of bullying, harassment or sexual misconduct

Responses to this question were evenly balanced, with some favouring identifying members cleared by the Commissioner of a breach of the Code of Conduct as a matter of policy, another similarly sized group in favour of seeking to maintain confidentiality, and a third group in favour of giving the member concerned the discretion as to whether to be identified or not. Several noted that, even if we accepted the principle of anonymity for those members cleared, there was a strong likelihood of members being named anyway in the media. In such cases, there was some support for being able to confirm the name of a member cleared if asked, rather than necessarily releasing the name in all cases. Having considered these three options, we favoured the option to make the release of a cleared member's name discretionary. However, we consider it more appropriate that this discretion should be exercised by the Commissioner for Standards, having consulted the member and taking into account the context of the particular case. This has the benefit of providing a safeguard against the risk that identifying a member's name might allow the identification of a complainant or witness who wished to remain anonymous. **We therefore recommend that the Commissioner should have the discretion to decide**

¹ Committee for Privileges and Conduct, *Independent Complaints and Grievance Scheme: Changes to the Code of Conduct* (4th Report, Session 2017–19, HL Paper 335)

whether to release the name of a member investigated and cleared of a breach of the Code of Conduct in relation to a complaint of bullying, harassment or sexual misconduct. In reaching a decision, the Commissioner will consult the member and take account of the context of the particular case.”

26. It is clear from the report of the Committee for Privileges and Conduct that the intention was that a report would be published and that the Commissioner’s discretion was only about naming members. It was also the intention of the Committee that this discretion should apply regardless of whether a case was dismissed on the basis of the written evidence only or after a full investigation.
27. **We accordingly recommend amendments to reflect more clearly our predecessor Committee’s report on anonymising respondents in dismissed bullying, harassment or sexual misconduct complaints.**
28. **These proposed changes are included in the appendix as paragraphs 147 and 158A.**

Conduct Committee’s discretion following appeal

29. Consideration of whether to anonymise complainants, respondents and witnesses will usually take into account the nature of the evidence received and the outcome of the investigation.
30. As the appeal process allows for new evidence to be considered and for the outcome of the investigation to change, we consider that it would be appropriate for the Conduct Committee to review questions of anonymity after any appeal. If the Committee considered it appropriate to take a different approach to the Commissioner in the light of an appeal, this might require the Committee to redact or amend the Commissioner’s report. In exceptional circumstances, it may require the Committee not to publish the Commissioner’s report.
31. **We therefore recommend inserting a provision into the Guide to the Code of Conduct to allow the Conduct Committee to review decisions on the anonymity of parties to a complaint and to take the steps necessary to give effect to those decisions.**
32. **Our proposed amendments are included in the appendix as paragraph 167A.**

Reporting dismissed complaints of bullying, harassment and sexual misconduct to the Conduct Committee

33. In cases of bullying, harassment and sexual misconduct, the complainant has the right to appeal the Commissioner’s finding. It is likely that the complainant would only exercise this right where the Commissioner has dismissed a complaint. Paragraph 138 of the Guide to the Code does not explicitly account for this right. It simply provides that the Commissioner normally publishes reports of dismissed cases straight to the parliamentary website, though it also gives her a discretion to refer her report to the Conduct Committee.

34. In our view, in bullying, harassment and sexual misconduct cases the Commissioner should be required to refer cases to the Conduct Committee to allow for any possible appeal.
35. **To ensure that the complainant's right to appeal the Commissioner's findings in cases of bullying, harassment and sexual misconduct is subject to proper process, we recommend requiring the Commissioner to refer dismissals to the Conduct Committee rather than publish a report directly to the parliamentary website.**
36. **Our proposed amendments are included in the appendix as paragraph 158A.**

Appeals process

37. We have now considered a number of appeals following investigations by the Commissioner. After each appeal we review whether any of the processes in the Guide require revision. In the light of that, we consider that the current wording in paragraph 163 of the Code which refers to taking “evidence” from the Commissioner during an appeals process is inappropriate. The Commissioner is not a party to an investigation and to refer to material from the Commissioner as “evidence” is incorrect. We do consider it appropriate for us to have the discretion to invite representations from the Commissioner during an appeal if necessary.
38. **We therefore recommend making minor drafting changes to paragraph 163 of the Guide to the Code of Conduct.**
39. **Our proposed amendments are included in the appendix as paragraph 163.**

Publication of Commissioner reports

40. Paragraph 167 of the Guide to the Code sets out the process to be followed where the Commissioner reports to the Conduct Committee and her finding is appealed:

“In all cases where there has been an appeal to the Conduct Committee, the Committee will publish a report either upholding or dismissing the appeal. The report from the Commissioner is annexed to the Committee's report.”
41. As noted above, the appeals process may result in further evidence being taken and the outcome of an investigation being changed. There may be circumstances in which such further work would make the publication of the details in the Commissioner's report inappropriate. We would expect these to be exceptional circumstances, but consider it important that the Code of Conduct should allow the Committee the flexibility not to annex the Commissioner's report to its own in such cases.
42. In making use of this flexibility, the Committee would be mindful of the purpose of the Code—to provide the openness and accountability necessary to reinforce public confidence in the way in which members of the House of Lords perform their parliamentary duties—and the requirement in the Code to act in accordance with the principles of natural justice and fairness.

43. In addition, annexing the Commissioner's report to the Committee's report may not always be the most practical option for publishing it. We therefore propose a minor change to the text to remove the reference to annexing the Commissioner's report, replacing it with a requirement to arrange for its publication.
44. **We therefore recommend paragraph 167 be amended to provide such flexibility.**
45. **Our proposed amendment is set out in the appendix as paragraph 167.**

Sanctions

46. In the light of the reports we have recently published on the conduct of members, and those published by the Commissioner for Standards, we have considered whether the Guide to the Code provides sufficient clarity about the sanctions regime under the Code of Conduct.
47. **We recommend three improvements to the provisions in the Guide:**
- **the purpose of the sanctions regime should be explained;**
 - **the list of possible sanctions should be clarified; and**
 - **the factors to be taken into consideration when deciding a sanction should be stated.**
48. These additions to the Guide will provide a more transparent framework for the Commissioner and the Conduct Committee to work from when deciding on sanctions and will help to make the sanctions we decide upon more understandable to others.
49. **Our proposed amendments are set out in the appendix as paragraphs 158B, 159 and 160A.**

Leave of absence

Custodial sentences and those on leave of absence

50. The Code of Conduct currently applies to members on leave of absence only in respect of conduct while on the Parliamentary Estate or using the facilities of Parliament.
51. The provisions relating to custodial sentences therefore do not apply while a member is on leave of absence. This means that if a member receives a custodial sentence of one year or less while on leave of absence, the Code does not apply.² We consider that these provisions ought to apply to those on leave of absence.
52. **To address this gap, we recommend the proposed amendments to paragraph 5 of the Code included in the appendix.**

2 By contrast, a member imprisoned or detained for more than one year (or indefinitely) automatically ceases to be a member of the House under the House of Lords Reform Act 2014.

Terminating or refusing leave of absence

53. Paragraph 129 of the Code of Conduct provides that:
- “If a member applies for leave of absence in order to avoid an impending investigation (or while an investigation is under way), the request may be refused. If the Commissioner decides to investigate a complaint about a member who is on leave of absence (in respect of conduct that occurred when the member was not on leave), the leave may if necessary be ended with immediate effect.”
54. The Guide to the Code does not include any similar provisions in relation to sanctions under the Code. Therefore, a member could choose to go on leave of absence rather than comply with a sanction imposed or recommended by the Conduct Committee.
55. **We recommend that the Guide to the Code be amended to address this lacuna.**
56. **The proposed new paragraph is set out in the appendix as paragraph 170A.**

Confirmation and correction of media reports

57. For all complaints against members other than those involving bullying, harassment or sexual misconduct, the Commissioner publishes basic information about the case on the parliamentary website.³ For complaints of bullying, harassment or sexual misconduct, no information is published unless or until a report is published. Occasionally, however, the existence of complaints of all types is made public by other parties, leading to press queries or inaccurate reporting.
58. Currently, the Code does not allow for any confirmation or denial of the existence of complaints or for any correction of inaccurate reporting. This can lead to an adverse or inaccurate understanding of matters which can undermine confidence in the application of the Code.
59. **We therefore recommend that the Commissioner should have the power, where information is already in the public domain, to confirm or correct such reporting having first consulted the parties involved. This power would apply with respect to all types of complaints.**
60. **The proposed new paragraph is set out in the appendix as paragraph 133A.**

External investigations

61. As well as being subject to the Code of Conduct, members may also be subject to legal proceedings or investigation by bodies which regulate their occupations outside of the House. Such investigations might give rise to:
- reputational damage to the House;
 - safeguarding considerations for others on the parliamentary estate; or

3 ‘Matters under inquiry by the Commissioners’: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards-/current-inquiries/>

- conflicts with concurrent investigations by the Commissioner.
62. To ensure the relevant authorities have the necessary information to address these issues, we recommend that the Code and Guide be amended so that members are required:
- to inform the Clerk of the Parliaments if they are arrested in connection with or charged with a criminal offence, regardless of whether a separate investigation under the Code of Conduct is underway;
 - to inform the Clerk of the Parliaments if they are under investigation by a body that regulates their occupation (including investigations under the Ministerial Code), regardless of whether a separate investigation under the Code of Conduct is underway; and
 - when the subject of an investigation under the Code of Conduct, to inform the Commissioner for Standards of any such circumstances so that she might take the external investigation properly into account.
63. **We therefore recommend introducing such requirements.**
64. **These proposed amendments to the Code and Guide are included in the appendix as paragraphs 17A, 17B and 17C of the Code and paragraphs 131A, 131B of the Guide to the Code.**

Custodial sentences

65. Under the Code of Conduct, members sentenced to imprisonment in the United Kingdom are deemed to have breached the Code. Where a member receives a sentence outside the United Kingdom, they are presumed to be in breach. However, in neither case is there a requirement for members to inform the House of any such imprisonment or sentence. This opens up the possibility of members being clearly in breach of the Code but without the House being aware.
66. **We therefore recommend that members be required to report such custodial sentences to the Conduct Committee.**
67. **These additions are included in the appendix as paragraph 17D of the Code and 170B of the Guide to the Code.**
68. This reporting requirement is one of the “provisions on imprisonment” referred to in paragraph 5 of the Code as amended above, along with the existing paragraphs 18 and 19.

Definitions of bullying, harassment and sexual misconduct

69. The Independent Complaints and Grievance Scheme (ICGS) was introduced in 2018 via the ICGS Delivery Report,⁴ a document highlighting the principles of the ICGS and outlining the Behaviour Code and the bullying, harassment and sexual misconduct definitions, policies and procedures.
70. The ICGS applies across the Parliament Community. In respect of members of the House of Lords and their staff, the ICGS is implemented via the House of Lords Code of Conduct. Paragraph 17 of the Code provides that behaviour

4 *Independent Complaints and Grievance Scheme Delivery Report*, July 2020: <https://www.parliament.uk/globalassets/documents/news/2018/1-ICGP-Delivery-Report.pdf>

amounting to bullying, harassment and sexual misconduct constitutes a breach of the Code. Appendix B to the Code sets out the definitions of bullying, harassment and sexual misconduct that were included in the ICGS Delivery Report.

71. In the light of experience and the recent 18-month review undertaken by Alison Stanley,⁵ those definitions of bullying, harassment and sexual misconduct are being updated.
72. As well as making drafting improvements, the amendments make three substantive changes to the definitions:
 - They remove the link to the protected characteristics set out in the Equality Act 2010 from the definition of harassment. Experience across the ICGS has shown this to inappropriately limit the definition, ruling out of scope behaviours that would be considered harassment in a conversational understanding of the word;
 - They insert into the definitions of bullying and harassment, and of sexual misconduct, a reasonableness test. This test is adapted from the provisions of the Equality Act 2010 and would require the complainant's perception of the conduct in question to be a reasonable response; and
 - They clarify that, although not against the law, paying for sex where it might occur in the course of the discharge of a member's parliamentary duties and activities ought to be considered sexual misconduct under the Code.
73. While the House of Lords Code of Conduct sets out processes and procedures for dealing with bullying, harassment and sexual misconduct which vary in detail from other parts of the ICGS, we consider that it is important that common definitions of bullying, harassment and sexual misconduct are maintained across the ICGS in order to ensure that all aspects of the parliamentary community are held to common standards.
74. **We therefore recommend the amendments to Appendix B to the Code set out in the appendix.**

⁵ Alison Stanley CBE FCIP, *Independent Complaints & Grievance Scheme Independent 18-Month Review*, 22 February 2021: https://www.parliament.uk/contentassets/e3ed0297d92a400bb249c887a30aa59b/icgs-18-month-review_final.pdf

APPENDIX 1: PROPOSED AMENDMENTS TO THE CODE OF CONDUCT AND GUIDE TO THE CODE

Changes to the Code

(deleted text in ~~strikethrough~~; new text in **bold**)

5. This Code applies to all members of the House of Lords who have taken the oath and signed the undertaking in that Parliament and are not either:

- (a) on leave of absence;
- (b) suspended from the service of the House; or
- (c) statutorily disqualified from active membership.

However, **when on the Parliamentary estate or using the facilities or services of Parliament**, all current and retired members are subject to the provisions **on (i) bullying, harassment and sexual misconduct and (ii) the use of facilities and services**, of paragraph 17 (standards of conduct) and paragraph 113 (use of facilities and services) of the Guide ~~when on the Parliamentary estate or using the facilities of Parliament~~, regardless of their membership status. **All current members are also subject to the provisions on imprisonment.**

17A. Members must, within 10 working days of being notified by the relevant authority, inform the Clerk of the Parliaments if they are:

- **arrested in connection with a criminal offence;**
- **charged with a criminal offence;**
- **placed under investigation by a body which regulates the occupation which they practise; or**
- **placed under investigation for an alleged breach of the Ministerial Code.**

17B. Members must, within 10 working days of being notified by the relevant authority, inform the Clerk of the Parliaments if they are:

- **convicted of a criminal offence;**
- **found in breach of rules governing the occupation which they practise;**
or
- **found in breach of the Ministerial Code.**

17C. If either paragraph 17A or 17B applies, members who are the subject of an investigation under this Code must also so inform the Commissioner for Standards either at the start of the Code investigation or, if the external investigation begins after the Commissioner has launched her own investigation, as soon as possible.

17D. Members must inform the Chair of the Conduct Committee if they receive a sentence of imprisonment, suspended or not, within 10 working days of the sentence being handed down.

18. A member sentenced to imprisonment in the United Kingdom, whether the sentence is suspended or not, shall be deemed to have breached the Code. If the sentence does not engage the provisions of the House of Lords Reform Act 2014, a case shall be referred to the Conduct Committee for it to recommend a sanction.

19. A member sentenced to imprisonment outside the United Kingdom, whether the sentence is suspended or not, shall be presumed to have breached the Code; such a case shall be referred to the Conduct Committee for it to consider whether the presumption should apply in that case and, if it should, for the Committee to recommend a sanction.

20. ~~A House of Lords Commissioners for Standards is~~ **are** appointed to investigate alleged breaches of this Code, or of the rules governing members' financial support or use of parliamentary facilities. **Commissioners decide on alleged breaches independently of one another.** Any ~~such~~ investigation is conducted in accordance with procedures set out in the Guide to the Code of Conduct, and during the investigation the member must adhere to any restrictions on their access to the facilities and services of the House which the Commissioner may impose. The Commissioner may also inform the complainant and the relevant senior managers of any such restrictions.

Changes to the Guide

(deleted text in ~~striketrough~~; new text in **bold**)

46. All interests stay on the Register for one year after the date on which the interest ceased. **An interest which is registered late and has already ceased by the time it is disclosed shall however remain on the Register for one year after the date of disclosure.**

79. An entry made in this category will remain on the Register for a period of one year from the date on which the visit was made. **A visit which, contrary to the requirements of the Code, is registered more than one month after it has concluded shall however remain on the Register for one year after the date of disclosure.**

85. Gifts and material benefits should be registered within one month of receipt; the entry will remain on the Register for a period of one year from the date of receipt. **Any gifts and material benefits which, contrary to the requirements of the Code, are registered more than one month after receipt shall however remain on the Register for one year after the date of disclosure.**

114. Members of the House are required to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy and members are required to attend the mandatory training established by the House to raise awareness of, and to prevent, bullying, harassment and sexual misconduct. **If the Lords ICGS Implementation Lead becomes aware of a failure by a member to attend the training, and the member declines to rectify the situation, he/she shall refer the matter to the Commissioner for Standards.** Paragraph 17 of the Code states that behaviour that amounts to bullying, harassment or sexual misconduct constitutes a breach of the Code. The definitions of these behaviours were set out in detail in the Independent Complaints and Grievance Scheme Delivery Report published in July 2018 (see Appendix B for full definitions).⁶

131A. Where they are the subject of an investigation under this Code, members must inform the Commissioner for Standards if they are:

- **arrested in connection with a criminal offence;**

⁶ The text of paragraph 114 used here is that agreed by the House on 3 November 2020, rather than the outdated text in the current edition of the Guide.

- **charged with a criminal offence;**
- **placed under investigation by a body which regulates the occupation which they practise; or**
- **placed under investigation for an alleged breach of the Ministerial Code.**

131B. Such disclosures must be made either at the start of the investigation under this Code or, if the external investigation begins after the Commissioner has launched her own investigation, as soon as possible.

132. The Commissioner may continue an investigation into an alleged breach of the Code if the police or another agency are investigating a related allegation of criminal misconduct, but in such circumstances the Commissioner will not finalise her report on the case until the criminal process concludes. Before finalising her report the Commissioner will take account of any relevant issues which arose during the criminal process. An investigation will be suspended if related proceedings (criminal or civil) become sub judice (within the meaning of the House's sub judice resolution).

133. Following her preliminary assessment, the Commissioner informs both the complainant and the member concerned whether or not she will investigate the complaint. Where the Commissioner dismisses a complaint of bullying, harassment or sexual misconduct at preliminary assessment, she has the discretion not to disclose this information **to, and/or to withhold the identity of the complainant from, the member.** If she has decided that the complaint does not merit investigation, she provides the complainant with a brief explanation of her reasons for dismissing the complaint. For most complaints, the Commissioner publishes a webpage setting out basic information about a case when she has decided to investigate a complaint. However, for complaints involving bullying, harassment or sexual misconduct, basic information will not be published on the website unless or until a report is published."

133A. In exceptional cases, the Commissioner may also publicly confirm or correct information in the public domain concerning a complaint or her preliminary assessment. For example, she may confirm that a complaint has been received, the outcome of her preliminary assessment, and the broad nature of the case. She must however consult the parties involved before doing so.

134. Where complaints relate to bullying, harassment or sexual misconduct the identity of the complainant will be shared where necessary with those directly involved in the investigation but will not usually be made public during the investigation, or on publication of the report, unless the ~~complainant desires otherwise~~ **Commissioner, having heard representations from the complainant and the member, considers that it would be appropriate.** This may involve some redaction in reports. Those involved in the investigation are under an obligation to protect the identity of the complainant and a failure to do so may constitute a breach of the Code as well as a contempt of the House.

134A. The identity of those who give evidence to the Commissioner during an investigation will be shared where necessary with those directly involved in the investigation but will not usually be made public during the investigation, or on publication of the report, unless the Commissioner, having heard representations from the complainant, the member and the witness concerned, considers that it would be appropriate. This may

also involve some redaction in reports. Where the Commissioner has anonymised someone who provided evidence, all parties to the complaint are under an obligation to protect the identity of that person and a failure to do so may constitute a breach of the Code as well as a contempt of the House.

147. In cases involving bullying, harassment or sexual misconduct, if the Commissioner decides to dismiss the complaint, it is at the discretion of the Commissioner, having heard representations from the complainant and the member, whether to ~~publish a report including~~ **include** the name of the member **in her report.**

158A. Where the Commissioner finds there has been no breach of the Code in the case of a complaint of bullying, harassment or sexual misconduct, it is at the discretion of the Commissioner, having heard representations from the complainant and the member, whether to include the name of the member in her report. On completing such a report, the Commissioner submits it to the Conduct Committee.

Sanctions

158B. There is a range of sanctions which can be imposed upon members who breach the Code of Conduct, the purposes of which may include:

- **deterrence: discouraging others from breaching the rules;**
- **protection: keeping staff and the public safe, e.g. through suspension;**
- **punishment: visibly punishing those who breach the rules;**
- **reparation: overtly making amends to those affected by a breach; and**
- **rehabilitation: ensuring that those found in breach reform their behaviour so that they can continue as active participants.**

159. In cases where the Commissioner upholds a complaint, the Commissioner makes recommendations to the Conduct Committee on any sanction that should be applied. These recommendations are included in her reports. The options available to the Commissioner ~~include~~ **are as follows:**

- ~~no action or sanction is appropriate.~~
- ~~no further action is appropriate because both parties have come to their own resolution through mediation or otherwise and this resolution has been agreed by the Commissioner~~
- the Conduct Committee should require the member to take action to regularise the position (for example a letter of apology or training) where this has not been agreed as remedial action.
- the Conduct Committee should require the member to make a personal statement of apology in the House.
- ~~the Conduct Committee should recommend to the House that the member be denied access for a specified period of time to the system~~

~~of financial support for members and/or denied access for a specified period to the facilities and services of the House, including services closely related to parliamentary proceedings and membership of select committees. These sanctions can be applied for any period of time and may be applied in addition to a sanction of suspension~~

- **the Conduct Committee should recommend to the House that the member be denied access to specific facilities or services of the House. This may include services that support parliamentary activity. This sanction can be applied for any period of time and may be applied in addition to a sanction of suspension.**
- **the Conduct Committee should recommend to the House that the member be removed from membership of select committees.**
- **the Conduct Committee should recommend to the House that the member be denied access to the system of financial support for members. This sanction can be applied for any period of time and may be applied in addition to a sanction of suspension.**
- the Conduct Committee should recommend to the House that the member be suspended from the House. If the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then, the suspension may be for any specified period of time. If the conduct occurred before 26 June 2015 and was public knowledge before then, the suspension may be for a specified period of time not longer than the remainder of the current Parliament.
- the Conduct Committee should recommend to the House that the member be expelled from the House. This recommended sanction is available if the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then.

160. In deciding upon the sanction to recommend and in particular whether in respect of conduct occurring before 26 June 2015 to recommend suspension for a particular period longer than the remainder of the current Parliament or, more severe still, expulsion, the Commissioner should bear in mind the retrospective effect of the House of Lords (Expulsion and Suspension) Act 2015 and that, the longer ago the conduct occurred, the more certain the Commissioner should be of the need for such a sanction before recommending it.

160A. The appropriate sanction in each case will be assessed by reference to all the circumstances surrounding the offence, including the state of mind and the degree of fault involved in its commission. In cases of bullying, harassment and sexual misconduct, the assessment will include the effect of the breach on the complainant(s). Account will be taken of any factors aggravating the offence (for example, any racism, homo- or transphobia or other hate-speech element) as well as any factors mitigating it (including whether the offence was out of character and/or took place in exceptional personal circumstances, and insightfulness).

163. Any appeal must be in writing, and should set out the grounds for the appeal and such supporting material as the appellant thinks appropriate. The Committee may from time to time publish guidance to assist appellants in this process. The

appeal may be against either the Commissioner's finding or, in the case of a member, the recommended sanction. The Committee may agree to hear from the member and/or complainant(s) in person, and ~~to take evidence~~ **invite representations** from the Commissioner. Any such hearings shall take place before a panel of at least five committee members (with a minimum of three Lords members and two lay members). The Chair of the Committee or his/her nominee may make further provisions about the procedures to be followed in each appeal.

167. In all cases where there has been an appeal to the Conduct Committee, the Committee will publish a report either upholding or dismissing the appeal. **Subject to paragraph 167A or in other exceptional circumstances,** ~~the report from the Commissioner is annexed to the Committee's report~~ **Committee will also arrange for the publication of the Commissioner's report.**

167A. Before publishing its report, the Committee will consider whether any decisions relating to the anonymity of those referred to in the Commissioner's report need changing. This may involve redacting or amending the Commissioner's report. In exceptional circumstances, it may require not publishing the Commissioner's report.

Compliance with sanctions

170. Members must comply with any sanction imposed by the Conduct Committee or the House. Any failure to do so shall constitute a breach of the Code of Conduct.

170A. If a member applies for leave of absence in order to avoid an impending sanction, the request may be refused. If the Conduct Committee imposes a sanction on or recommends a sanction in relation to a member who is on leave of absence, the leave may be ended with immediate effect.

Imprisonment of members

170B. Members must inform the Chair of the Conduct Committee if they receive a sentence of imprisonment, suspended or otherwise, within 10 working days of the sentence being handed down.

171. A member of the House of Lords who is sentenced to be imprisoned indefinitely or for more than one year ceases to be a member of the House and is no longer subject to the House's Code of Conduct.

172. The following paragraphs apply in cases where a member who has been sentenced to imprisonment continues to be a member of the House and therefore is subject to the Code.

173. A member sentenced to imprisonment in the United Kingdom, whether the sentence is suspended or not, is deemed to have breached the Code. If the sentence does not engage the provisions of the House of Lords Reform Act 2014, then the case is referred to the Conduct Committee for it to recommend a sanction. The Committee may defer its consideration of a sanction if an appeal is lodged in the courts.

174. A member sentenced to imprisonment outside the United Kingdom (whether the sentence is suspended or not) is presumed to have breached the Code. The case is then referred to the Conduct Committee for it to consider whether the presumption should apply in that case and, if it should, what sanction to recommend. The member has the right to make representations to the Committee,

and the Committee may take other evidence. If the sentence is for imprisonment for a term of more than one year, the Committee will defer its consideration of the case until any motion in the House that the member should cease to be a member is disposed of.

175. These provisions apply regardless of whether the member was a member of the House at the time of the offence, though they only apply to sentences imposed after a member's introduction. Where the Conduct Committee considers the breach to be sufficiently serious as to warrant expulsion or suspension, it is bound by the provisions of Standing Order 12 (Expulsion or suspension of a member).

Changes to Appendix B to the Code

Appendix B – Definitions of bullying, harassment and sexual misconduct, taken from the Independent Complaints and Grievance Scheme Delivery Report⁷

Bullying and harassment (~~Delivery Report, pages 46 to 49~~)

Definitions

1. There are many definitions of bullying and harassment and both terms are often used interchangeably. The definition for harassment below reflects the definition set out in Section 26 of the Equality Act 2010, **although this policy is not limited to harassment connected with a protected characteristic under that Act**. The definition for bullying below is based on classification provided by **taken from ACAS guidance**. These definitions will be used for determining whether any behaviour reported under this policy and procedure constitutes bullying or harassment.
2. All behaviour that does constitute bullying or harassment is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute bullying or harassment. ~~When alleged incidents of bullying or harassment are reported under this policy, any investigation will assess whether or not the incidents constitute bullying or harassment.~~

What is bullying?

3. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation.
4. Like harassment, bullying can take the form of physical, verbal and nonverbal conduct ~~but does not need to be related to protected characteristics~~. Bullying behaviour may be in person, by telephone or in writing, including emails, texts or online communications such as social media. It may be persistent or an isolated incident and may manifest obviously or be hidden or insidious. **Whether conduct constitutes bullying will depend on both the perception of the person experiencing the conduct and whether it is reasonable for that person to have perceived the conduct as bullying.**
5. Examples of bullying may include, but are not limited to:
 - Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language;
 - **Abuse of a similar nature carried out in writing or electronically (including posters, graffiti, emails, messages, clips or images sent by mobile device or posted on the internet);**

⁷ Independent Complaints and Grievance Scheme Delivery Report, published July 2018 (<https://www.parliament.uk/documents/news/2018/1%20ICGP%20Delivery%20Report.pdf>). **The definitions in this appendix are taken from Independent Complaints and Grievance Scheme policies on bullying and harassment, and sexual misconduct.**

- Physical or psychological threats or actions towards an individual or their personal property;
- Practical jokes, initiation ceremonies or rituals;
- Overbearing or intimidating levels of supervision **or micro-management**, including preventing someone from undertaking their role or following agreed policies and procedures;
- ~~Inappropriate comments about someone's performance;~~
- Abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work, or coercing someone to meet such expectations;
- ~~Use of unfair sanctions in relation to disciplinary or attendance procedures;~~
- Ostracising or excluding someone from meetings, communications, work events or socials;
- Sending, distributing or posting detrimental material about other people, including images, in any medium.

What is harassment?

6. Harassment is any unwanted ~~physical, verbal or non-verbal~~ conduct that has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. ~~Under the Equality Act 2010, harassment is related to one or more of the relevant 'protected characteristics' which include age, sex, race, disability, religion or belief, sexual orientation and gender reassignment.~~ **All harassment, regardless of whether or not it relates to a protected characteristic, is covered by this policy.**
7. ~~Sexual harassment is qualitatively different from other forms of unacceptable behaviour, including bullying and non-sexual harassment. There is a separate Sexual Misconduct policy and procedure for dealing with allegations of sexual misconduct and more information about reporting incidents under that are covered by both policies can be found in clause 2.15 of this policy.~~
8. Harassment may be persistent or an isolated incident and ~~may~~ **can either be** manifest, ~~obviously or be~~ hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications such as, **including** social media.
9. Harassment can be intentional or unintentional. ~~For example, if a person speaks or behaves in a way that they do not find offensive, but that another person does. The key is that the words or behaviour are unwanted or unacceptable to the recipient. The purpose or effect of the unwanted conduct violates the recipient's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.~~ **It can occur where A engages in conduct which has the effect of violating B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A didn't intend this. Whether conduct constitutes harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way.**

10. A person may also be harassed even if they were not the intended 'target' of harassment. For example, a person may be harassed by jokes about a religious group that they do not belong to, if these jokes create an offensive environment for them.
11. ~~Harassment associated with different protected characteristics may be quite different in nature and may relate to more than one protected characteristic.~~ Examples of harassment, other than sexual harassment, may include, but are not limited to:
 - ~~Deliberate exclusion from work activity or conversations;~~
 - Sending or displaying offensive material in any format (including posters, graffiti, emails, messages, clips or images sent by mobile phone or posted on the internet);
 - Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype) ~~in relation to their age, disability, gender reassignment, race, religion or belief, sex or sexual orientation;~~
 - Use of unacceptable or inappropriate language or **racial or other stereotypes relating to race or ethnicity (regardless of whether the complainant is in fact a member of the group stereotyped);**
 - Deliberately holding meetings or social events in a location that is not accessible for an individual with a disability **(by reason of disability, religious prohibitions or otherwise);**
 - Using profanities or swearing that could have the effect of ~~intimidating a person~~ **creating an offensive environment for a person to work in.**

What does the law say about bullying and harassment?

12. In some cases, acts of bullying or harassment can be civil offences, which can be ~~brought to~~ **litigated through civil proceedings, in either** an employment tribunal or county court.
13. In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. ~~There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence.~~ Examples may include, but are not limited to:
 - Physical assault;
 - Making violent or death threats;
 - Stalking;
 - Hate crimes.
14. ~~Clauses 2.15 and 2.16 of this policy contain more information about how this policy and procedure deals with criminal investigations into conduct that may also amount to bullying and harassment.~~

Sexual Misconduct (Delivery Report, pages 74 to 76)

15. **The definitions below will be used for determining whether any behaviour reported under this policy constitutes sexual misconduct.**
16. **All behaviour that constitutes sexual misconduct is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute sexual misconduct.**

What is Sexual Misconduct?

17. Sexual misconduct ~~incorporates~~ **describes** a range of behaviours including sexual assault, sexual harassment, stalking, voyeurism and any other conduct of a sexual nature that is non-consensual or has the purpose or effect of threatening, intimidating, undermining, humiliating or coercing a person. ~~Sexual misconduct is used to describe the range of behaviours that will be treated as a potential breach under this Policy and Procedure, encompassing behaviours that may or may not also be defined as sexual harassment or sexual offences in the context of civil or criminal courts.~~ **Any of these behaviours will be treated as a potential breach under this policy, encompassing behaviours that may or may not also be defined as sexual harassment or sexual offences in the context of civil or criminal courts.** However, using the language of sexual misconduct makes it clear that the policy and Procedure for Parliament is separate from and additional to any court legal processes.

Behaviours

18. The following behaviours may constitute sexual misconduct if they occur inappropriately or without explicit full and freely given consent. **This non-exhaustive list sets out examples in the categories of verbal, non-verbal/environmental and physical sexual misconduct.**
19. ~~This non-exhaustive list provides examples of broadly escalating severity in the categories of verbal, non-verbal/environmental and physical sexual misconduct. However, impact and trauma will be felt differently by those experiencing sexual misconduct.~~
20. Verbal—sexual remarks including those about appearance or clothing, jokes, catcalls, questions about sexual life, raising sexual topics, verbal advances, etc.
 - Asking personal questions about sexual or social life or offering unwanted personal information about own activities.
 - Remarks that draw attention to someone's sex in an inappropriate or unwanted way.
 - Enquiring about sexual history, fantasies or preferences.
 - Making sexual comments about a person's clothing, anatomy, or appearance.
 - Obscene phone calls of a sexual nature.
 - Repeatedly propositioning someone, **in person or by telephone.**

- Subtle or overt pressure for sexual activity, including requests or demands for sexual favours and promises of reward in return.
 - Threats of reprisals if requests for sexual activity are turned down.
 - Treating someone less favourably because they have rejected or submitted to unwanted sexual conduct.
21. Environmental/Non-Verbal—displaying pornographic or sexually explicit material, sexist comments and pictures on social media **or chat groups**, stalking, image-based sexual abuse such as up-skirting, revenge porn, deep fake porn, etc.
- ~~Obscene texts, emails, notes or letters of a sexual nature.~~
 - **Sending or displaying obscene material of a sexual nature in any format (including posters, graffiti, emails, messages, clips or images sent by mobile device or posted on the internet)**
 - Inappropriate gifts of a sexual nature.
 - Inappropriate advances or stalking via social media.
 - The circulation or displaying of pornography.
 - Sharing private sexual materials **images** of another person without consent.
 - Repeatedly propositioning someone in writing **(including through text or social media chat groups)**.
 - Repeatedly following or tracing the movements of another person without good reason.
22. Physical—suggestive looks and gestures, staring, leering, threatening behaviour, brushing past someone, pinching, touching, groping, promises/threats related to career prospects in return for sexual favours, etc.
- Uncalled-for physical contact, deliberate brushing past.
 - Unwelcome and inappropriate touching, hugging or kissing.
 - Groping, grabbing, kissing or fondling without consent.
 - Indecent exposure (masturbation, nudity) and acts of voyeurism or exhibitionism.
 - Attempting to or engaging in sexual intercourse or a sexual act without consent.
23. ~~For the purposes of this policy, although it may not be~~ **It is not illegal in the UK to pay for sex. , in line with best practice it is considered** **However, for individuals to do so when they are acting in a parliamentary capacity or engaged in activity connected to their membership of the Parliamentary Community (whether it takes place in the UK or overseas) is considered** unprofessional and inappropriate. ~~and It is therefore a breach of the Behaviour Code, if this occurs whilst individuals are acting in a parliamentary capacity or engaged in activity connected to~~

~~their membership of the Parliamentary Community both in the UK and overseas~~ **and constitutes sexual misconduct for the purposes of this policy.**

Legislation **What does the law say about sexual misconduct?**

24. ~~Harassment of a sexual nature is defined in The Equality Act 2010, section 26 (2) and (3) defines sexual harassment, which is one form of sexual misconduct. A non-exhaustive summary that covers the majority of what is meant by the term is: unwanted behaviour that is sexual in nature or draws attention to sex in an unwanted way. The law around sexual harassment is grounded in a rights framework; sexual harassment offends the universal right to work in a dignified, safe environment and not be subject to discrimination. It includes conduct by A of a sexual nature which has the effect of violating B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A did not intend this. Whether conduct constitutes sexual harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way. A can also carry out sexual harassment if A treats B less favourably because B did not submit to A's sexual advances.~~
25. ~~Some forms of sexual harassment and sexual misconduct may also constitute criminal offences under a range of legislation, including, but not limited to, the Sexual Offences Act 2003 and the Protection from Harassment Act 1997 and national legislation in Scotland and Northern Ireland. Potential criminal offences include sexual assault, sexual assault by penetration, rape, harassment, stalking or disclosing private sexual images to cause distress ('revenge pornography').~~

Consent

26. ~~The definition of consent provided by Under the Sexual Offences Act 2003 is agreeing to something by choice and having the freedom and capacity to make that choice, a person is regarded as consenting to sexual activity if (a) they agree to it by choice and (b) have the freedom and capacity to make that choice. This Policy uses the same definition of consent in relation to sexual misconduct.~~
27. Capacity—A person's capacity is dependent on whether they are physically and/or mentally able to make a choice and to understand the consequences of that choice. For example, a person does not have the capacity to give consent if:
- They are drunk or under the influence of drugs, for example they may still be physically able to have sex but they may not be able to consent.
 - They are asleep or unconscious.
 - They may not have capacity if they have a disability or impairment, including learning difficulty, physical disability or mental health condition.
28. ~~Consent is ongoing and needs to be negotiated every time one engages in sexual activities. Individuals must stop if they are not absolutely sure that they have someone's consent. Any prior sexual activity or relationship does~~

~~not, in and of itself, constitute consent. Consent may be withdrawn at any time (including during a sexual act) and can never be implied, assumed or coerced.~~ **Consent must be present every time a person (A) engages in sexual activity with another person (B). A must stop if they are not absolutely sure that they have B's consent. Any prior consensual sexual activity or relationship between A and B does not, in and of itself, constitute B's consent to further sexual activity with A. B may withdraw consent at any time (including during a sexual act) and consent can never be implied, assumed or coerced.**