

Written Evidence relating to Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers

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R v. Elphicke – Release for Media Publication of Character References Not Made Public in Criminal Proceedings

You will be aware that Mr Charlie Elphicke was recently convicted and sentenced to two years in prison by Mrs Justice Whipple (Whipple J).

We write to express concern that Whipple J is holding a further hearing in this case on whether the character references provided in Mr Elphicke's case should be published following a request by the Guardian newspaper. These are references which the Judge, when making her sentencing determination, did not read out and where the individuals were not named at the relevant time.

Representation and Privacy, Harm to Vulnerable Witnesses: A matter that greatly concerns us is the effect this proposed hearing is having on members of the public who have given references. In doing so, they were providing information to the court and the justice system to assist the judge in making her decision on sentencing.

Some of the character referees report that they have been put into fear and some have suffered serious anxiety and mental harm at the prospect of being identified by Mrs Justice Whipple.

The judge has ordered the hearing on 25th November to be in open court. Some of the members of the public are afraid to attend or make written representations on their private matters without risk of these representations or objections also being disclosed to the media. While a specific request for their representations to be heard or considered in closed session could be made in relation to them, a number of vulnerable witnesses have expressed concern to their MP as to whether any such assurances, were they to be given, could in any event be relied upon, given the nature of reporting of sensitive issues already in this matter.

We believe that this is quite wrong. Mrs Justice Whipple is aware that some of the witnesses are extremely vulnerable and that a number of the references provided to the court disclose deeply personal and private matters where Mr Elphicke helped referees in his official capacity as a Member of Parliament. This includes references to disability care, severe mental health and business troubles.

We understand that some of these vulnerable witnesses have suffered additional mental harm and distress because of the way this matter is being handled by the Judge; harm to ordinary, private, individuals which was both foreseeable and avoidable.

Many of these most vulnerable witnesses are Mrs Elphicke's constituents, and they have raised such matters of harm and distress with her directly. She therefore joins us as a signatory to this letter in her capacity as the sitting Member of Parliament for Dover and Deal.

Media Interest - Future and retrospective implications

The request made to Whipple J to publish the character references has come from the media. It is understandable that they would wish to use this case to secure a radical change to judicial

practice to establish a principle that character references will now be routinely disclosed. This would provide a source of content to be reported on, especially if it covers references provided in past cases as well as current ones.

However, release of character references to the media in this way, where they have not been read out in the Court proceedings and where such individuals have not been identified or named in such proceedings, has not occurred to date, so far as we are aware.

Indeed, we are not aware of a situation where character references have been released solely for the benefit of the media and outside of the relevant substantive court proceeding.

Consequences to Sentencing Practice: Such a move to release character references in this way could have the chilling effect and harm the criminal justice system.

It has long been the practice that members of the community provide character references to assist the court in determining the sentence that should be passed on a convicted person. They do this in discharge of their public duty to the court and to the community as a whole. The purpose is not to seek to excuse the behaviour which has led to a criminal conviction, only to provide information about the previous general conduct and character of the defendant as it is perceived by the referee. You will be aware that such references are used by judges as an important tool to make the best and most informed decisions. Specific provision is made for this in the sentencing guidelines.

We are concerned that if a person considering giving a character reference thinks it will be published, they may be reluctant to give it. They will fear that carrying out this civic duty, they will be made the subject of vilification in the media or in social media.

If release of character references is allowed by the court, this would be a change of practice with far reaching consequences that would extend to all other cases. Such a change of application could mean the publication of character references in every case. That could well result in bringing an end to the practice and utility of character references.

Role of the Court of Appeal and senior judges: We recognise that the Court of Appeal has jurisdiction to overturn decisions of judges in lower courts. However, in relation to these character referees, and indeed any others in cases where a similar application is made before an appeal could be heard, the harm to vulnerable individuals would already have been done and could not be remedied.

We therefore believe that it is important for you, as senior judges with relevant oversight responsibility, to consider the crucially important matters of principle which are at stake in this case, prior to any disclosure of names of any members of the public or of the references they have provided to the court.

So serious a matter with such significant repercussions also should be considered further and fully by Parliament. We are all Parliamentarians. In order that we may freely express our serious concerns pertaining to vulnerable private individuals, we have decided to place our own references into the public domain.

Rt Hon. Sir Roger Gale MP

Mr Adam Holloway MP

Colonel Bob Stewart MP

Rt Hon. Theresa Villiers MP

Rt Hon. The Lord Freud

Mrs Natalie Elphicke DBE MP

I have been asked to reply to your letter dated 19 November to the President of the Queen's Bench Division, Dame Victoria Sharp DBE, and the Senior Presiding Judge for England & Wales, Lady Justice Thirlwall, which you copied to Mrs Justice Whipple.

It is improper to seek to influence the decision of a judge in a matter of which he or she is seized in this way. Mrs Justice Whipple will determine any matter before her on the basis of evidence and argument adduced in her court.

It is all the more regrettable when representatives of the legislature, writing as such on House of Commons notepaper, seek to influence a judge in a private letter and do so without regard for the separation of powers or the independence of the judiciary. It is equally improper to suggest that senior judges should in some way intervene to influence the decision of another judge. The independence of the judges extends to being free from interference by judicial colleagues or superiors in their decision making. Judicial independence requires that the senior judiciary, and the two judges to whom you have written, can play no role in influencing the way in which another judge, in this case Mrs Justice Whipple, conducts a case.

Judges must be free to make their decision independently of pressure or influence from all, including legislators.

Although you have marked your letter 'Private and Confidential' I understand that you have provided it to the Parliamentary correspondent of the Press Association. Irrespective of that, normal practice, in cases where a judge receives an inappropriate or improper communication seeking to influence a decision, is for the communication to be provided to the parties in the case.

Thank you for the letter sent on your behalf by your Private Secretary, [name redacted], dated 20 November 2020.

We note the concern expressed by Mr [name redacted] regarding our letter to Dame Victoria Sharp DBE and Lady Justice Thirlwell and we hope we can provide you with some reassurance.

You will be aware that trial and sentencing have both concluded in Mr Elphicke's case. All that remains to determine is a media request submitted for media reasons. We acknowledge that this decision will be made by Mrs Justice Whipple, taking into account all the relevant matters, and had not sought to suggest otherwise. Nothing in our correspondence was intended to challenge the judge's authority. However, given the harm that will potentially be caused to Mrs Elphicke's constituents, we felt it important to highlight our serious concerns prior to the forthcoming hearing.

As you acknowledge, our letter of 19 November 2020 was copied by us to Mrs Justice Whipple in order to ensure that she is aware of the points we have raised which we hope she will take into account.

To recap, two distinct issues were set out in our letter. Firstly, harm and distress has been occasioned to wholly innocent parties. Moreover, some of them feel reluctant to make representations at the forthcoming hearing because of the inevitable disclosure of their identities which this would involve. We wanted to make the judge aware of both of these matters.

In choosing to release voluntarily the character references of all sitting parliamentarians, our intention is to assist the court and members of the public who have provided references in this case. We hope that our decision will enable the focus at the hearing to be on whether to release to the media information relating to private individuals and private matters which have been provided to assist the judge in the execution of her duty, without this being overshadowed by the fact that some of the references in the case were provided by public figures.

Secondly, as Parliamentarians, we do feel it is legitimate to set out concerns about the long-term implications of publication of character references submitted to the judge solely to assist sentencing, and containing private and confidential information. This has been confirmed as properly a matter for Parliament and Parliamentarians. We refer you to the Leader of House's remarks in Hansard in this regard on 19 November 2020. The Leader of the House has referred this issue to the Justice Secretary and Attorney General.

We have not asked Dame Sharp to interfere with Mrs Justice Whipple's decision, only to "consider the crucially important matters of principle which are at stake in this case".

Finally, we can provide the reassurance that you have been misinformed regarding publication of our letter of 19 November 2020. We have not released the letter publicly.

We write in relation to the hearing scheduled for 25 November 2020 on potential release of references provided to the court in relation to Charlie Elphicke.

You will have seen our recent letter to Dame Victoria Sharp DBE and Lady Justice Thirlwell. For your information, we are also attaching a copy of the response we are sending to the Lord Chief Justice on this matter.

As we set out in that correspondence, we are worried about the harm and distress that is being suffered by vulnerable members of the public who provided references, some of whom are Mrs Elphicke's constituents.

In raising this with you and your judicial colleagues, we do not in any way challenge your authority to take the decision on publication. We only wish you to be aware of the potential impacts of publication and also the concern that some referees are reluctant to make representations at the forthcoming hearing because this will disclose their identity. We certainly do not suggest that you have intentionally caused such outcomes. Nonetheless they are real.

In making the references we provided public, we hope to assist both the court and the other referees because we hope this will enable a greater focus on the question of disclosure of sensitive personal information relating to members of the public, rather than matters relevant only to public figures who provide references in criminal cases.

Likewise, as Parliamentarians we felt duty-bound to highlight the potentially wide-ranging implications of routine publication of references in past or future cases. This general issue has been raised in Parliament in the way that such policy matters regularly are. We would again emphasise that highlighting this in Parliament is not meant, in any way, to interfere with the judicial process, only to highlight the potential harm to ordinary people who in good faith have provided references to assist the courts in making a decision on sentencing.

Thank you for your letter of 22nd November.

As I set out in my letter of 20th November the matters you raise are for Mrs Justice Whipple alone as the judge in the case to which you refer.

The Lord Chief Justice, or any other member of the judiciary, is unable to comment on, intervene in or otherwise interfere with any judicial decision made by an independent judge.

The application will be made before the Court and Mrs Justice Whipple will make her decision.

I have copied our correspondence to the Speaker of the House of Commons and to the Lord Speaker for their information.

R v Elphicke – Release for Media Publication of Character References Not Made Public in Criminal Proceedings

We write to you in your capacities as Chief Presiding Judge of England and Wales and President of the Queen’s Bench Division.

Ongoing consideration of Appeals in the Elphicke case

You will be aware that Mr Charlie Elphicke was recently convicted and sentenced to two years in prison by Mrs Justice Whipple (Whipple J). We are aware that Mr Elphicke is appealing his sentence, together with conviction on grounds which include the conduct of Whipple J. These are matters for the Court of Appeal to resolve and are not the subject of this letter nor do we make comment in relation to them. We draw attention to such matters solely so your Ladyships are aware that this Judge and this case have not proceeded on a basis that is without controversy, and it is already a subject of substantive appeal applications.

Media Application for release of Character References

We write to express concern that Whipple J is holding a further hearing in this case on whether the character references given on Mr Elphicke's behalf attesting to exemplary conduct should be published in their entirety following a request by the Guardian newspaper, a request which we view as purely political and opportunist.

Representation and Privacy, Harm to Vulnerable Witnesses: A matter that greatly concerns us is the effect this proposed hearing is having on those who were only doing their duty to the court and justice system, in describing Mr Elphicke’s exemplary behaviour in relation to them solely for the purposes of assistance to the Judge in her sentencing decision.

Some of the character referees report that they have been caused fear and some have suffered serious anxiety and mental harm at the prospect of being identified by Whipple J. This cannot be an acceptable position.

In relation to the upcoming hearing on 25th November 2020, Whipple J has ordered the hearing to be in open court, and she recognises that there is considerable media interest. She has made no provision for any aspect of representation to be made privately by individuals whose privacy would be so affected. As such, it is impossible for such individuals to reasonably be expected to attend or make written representations about their private matters with any degree of assurance or certainty that the Judge will treat the matters as such.

This is, in our view, an irresponsible approach about which we make formal complaint. Whipple J is fully aware that some of the witnesses are extremely vulnerable and many of their cases highly personal. She has read their full accounts which we understand to contain matters, for example relating to disability care, severe mental health and business troubles. The content of these references relate to confidential constituency casework and deeply private circumstances in which

Mr Elphicke helped referees and others to great effect in his official capacity as a Member of Parliament. Some such vulnerable witnesses have suffered additional mental harm and distress by the way this matter is being handle by Whipple J. Harm to ordinary, private, individuals which was both foreseeable, unnecessary, avoidable and in our view unjudicial.

Many of these most vulnerable witnesses are Mrs Elphicke's constituents, and they have raised such matters of harm and distress with her in her capacity as the sitting Member of Parliament for Dover and Deal. As such, she joins us a signatory to this letter.

Media Interest - Future and retrospective implications

The request made to Whipple J to publish the character references has come from the printed media. The motive for the press to seek to use this case to change judicial practice and to publish character references across the board is transparent: such a change would of course provide a rich source of potentially salacious content for journalists. There could well even be an opportunity, on the basis of such a decision, to seek the production of such character references retrospectively and to potentially provide an even richer seam of material upon which to bases "stories"...

Release of character references to the media in this way, where such references have not been read out in the Court proceedings and where such individuals have not been identified or named in such proceedings, has not occurred to date, so far as we, or leading members of the Criminal Bar, are aware. To do so would set a very dangerous precedent.

Indeed, we are not aware of a situation where character references have been released solely for the benefit of the media and outside of the relevant substantive court proceeding. Whipple J has concluded her trial and sentencing and in relation to both of these, applications for appeal are lodged with the Court of Appeal.

Consequences to Sentencing Practice: Such a move to release character references in this way could have the chilling effect of undermining the criminal justice system.

Currently it is (and has long been) the practice that members of the community provide character references to assist the court in determining the sentence that should be passed on a convicted person. They do this in discharge of their public duty to the court and to the community as a whole. Such references have long been used by judges as an important tool to make the best and most informed decisions. Specific provision is made for this in the sentencing guidelines.

We are concerned that if a person considering giving a character reference thinks it will be published, they are likely to decline to give references in future. This is because they will fear being "named and shamed" and made the subject of vilification in the media or to suffer employment or other consequence as a result.

In order that we may expose the fundamental concerns in relation to this matter, particularly pertaining to vulnerable private individuals, we have chosen to attach our five character references in full in the Annex to this letter and to place our own references only, as Members of Parliament, in the public domain.

Role of the Court of Appeal and more senior judges: We recognise that the Court of Appeal, and indeed the Supreme Court, has jurisdiction to rectify decisions of more junior judges, such as in the case of Whipple J. However, in relation to these character referees, and indeed any others where a similar application is made before the Court of Appeal can hear a case further the harm to individuals, such as those that are most vulnerable as has been set out in this letter, could not be remedied.

Given the above, it is our strong view that Whipple J should be removed from taking any further part in these proceedings and in this case.

This particular decision, if release of the information is ordered, could change current and future practice for sentencing. Such a decision should not be made lightly by a single judge. It is a decision that, were it to be taken, should surely be taken by an appropriate authority, such as the sentencing council or a group of leading judges who are responsible for such matters - such as yourselves.

So serious a matter with such significant repercussions also should be considered further and fully by Parliament.

Thank you for your email of 26 January. You asked me to let you know what advice I would have given Adam Holloway MP, Sir Roger Gale MP and Colonel Bob Stewart MP if they had sought my advice about using House-provided stationery to send out a personal reference for another former Member, who was a defendant in a criminal matter, the personal references being sent to the court to be considered for sentencing purposes. You also asked for my observations on the factors I would have taken into account in reaching a view in this instance.

I can confirm that my team were not consulted by any of these three Members, though I would note there is not a requirement for Members to do so.

The House provides the stationery budget to assist Members in performing their parliamentary duties but, as you noted in your email, the rules cannot be expected to cover every eventuality. You will be aware that while my team and I can provide guidance on usage, ultimately Members should always behave with probity and integrity when using House-provided stationery and postage, and should regard themselves as personally responsible and accountable for the use of it. If a complaint is made, whatever guidance we might have provided cannot bind your ability to come to a different conclusion.

If I had been asked, I would have advised that using the House-provided stationery in this way falls outside the rules. The rules state that *'House-provided stationery and pre-paid envelopes are provided only for the performance of a Member's parliamentary functions'*; writing a personal reference for another former Member does not, in my opinion, fit within this definition.

In your email you ask if I feel that rule 5 is applicable: *'modest use of stationery (but not pre-paid envelopes) for personal correspondence is permitted'*. I would not agree that this personal correspondence would still be within the remit of a Member's parliamentary functions. Additionally, as Members of Parliament, these three Members would still have been able to refer to their positions without using House-provided stationery or postage to do so.

Previously, in an investigation into a similar matter, the then Clerk of Journals Mark Hutton gave his view as follows. "My advice would have been that this is an inappropriate use of the crowned portcullis since it risks implying a parliamentary connection or even authority in what is a purely personal communication. That said, I would consider it at the milder end of inappropriate because the text of the letter itself is clearly in a personal capacity and does not pretend to any parliamentary authority."

You have sought advice from me on inquiries regarding:

- a) Adam Holloway MP;
- b) Sir Roger Gale MP; and
- c) Colonel Bob Stewart MP.

All three Members have used House of Commons headed paper to send out a personal reference for another former Member, who was a defendant in a criminal matter. The personal references were sent to the court to be considered for sentencing purposes.

You have asked:

- 1. Please advise whether in your view writing a personal reference for a former Member constitutes performance of a member's parliamentary functions
- 2. Any other comments you feel may be useful.

Defining parliamentary functions is not straightforward. The Stationery Rules provide:

- 3. House-provided stationery and pre-paid envelopes are provided only for the performance of a Member's parliamentary functions. In particular, this excludes using stationery or postage:
 - i) in connection with work for or at the behest of a political party (including fund-raising for a political party, advocating membership of a political party or supporting the return of any person to public office);
 - ii) for business purposes;
 - iii) for newsletters (including annual reports or general updates to constituents on a range of issues);
 - iv) for birthday or other greetings cards;
 - v) in a way that can be construed as campaign expenditure within the scope of the Political Parties, Elections and Referendums Act 2000.

The activity which is clearly prohibited is the use of stationery for business purposes or for political campaigning. As the Members concerned note, modest use of stationery for personal use is also permissible.

Similarly the Members Estimates Committee has set out some fundamental principles on the use of resources which notes "the role of Members is constantly evolving and different Members have different needs, priorities and ways of performing their duties. Therefore, there will always be areas of uncertainty and the need to exercise individual judgement" but warns:

Anything which is done for personal benefit or for electioneering or for the direct support of a political party will not be part of a Member's parliamentary duties¹

When the Committee on Standards considered the role of an MP some years ago it set out a description which I reproduce here. I have added emphases to points which seem to me to be particularly relevant to this matter:

ROLE OF AN MP

MPs have a multi-faceted role. It includes, but **may not be limited** to:

- supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition);
- representing and furthering the interests of their constituency;
- representing individual constituents and taking up their problems and grievances;
- scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;
- initiating, reviewing and amending legislation; and
- contributing to the development of policy whether in the Chamber, Committees or party structures and promoting public understanding of party policies.

It is for each MP to decide how best to balance these tasks. **Unless their actions damage the reputation of the House as a whole or of MPs in general, MPs have complete discretion in**

a) policy matters;

b) **expressing views or opinions;**

c) the handling of or decision about a case (**whether or not anyone involved is a constituent of the Member**)²

To turn to the character references on which you have asked my view. The use of character references to assist the court is well established in criminal cases. The MPs concerned say they were asked by Mr Elphicke's legal representatives to assist by providing references. They received no personal benefit, this was not electioneering and it was not in direct support of a political party. I see no reason why they should not have used House of Commons note paper to give these references. In addition, these particular character references in all cases referred to knowledge the respondents had as a result of their association with the ex-Member precisely because they were MPs.

¹ Members Estimate Committee, Second Report of Session 2017–19. Consolidated list of provisions of the Resolutions of the House relating to expenditure charged to the Estimate for House of Commons: Members as at 20 May 2019

² Sixth Report of Session 2014-15, The Standards System in the House of Commons

I note the letter initiating the inquiry which you have shared with me also refers to correspondence between the Members concerned and members of the judiciary, but you have not asked for my view on this. I presume this is because, whether or not you come to decide this correspondence was proper, you do not consider that the issue in question is the use of House stationery. If this is the case, I agree.

This letter responds to yours of 26th January 2021 concerning your inquiry into correspondence by certain Members of Parliament with members of the judiciary in the matter of disclosure of character references, in advance of the hearing before Mrs Justice Whipple.

I should preface my remarks by noting that I am unable to provide formal legal advice to individual Members for professional regulatory reasons. However, if asked for an informal view on something by a Member, I am always happy to discuss the issue with them, as well as suggesting possible alternative sources of legal advice, and that is what I would have done in this case.

None of these individuals sought my view before writing their letters. Nor did they seek the Speaker's view about the appropriateness of writing to members of the judiciary about live legal proceedings. If I had been asked for a view, I would have strongly recommended (or advised the Speaker to recommend) that they took appropriate legal advice from a firm of solicitors specialising in criminal work, and discussed with that firm the possibility and the merits of making a formal intervention in the court proceedings to ensure that their views were available to the judge in the case. I would also have advised that they should otherwise refrain from any comment or intervention.

My reasoning for that view would have been that the principle of comity between Parliament and the courts is a long-established element of the UK constitution. In the formal procedural context, Parliamentary privilege protects proceedings in Parliament from being examined and criticised ("impeached or questioned") in court proceedings, and the sub judice resolutions of each House of Parliament (appended, in the Commons, to the Standing Orders of the House) prohibit references in "any motion, debate or question" to cases that are live before United Kingdom courts. (In this case, a question on the general principle of the case was asked at Business Questions, seeking a debate in the future on the topic. It is, in my view, unlikely that a debate would have been granted until the proceedings before Mrs Justice Whipple had concluded, in order to avoid infringing the sub judice resolution.)

As Lord Browne-Wilkinson said in *Prebble v Television New Zealand*³, the courts and Parliament are "both astute to recognise their respective constitutional roles". The sub judice resolution was considered most recently in the report of the Joint Committee on Parliamentary Privilege in 1999⁴, which comments (at paragraph 192):

"It is important that a debate, a committee hearing, or any other parliamentary proceeding should not prejudice a fair trial, especially a criminal trial. But it is not only a question of prejudicing a fair trial. Parliament is in a particularly authoritative position and its proceedings attract much publicity. The proper relationship between Parliament and the courts requires that the courts should be left to get on with their work. No matter how great the pressure at times from interest groups or constituents, Parliament should not permit itself to appear as an alternative forum for canvassing the rights and wrongs of issues"

³ [1995] 1 AC 816

⁴ 1999 HC 214

being considered by the judicial arm of the state on evidence yet to be presented and tested. Although the risk of actual prejudice is greater in a jury trial, it would not be right to remove appeal cases or other cases tried without a jury from the operation of the rule. Restrictions on media comment are limited to not prejudicing the trial, but Parliament needs to be especially careful: it is important constitutionally, and essential for public confidence, that the judiciary should be seen to be independent of political pressures. Thus, restrictions on parliamentary debate should sometimes exceed those on media comment."

This does not, of course, directly apply to the decision of an individual Member of Parliament to correspond with members of the judiciary concerning a live case. However, I would have advised any Member that it would be improper for any member of the general public to attempt to influence a judge in a case to which they were not a party. The proper approach to a court case to which a person is not a party but in which that person has an interest is to make an application in the proper form to intervene in the case so that representations can be made as part of the proceedings, with the full knowledge of all parties to the case.

In addition to those general considerations, in the light of the observations of the Joint Committee on Parliamentary Privilege, and of the courts, on the importance of respecting and maintaining the constitutional separation between the courts and Parliament, I would have said that it would be particularly improper for them to use the authority and status conferred on them as Members of Parliament to influence the outcome of legal proceedings (or, as a minimum, in a way that could appear to be attempting to influence those proceedings).

In this particular case, Mrs Justice Whipple was clearly of the view that the intention of the correspondence was to influence her decision on the release of character references. She said at the hearing: "I wish to confirm, as the parties to this application would anticipate, that I have had no regard at all to any argument raised or suggestion made in any of the three letters from the six individuals. I will decide this application on the evidence and submissions put before me at this hearing by those who have a proper interest in this matter as parties or persons directly affected, and who are authorised by me to participate."

If you have any further questions arising out of what I have said in this letter, please do not hesitate to let me know.

I refer to your letter containing notification of a formal investigation, following a complaint instigated by Helen Hayes MP. The investigation sets out two provisions of the Rules that have been activated, being use of stationery and bringing parliament into disrepute.

I have set out my response in relation to this matter to assist you in making your determination. Giving the seriousness of such a complaint being investigated, I am grateful for the extra time you have allowed for this submission.

I believe that the complaint is not justified. I would respectfully ask that you dismiss it for the reasons set out in this letter.

In relation to the matters which are the subject of the complaint, I have discussed these with my colleagues Bob Stewart, Adam Holloway, Sir Roger Gale and Rt Hon Theresa Villiers. Given those circumstances, I have felt it appropriate to engage with them in formulating my response to your letter. So whilst this is my individual response, I understand that their replies may contain some similar content in some regards.

In view of the collaborative nature of the decisions made and the joint correspondence sent, the word 'we' is sometimes included where that is the best expression of that. However, I take full responsibility for all my actions and decisions that are related in this letter.

I have provided answers to your specific list of questions Annex One attached to this letter.

Personal Context: While you have not expressly requested this information with respect to my personal life, I am aware of the decision in the case of Kate Osamor where parliamentary stationery was used to provide a character reference to a court in relation to a family member. I can provide assurance that the ancillary application to the court did not involve me in my own personal private capacity. I am not one of the 34 individuals who provided a Character Reference to the Court. I have not directly corresponded with the court other than to provide the joint letters to Mrs Justice Whipple on our behalf.

Neither did it involve Mr Elphicke, other than in a nominal/titular sense. As the Judge states, "The dispute lay between the Media and the character referees." As such the Judge did not require Mr Elphicke to attend or be represented at the hearing, and he was not.

As such the arguments and decisions in this matter, unlike the Osamor case, did not involve decisions in a personal context about me or Mr Elphicke. I did not provide a Character Reference and was not a subject to the decision in this matter.

Background to the correspondence sent to judges

The relevant issue arose as a separate matter following the verdict and sentence of Mr Elphicke. The Guardian Newspaper made an application to the court for publication of character references and were subsequently joined in this by two other major newspapers (the "Guardian Application").

Individuals who had given such Character References were notified of the Guardian Application, including the four MPs. I had no personal interest in this. However, I have a constituency interest in this matter because a number of constituents did provide character references. It was in that representative capacity (as a constituency MP) that I am involved in this matter.

Following such notification of the Guardian Application, considerable distress and harm was occasioned on some of my constituents. It was clear from representations made to me that some people did not feel that they could be heard and represented fully or fairly, in particular because of the media involvement. That gave rise to concerns on my part relating to the administration of justice issue. Furthermore, there was a strong view, even from those who otherwise would not necessarily object to their own reference being made public, that this would be a damaging development from the public policy perspective that could deter people from giving such references in the future.

However, it was the particular and concerning impact on my vulnerable constituents that persuaded me that I needed to take action to highlight this important issue. I did not take this decision lightly. I took advice and a number of steps to consider how best to address this issue which I set out below.

These are some examples of the impact communicated to me in relation to vulnerable constituents, following notification of the Guardian application:

Constituent A: a vulnerable individual who had a suicidal episode when they were informed about the Guardian application.

Constituent B: had a rear emergency exit added to their garden because they were so frightened of media intrusion.

Constituent C: is undergoing cancer treatment and had a significant mental collapse on hearing about the Guardian application. They were unable to respond personally to the court. A family member responded on their behalf but could not put the full details of the situation because they were concerned about the media knowing additional information about their medical condition.

Following the decision to publish, Constituent A had a further suicidal episode and I was contacted by another constituent in the following terms "Can you ring [Constituent A, they] is threatening suicide...". A constituent said they felt "violated". A number of constituents have asked how they can make a complaint with regard to this matter. At present, with the complaint made to you by Ms Hayes, I do feel constrained in representing my constituents fully and appropriately at this time.

I discussed my concerns with the other parliamentarians and we all believed that it was legitimate to speak up on the issue of principle raised by the case.

Accordingly, I fully supported the decision of the MP Character Referees to put their testimonials in the public domain as I thought that would assist the court in enabling the focus to be primarily on questions relating to privacy of members of the public, without the matter being overshadowed by media interest in the references provided by Members of Parliament. Given the inevitable media interest in this matter, in line with it being a media application, explaining the reasons for publication was an integral and necessary part of addressing the issue of principle raised by the case and the impact on other people who were not public figures. Otherwise, not to do so, might wrongly give the impression that the MPs were in fact supportive of the principle of publication of such character references.

Action to Publish

On 19th November, the five Parliamentarians published the references they provided, along with a statement from all of us expressing the view that references from members of the public should be not be disclosed.

At the same time as publicly disclosing the references they had written, we sent a letter to senior judges, Dame Kathryn Thirlwell and Dame Victoria Sharp (the Senior Presiding Judge and the President of the Queen's Bench division). You have seen a copy of this letter which is included in your initial disclosure bundle. Because of the involvement of my constituents and my concerns as outlined above, I added my name to this correspondence.

As can be seen by our letter we asked Their Ladyships to consider the principles relating to disclosure of character references. We illustrated our concerns by referring to the members of the public who were distressed about the Guardian Application. We did not ask Their Ladyships to interfere with the judge's decision and made it clear that a copy of the letter would be sent to Mrs Justice Whipple, which it was.

Advice and Guidance

When this issue arose, as it affected my constituents, I consulted with Sir Roger Gale, my neighbour MP, as I often do. Sir Roger is very supportive and helpful to me as a junior MP and I greatly value his advice and experience. My actions and decisions are, of course, all my own. Following, Sir Roger's suggestion, I asked for a meeting with the Speaker to discuss how best to raise this important issue in Parliament in the right way.

Given the current significant constraints on parliamentary engagement due to the coronavirus pandemic, there are considerably fewer avenues available to parliamentarians to debate or raise matters in the usual way.

1) **Meeting with the Speaker:** I discussed the issues that had arisen with the Speaker as they had affected my vulnerable constituents, and that in order to make sure the substance of the issue could be considered properly in Parliament the other MPs and Peer would be publicly releasing their own character statements voluntarily so that there could be no criticism as to their

motives or actions in relation to their support and concern on the substantive issues of public policy.

Given that Justice oral questions had recently passed, he suggested that we apply to raise it during Business Questions to the Leader of the House.

2) **Application to Business Questions:** Application to business questions is currently by way of ballot. Bob Stewart and I applied for the ballot to ask the question. Bob was successful in the ballot.

3) **Notification to the Leader of the House:** in accordance with usual practice, the question was notified to the Leader of the House through his PPS in the usual way, ahead of Business Questions, including the context of the question.

4) **Asked in the Chamber:** the Question was asked and answered in the Chamber accordingly and as follows:

Bob Stewart

The Guardian newspaper has applied for the release to the media of character references that were provided to a judge solely to assist in sentencing during a criminal trial. If allowed, this would be a fundamental change of practice, with far-reaching consequences for the criminal justice system. Will my right hon. Friend allow time for an urgent debate on this vital matter?

Jacob Rees-Mogg

It would obviously be wrong for me to comment on a specific case, but my hon. Friend raises a concerning point. If people have, in a generality, given evidence to a trial on the understanding that is confidential, it risks people not being willing to give such evidence in future if what is believed to be confidential turns out not to be. A just system requires certainty, whatever degree of certainty that is. In individual cases, I understand that it is a matter for the trial judge, under rule 5 of the criminal procedure rules, but I will of course refer this matter to my right hon. and learned Friends the Lord Chancellor and the Attorney General.

5) **Considered in Order in the Chamber:** I sat, behind the bar, in the Chamber for Business Questions. The Shadow Leader of the House (Valerie Vaz) was also in the Chamber for Business Questions, as well as a number of other experienced Members. No objection was made to the question or answer on any side of the House nor was the matter considered to be not 'in order' by the Speaker. A number of colleagues subsequently expressed their concern about the issue that we had been raised in terms that were supportive of the action that had been taken.

6) **Letter to the Senior Judges:** Immediately following Business Questions, a letter was sent to the Senior Judges at the first available opportunity. Having raised the matter in Parliament, we felt it was respectful and appropriate to make them aware of the concerns, and that the character references of Parliamentarians would be made public, and the reasons for that.

In relation to taking such action, including with respect to the letter, reasonable and considered steps were taken. This included consulting relevant parliamentary authorities, namely Erskine-May, House library resources material, Supreme Court resources material and Hansard, including the debate on the introduction of Supreme Court Act, with regard to the extent and limitation on separation of powers and confirmation of parliamentary sovereignty, along with the resolutions and standing orders of the House, discussing with the Speaker and giving advance notification to the Leader of the House, to ensure that the matter was raised in the correct way.

Response from the Lord Chief Justice

You will have seen from the correspondence that you have been sent that [name redacted], the Private Secretary to the Lord Chief Justice, responded on 20th November to our letter to senior judges in a negative way.

We wrote to the Lord Chief Justice on 22nd November to seek to provide reassurance that we were not in any way attempting to improperly interfere with the judicial process, only to draw attention to the important principles involved in the case. Mrs Justice Whipple was also provided with reassurance on this point.

We did not publish any of our correspondence with judges. I believe the judiciary did. The matter was duly decided by Mrs Justice Whipple.

Subsequently, Opposition Spokesman Helen Hayes MP then submitted her complaint to you and press released the same to the Guardian, without notifying me that such a complaint had in fact been made by her. Indeed, she only notified me some days later, following my complaint in respect of this to you and Mr Speaker.

The complaint

Our actions did not contravene either paragraph 16 or 17 of the Code of Conduct for Members. Nor are they inconsistent with any other aspect of the Code of Conduct or any related rules on use of the Crowned Portcullis image or Parliamentary headed paper and postage.

Paragraph 17 – Damage to the reputation or integrity of the House of Commons

As well as trying cases, senior judges have an additional role in which they act in an administrative and legislative capacity in relation to the criminal justice system. For example, the Lord Chief Justice chairs the Criminal Procedure Rules Committee and, with the Lord Chancellor, issues Practice Directions for the criminal courts.

We believe that it was legitimate and appropriate to raise our concerns about the principle of disclosure of character references with senior judges in their administrative/legislative capacity. Such matters could well be the subject of Practice Directions, and they are regularly debated by MPs in the media, in Parliament, and in other fora, without this being viewed as interfering with matters which are the preserve of the courts.

There is also the option for Parliament to legislate on the rules which should be applied in the courts, a further reason why MPs can and should comment on such matters. The 9th December judgement of Mrs Justice Whipple on disclosure of references confirms that the case engaged important points of principle relating to the administration of justice, privacy and human rights. It also acknowledges that the Guardian Application is one related to 'political discussion'.

There are many examples of Members of Parliament speaking up on matters related to the criminal justice system. Hansard records one such instance, as far back as 1883, of an MP highlighting concerns about representation in the criminal courts, including comment on matters falling within the administrative responsibilities judges have for formulating general rules of court procedure (Hansard reference). The issues I highlighted were similar to those in times past.

We recognise that the decision on disclosure of references in the Guardian application was solely a matter for Mrs Justice Whipple and we asked in our 19th November letter only that the Lady Justices "consider the crucially important matters of principle which are at stake in this case".

We of course accept that the senior judges (unless sitting as the Court of Appeal in a particular case) cannot interfere in a judicial decision of a trial judge. Although it is worth noting that they have more recently shown themselves to be prepared to be more active in current judicial matters where they do have concerns, for example they recently removed and replaced a judge in Woolwich Crown Court. However, we did not intend our 19th November letter to suggest that they should interfere in the decision of the judge, only that they consider the important general principles at stake in decisions they might take in their administrative/legislative capacity. In their administrative capacity, that would include the representative issues that I raised in respect of my constituents.

Any perception this might have engendered in the Lord Chief Justice that we were asking Justices Thirlwell or Sharp to interfere with the trial judge's decision in a way that was inappropriate was simply incorrect. We were surprised and concerned by the response from the Lord Chief Justice's Private Secretary.

Accordingly, we provided explicit reassurance to His Lordship to explain that he had misunderstood our letter of 19th November, by our letter of 22nd November to him. In such letter we emphasised once again that it was the general principle which we wished to raise and that of course the decision in the Guardian application was properly a matter for Mrs Justice Whipple alone. He confirmed that was the case in his further response to us.

We would provide the further reassurance that we were not, as appears to be implied in the 20th November letter from [name redacted], in any way seeking to 'go behind the back' of Mrs Justice Whipple. It is clear on the face of both sets of letters that she was to be copied into both our letters to senior judges, and she was provided with all of the correspondence. This did raise a concern that the letter from us had not been fully or properly considered, and the context and purpose of it had been assumed, rather than read.

We would point out that it is an everyday aspect of MP constituency correspondence to raise matters with Ministers where concern is expressed about a general principle with reference to a particular case. In many such instances, the Minister will be unable to intervene in, or comment on, the individual case. Indeed in some circumstances there may be important reasons why they cannot comment or get involved, for example if some form of quasi- judicial or administrative appeal process is underway.

But no one doubts that an MP can write to a Minister, in such circumstances, asking them to consider the general principles raised by an individual case.

Including the details of the particular case is an important means to convey to the Minister the motivation for the correspondence, the practical importance of the issue, and the potential impact on members of the public.

What marks our correspondence in this matter out as perhaps unusual is that the decision-makers were judges acting in their administrative/legislative capacity, not Ministers. But, as set out above, senior judges have a role in issuing practice directions and managing the criminal justice system and therefore do have important powers over the general rules applying in our courts regarding matters such as disclosure. The context related to serious concerns raised by individual constituents and the impact of disclosure rules on them, but what we asked the judges to do was look at the general principles at stake.

In respect of this matter, my own constituents were affected. In relation to the other MPs, I would note that MPs routinely become involved in matters of importance raised by people who are not constituents. That includes signing joint letters regarding matters of particular relevance to the constituents of colleagues. You will know that Section 21 of the rules confirms that pursuance of constituents' interests, whether relating to specific cases or relevant policy matters, is not limited to those of the individual MP concerned.

A finding that a Member of Parliament has caused "significant damage to the reputation and integrity of the House of Commons" under paragraph 17 of the Code of Conduct is very serious. Whilst recognising the sensitivities which apply regarding the relationship between legislators and the courts, we would argue that it would be unjustified and disproportionate to conclude that the threshold for paragraph 17 has been met when, for the reasons set out, a common sense reading of our correspondence shows that it falls within the remit of activity which it is correct and proper to undertake as Members of Parliament.

Moreover, I would highlight the steps taken to brief the Speaker and the Leader of the House on our concerns. Neither indicated that asking a question about the Guardian Application and the principles relating to disclosure of character references was in any sense “out of order”. As set out above, following my consultation with the Speaker, a question was asked by Bob Stewart on the floor of the House during Business Questions. No concerns were raised by the Speaker, the Leader of the House, or other MPs, about the propriety of the question rendering it “out of order” for the purposes of Parliamentary procedure.

The rules on “Parliamentary sub-judice” are not engaged in relation to this question, or our correspondence with judges, since these constraints on matters raised in the House of Commons come to an end when criminal proceedings have concluded with a verdict and sentence (Erskine May paragraph 21.19).

By making the MPs references public, those MPs took active steps to try to prevent there being any suggestion that our joint actions were intended to prevent publication of their identities or references, or to improperly influence the decision on whether to publish them. It was entirely clear from the face of the correspondence that my own interest was as a constituency MP, on a matter of policy that was not sub-judice under the relevant resolution of the House.

The careful steps taken to get this matter raised in Parliament, including consultation with the Speaker, provide a further reason why it would be both surprising and unjustified to view our correspondence with judges as damaging the integrity or reputation of the House of Commons.

Paragraph 16, House of Commons stationary and the use of the Crowned Portcullis

We believe that the use of House of Commons headed paper and the Crowned Portcullis was justified in relation to the letters of 19 and 22 November to senior judges. I did not provide a Character Reference.

Letters of 19th November to Their Ladyships Dame Kathryn Thirlwell and Dame Victoria Sharp and of 22nd November to the Lord Chief Justice and Mrs Justice Whipple

As set out above, we believe it was legitimate and appropriate to address our concerns about the general principles relating to the disclosure of character references to senior judges. That was the intended effect of our letter. It is correct to use Portcullis headed paper for corresponding with a public body on matters of principle and policy.

Matters relating to the criminal justice process are routinely ones on which MPs comment and make representations. It is clearly part of their role to examine and comment on issues concerning the operation of the court process and this justifies the use of the Crowned Portcullis in our letters.

Conclusion

In conclusion, we did not seek to improperly interfere with Mrs Justice

Whipple's decision. We kept her informed of our correspondence and always acknowledged that the matter was one for her to determine. Nor did we ask senior judges to interfere with her decision, only to consider the general principles for the administration of justice highlighted by the case in their administrative/legislative capacities. Given the magnitude of this matter as it affected my constituents, and having considered the matter at length, I did form the view that it was appropriate, and indeed necessary, to raise this matter as I have outlined above. I did so taking considered and careful steps.

In these circumstances we consider that our correspondence relating to this matter was an appropriate use of Parliamentary headed paper and did not damage the reputation or integrity of the House of Commons. The complaint should not therefore be upheld.

Appendix 1: Responses from Mrs Natalie Elphicke MP to the Commissioner's questions of 8 December 2020

1. Are you aware of the rules regarding the use of House-provided stationery and pre-paid postage?

Yes

2. Are you aware of the rule regarding use of the crowned portcullis?

Yes

3. Did you take advice from the House authorities before sending your letter of 19 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

Yes.

4. Did you take advice from the House authorities before sending your letter of 22 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

Please see the answer to question 3.

5. When sending your letters of 19 and 22 November 2020, did you consider using other stationery, such as party headed paper or your own personal notepaper? If you did, please explain why you decided against doing so.

This was a matter involving constituent and policy matters. As such, I believe that Parliamentary stationery and the Portcullis logo was correct and appropriate.

I did consider whether the letter should be printed on green portcullis paper, as it involved a member of the other House. I was aware that MPs can use the red, blue or green portcullis in stationery. As such, I considered that the green portcullis was acceptable in this circumstance, where there were 5 signatories from the Commons and 1 from the Lords.

As the most junior MP, I agreed to arrange the printing and sending of the letter and therefore should there have been an error in using green Portcullis paper involving a Lord, I take full responsibility for that.

I did consider whether I should use my own headed Parliamentary paper or general House of Commons paper. As it was a joint letter which I was joining, and not simply a letter from me, I opted for the general House of Commons paper with regard to the letters of 19 November which I had in my parliamentary office.

For the following letter 22 November, I used the simple portcullis continuation design, because it was a Sunday and I didn't have general House of Commons paper at home. I and the other Members were keen to respond to the Lord Chief Justice's letter immediately, so I didn't want to wait until I was able to attend Parliament to get the response back.

This did not involve a personal interest for me, as set out in the covering letter, so personal stationery was not appropriate.

This was not a party political matter, so party political branded stationery would not be appropriate.

6. Why did you decide to send your letters of 19 and 22 November 2020? Did anyone ask you to write those letters and, if so, who?

I have set out the background and reasons for the correspondence sent in my covering letter.

7. Can you confirm if any of the personal referees referred to in your letters of 19 and 22 November 2020 are your constituents?

Yes.

8. Did you also submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke? If so, please share with me a copy of that character reference and any other correspondence that you submitted to the Court.

No.

I did not correspond with the Court with regard to the character references, other than in respect of this matter, where I sent over the letters to Mrs Whipple's judicial office.

9. If you did submit a pre-sentencing character reference, or any other correspondence to the Court, please can you confirm whether House- provided stationery or/and pre-paid postage was used?

I did not submit a Character Reference to the court. This was not an application that concerned me in a private capacity as I have set out. My interest in this was a constituency one.

I did email the joint letters to the court as outlined in my letter. I did not use pre-paid postage.

KS	Thank you. Right, so the first couple of questions that I have then Mrs. Elphicke are general questions. Have you read the advice that we received from Speaker's Counsel?
NE	Yes.
KS	OK. Is there anything you would like to amend – in anything you have put forward in your initial submissions in light of the advice from Speaker's Counsel?
NE	Well, I was slightly disappointed that you said that we shouldn't respond to Speaker's Counsel ahead of this meeting given the comments I am about to make, and I would be grateful if you there is an opportunity for me to follow-up in writing given the fact that these are obviously technical matters and I am very surprised at the letter from Speaker's Counsel. I am surprised on a number of levels. I am surprised that its incomplete and that the level of research and analysis was not as great or deep as I think it should have been given the seriousness of the charge against us. A charge that is going to blight all of our parliamentary records. So I think the matter – the allegation – that we have acted improperly, so as to bring Parliament into disrepute, cannot be more serious, and I take it as such and I know others of my colleagues do who have already have had their interviews with you. So with that in mind I think the approach to the lack of research, analysis and completeness is very surprising. This is a complicated matter on which considerable thought was given and given how much weight I am sure you will place – and, indeed, any others involved in the process would place – on something coming from a Speaker's Counsel it is particularly concerning that it makes incorrect assertions over what was done or what wasn't done and the actions that I did or didn't take – matters that were not in my letter and have not been discussed with us - between us - it makes an incomplete report in relation to the relevant reports that it refers to.
KS	OK, I want to explore that a little bit further, if I may and just light on a particular comment that was made by Speaker's Counsel, and she says, "it would be particularly improper for them - you and your colleagues - to use the authority and status conferred on them as Members of Parliament to influence the outcome of legal proceedings or as a minimum in a way that could appear to be attempting to influence those proceedings". I wonder what your views are on that particular piece of advice?
NE	I don't think it is a piece of advice – I think it is a comment and I think it is a comment that has been made without consideration of all the particular relevant factors in this matter - without reference to all of the reports and authorities that there are in relation to this specific issue, that I would expect Speaker's Counsel – in order to properly help you with your inquiry – would have drawn to your attention. And it is absolutely not what was intended by the nature of the letter. I would like to come onto that in more detail in terms of the intent and the appearance because that is obviously at the heart of the issue that you are looking at but I would just like to draw out some specifics in relation to the Speaker's Counsel's letter that I will, with your permission, follow up in writing with greater details so that you can take that forward as you consider appropriate.
KS	Thank you.

NE	<p>The first is that it only includes one part of the 1999 Report and by doing so it doesn't refer to an earlier and a later paragraph that are directly relevant to the matter in hand. As such I think it provides an incomplete view of what the conclusions were and indeed what the considerations were in the 1999 Report. Furthermore, and perhaps more importantly, it doesn't reference a later directly relevant report of the same committee which directly addressed the issue of Member correspondence and that was a report in the 2013-14, so, a later report, in the 2013-14 Parliament. This report directly looked at this issue between matters raised in Parliament and the scope of Member's correspondence in relation to it. So it is, I would suggest, an absolutely crucial, piece of Parliamentary information that I would expect for you to be informed of.</p>
KS	<p>[inaudible]</p>
NE	<p>In the letter Counsel's comments make an assumption which is incorrect, that I did not seek guidance from suitably experienced criminal lawyers in the matters or that I didn't encourage individuals who had concerns to raise those directly with the criminal lawyers in the case to be reported to the judge.</p>
NE	<p>The letter should have recognised the role of the Speaker in relation to sub judice rule that is – slightly differently to, from how it is described. We've seen the Speaker is very clear about the sub judice rule and in relation to the current Sarah Everard case the Speaker and his deputies have intervened already and issued guidance in relation to this matter not being discussed in Parliament. However, the Speaker himself has the discretion as to when the sub judice rule operates and when it does not. Assuming for a moment which has not been the position – that is something that has not been considered as to whether or not which the matter in hand fell within the sub judice provisions as set out in the relevant standard. The Speaker himself, when he exercises that discretion, can allow matters to be raised on the floor of the House and it is the Speaker's discretion which is the relevant factor in relation to this. In this matter the Speaker exercised his discretion to allow the question. No objections were raised in the Chamber on any sides. The question made it clear that there was a policy concern that related to the subject matter at hand and the letter that were sent was consequent upon that matter being raised in Parliament, in the due way, having asked the Speaker for permission to raise the issue. Speaker's Counsel implies that I said that the Speaker approved the letter. I did not say that. I believe that in putting that in her letter she creates a wrong impression that I said that I did it - I did not. I am saying that he allowed proceedings in Parliament and the letter was resultant and connected to such proceedings in Parliament. This is the very issue that is explored in the 2014 Report and so the consideration of those issues is highly relevant and therefore I think it should be considered – you should have a report that actually includes the full information.</p>
KS	<p>OK. I look forward to receiving that information from you, Mrs Elphicke, thank you.</p>
NE	<p>And then, a couple of other points on it. The comments that Mrs Justice Whipple does not take into account the letter, I take the completely opposite view in relation to Speaker's Counsel's</p>

	<p>comments. I do think that it is reflective of the fact that we were not writing to her and we did not direct the letter directly to her because we were intending, and did raise an important matter of policy that we wanted addressed as parliamentarians. So, I take a different interpretation of those comments and I would not expect Mrs Justice Whipple to have said that she took account as if we were parties to the proceedings in front of her - that is not the purpose of the letter and that was not the reason it was copied to her, which I will come back to, I am sure in the course of this discussion.</p>
NE	<p>I was slightly surprised that it was Speaker's Counsel rather than the Clerk to the House who was asked about this matter given that it would be the Clerk to the House who would normally give evidence to the Committee when they would be looking at this matter, and I did think it was relevant that the Committee are currently looking at this role about correspondence and MPs and whether more needs to be done to clarify the position in light of the changing role. Again, this is exactly the issue that the 2014 Report is looking at. The extent to which the changing nature of the MP's role reflects on correspondence and its relationship to matters in the House.</p>
NE	<p>So, I think just to summarise on that I think the Speaker's letter is not a complete opinion – I do think that it could benefit from a more detailed review and also a greater consideration of what we were actually doing and trying to do and believed that we had done in relation to raising a matter of policy – in particular – the role of the Speaker in exercising his discretion in matters on the floor of the House, which she doesn't touch on and the role of correspondence in relation to matters that are Parliamentary business raised on the floor of the House.</p>
KS	<p>OK, thank you, and I look forward to receiving those additional comments from you. I want to move on now, to talk about the letters to the judiciary. I understand that you led on the drafting and the sending of the letters. Is that correct?</p>
NE	<p>All the letters that were drafted went through the same process. We had discussions individually and collectively. I put together drafts, collected comments, collected re-drafted letters and circulated updates. As I have said in my letter to you as the junior member of the MPs, I arranged for the sending, emailing and all the admin work, if you like, that went along with that. I confirmed with each individual person that they were comfortable that they were being sent from us and during that process we saw the final letter that was sent being substantially re-written throughout a period of a number of days in order that it properly distinguished between the matter of principle that we were trying to set out in the letter, individual concerns that would be routed through to the criminal lawyers in formal submissions to the judge and to make it clear that that was our intent and that's what we felt we got to in the final letter that was sent to the senior judges.</p>
KS	<p>Thank you. Can you send me please the comments that you received from your colleagues and the various drafts and iterations of the letter before it was sent?</p>
NE	<p>I can send you a comparite of the original and the final letter. As I said in my comments just now, I collected comments and re-drafted letters and circulated updates and so I don't want you to be disappointed if you don't have lots of emails saying "on paragraph 3 mark 4, can you change x,</p>

y and z". It was very much a collaborative effort. I would say, obviously, Theresa and I were the two people who put most work into the drafting – who considered the points. She is obviously a highly experienced former Cabinet Minister as well as being a lawyer and was very helpful in making sure that we really clarified the issues that were right and the ones we wanted to raise as a matter of principle and those matters that shouldn't be there. From the early drafts to the final drafts, there are some 150 revisions on the letter so it was not a rash or ill-considered piece of work – it was a considered piece of work which we took time to try and make sure that it properly reflected the matter of principle that we thought was so important it should be raised. We felt that we raised it in the right way and as you will know from my letter that I am happy to expand further - I took a great number of careful and considered steps in order to make sure that the letter reflected the right approach as well as the right content.

KS OK. Well, thank you for your offer to send me the comparator. If you can do that please then obviously, if we need further, then we will come back to you and/or your colleagues about that. Can I ask you what outcome you were hoping to achieve by sending the letter of the 19th November to Dame Thirwall and Dame Sharp please?

NE Well, let me start with the question that is behind that – which was what I not trying to do, which is I was not trying to influence Mrs Justice Whipple in her decision in relation to the case before her and that is why we didn't write to her and only to her and that is precisely why the letter was written to senior judges and why the issue was raised as a matter of principle in Parliament and why that was set out in the letter. Because it was and it remains my view that this is an important issue of principle which should be addressed in Parliament.

NE I raised it in Parliament, and I intended by the letter to flag it with the senior judges who were responsible for the administration of justice and practice guidance as I've set out in my letter to you. I also asked to meet with the Justice Secretary and Attorney General in line with the question in Parliament and on my email to them of the same day I would like to read to you what I said when I copied the letter to the senior judges.

"Dear Robert and Suella, Today, Bob Stewart asked a question in Business Questions to the Leader of the House which relates to the attached letter which has been sent to Dame Victoria Sharp and Dame Kathryn Thirwall from six parliamentarians. The question and answer in the House is set out below for ease. I would be grateful if we could arrange to meet with you urgently to discuss how best to address this matter for the reasons set out in the attached letter. For the avoidance of doubt, it is the principle of the matter rather than any particular case and the likely impact on the justice system should such information not referred to in open court be released in past, present or future cases. In the current case I have a number of extremely distressed constituents and the handling of this matter has caused mental harm and considerable distress to vulnerable people who have simply done their civic duty in accordance with sentencing guidelines."

NE Then we set out the question and answer. And I am happy to provide that to you.

KS	OK, thank you, that would be very helpful. Can I ask then, if the letter is about the principles on the release of character references, could you help me to understand then, why a large section of that letter concerns Mr Elphicke's court case specifically?
NE	Which large piece of it are you referring to?
KS	So, well a large section of the letter of 19 th November specifically relates to Mr Elphicke's court case and what you are saying is that the letter is about the principles on the release of character references but a large section of the letter relates specifically to Mr Elphicke's court case.
NE	Well, I think for one thing it doesn't relate to Mr Elphicke's court case for the reasons I have been at pains to explain – it relates to a media request for the disclosure of information that was provided to the court. Mr Elphicke was not a party. He was not represented. He was not required to be represented or a party. He was not a party to this particular hearing. It was a media request for the disclosure of information and it's that element that marks it out as something different from a - going in to say, not that we would obviously say this, exactly for those reasons, to make a comment on the Sarah Everard case at the moment. So, it wasn't about Mr Elphicke's case and I think this is quite an important distinction that we hold in our mind.
NE	So, turning to the addressing of the context of the case, which is the hearing, why is it referred to? Because it is illustrating the very matter that we are trying to raise as a principle. And that is a matter as follows. This was a case where the media were asking for private information to be put in the public domain. In circumstances where those individuals did not have a right, the same right, at the hearing, to be present at the hearing as The Guardian newspaper did. So, this is was decision about those people who were not in fact, a direct party to the case or represented legally in relation to it.
NE	Now in the course of that situation it became apparent that there were two really important issues of public policy and those are that whilst there have been tremendous changes across the board in relation to looking at the issues of privacy, this hasn't extended to the context of the justice system in the same way. So, at the moment there has been an extension of privacy for some participants in the judicial system but not for others. With the rise of the social media age and the impact of reporting this important principle of how the judicial system operates has not been explored in recent times by Parliament or indeed in those practice guidance matters that I referred to that the senior judges have administrative oversight and responsibility for setting. The second one is the fact that the decision to publish as a matter of course character references that haven't been read out in court would be and is something which would impact as a matter of principle in sentencing practice on all past, present and future cases. So this was something that went far beyond a single case or a single decision and regardless of whatever the decision that Mrs Justice Whipple had made in that case, if she had said "No, nothing can be released", it doesn't take away from the fact that the application by The Guardian exposed an issue of principle that I do believe its important for Parliament to address and also important for the senior judges to address in the administration of duty and in their sentencing role.

NE	<p>It is and it seems a very unsatisfactory position if we have a situation where people cannot make representations – do not feel they can make representations to a judge in a privacy case because they cannot make those representations in a private way and that is an issue of administration of justice for senior judges to consider. Mrs Justice Whipple was very clear in her judgment that such issues over social media abuse, not being able to work in employment in the future and the like, were not for her in relation to her courtroom. I agree with her and that's what she is setting out - that these are matters which go to the rights and privacy of individuals across the land outside of my constituents and simply have not been considered in the modern age and at the moment I am involved in Parliament in a number of projects looking specifically at social media abuse, trolling, at the psychological and real harm that happens when that occurs and that is what I saw happening to my constituents and I think it is absolutely vitally important that parliamentarians, when they see that things aren't right, that they are having a direct harm on individuals, that actually they raise those with the right authorities in the right way. That is what I am trying to do, that is what I thought I had done and I was so shocked and dismayed when the Lord Chief Justice reacted in the way he did and I expected him to want to start a dialogue and with the Justice Secretary about the important principles that actually I do think need to be addressed in order to modernise the justice system in a situation such as this. And when we look at policy issues – policy, it doesn't exist in a vacuum. The whole point of policy is that we learn from the situations that happen and our role as parliamentarians, I believe, is to interpret and apply what's happening in the day-to-day and to consider what needs to happen in the day tomorrow. I take that really seriously. That's what I think I am here to do. And that's what I was trying to do in this case. Not just make sure that the real harm, the real concerns, the mental harm that had happened to my constituents - I wanted people to realise that this was serious so that they would take account of the fact that in the future these are issues that do need to be addressed particularly in the modern media age and that was the principle that I was trying to achieve, that's why I wrote to senior judges and that still the issue that I am concerned about.</p>
KS	<p>Thank you. You have made that very clear. Did you ever consider waiting until after the case to raise these issues?</p>
NE	<p>The particular timing issue in this case was the fact that I wanted to raise the issues on behalf of my constituents to raise the important principle that was at stake and the five parliamentarians had got character references that otherwise would be subject to the same hearing and so it was really important to make sure that the matters of principle that was being raised were not conflated or confused of any self-interest for those parliamentarians or for me, as a Conservative MP, or indeed, as an MP for other MPs, and for that to be confused.</p>
NE	<p>So in order to raise the important matters of principle for all of us it was essential that actually those parliamentarians put their own character references in the public domain and in doing so, removed themselves from the impact of the decision, and the jurisdiction in the narrow sense, in relation to the publication of the court in such matters. So there was a very careful consideration of why the timing was important and that was because Mrs Justice Whipple needed or had required the responses to go back at the end of that week. So they were released on the Thursday and the responses about whether or not people agreed to their publication and their</p>

particular comments were required back by the Friday. So it was important that the parliamentarians who wanted to speak up for this important principle with me, that they released their own references so as to avoid any conflict of interest or concern for them or for me in raising the issue but also to make sure that we informed Mrs Justice Whipple because otherwise not to do so would be discourteous and I did speak to criminal lawyers about that particular issue and they were clear that actually the right thing to do was to copy her in and make sure she had a copy of the letter. I did that its clear on the face of it is clear on the email that I sent to the senior judges and I say “this is being copied to Mrs Justice Whipple” so for the Lord Chief Justice to imply that we were somehow going behind her back or trying to influence over her head is simply not the case and I think our actions were very very clear that we were trying to separate the two issues, the issue of principle and the issue that was before Mrs Whipple’s court including that as it related to the other parliamentarians and the reason we had to do that was because of the timing of the court’s timetable, for them to have to make a response and because there was a concern that if they were subject to the court or wrote a letter to Mrs Justice Whipple explaining the principle of why they were concerned then it would potentially – it would look like they were using their influence as parliamentarians to try and influence the judge and that is what we were trying not to do. So, we went to great lengths to try to separate the issues to try and really clarify – we worked really hard at that letter – it is a complicated issue – there is no two ways about it. But we really worked really hard to try and get that balance right. Now I appreciate at the end of the day that it will be your determination will be whether we got that balance right and we will have to learn from that if we didn’t get it right. But that was the intent and those were the actions.

KS OK. Thank you. You spoke at the beginning of our conversation about the importance of separating the public and the private and I wanted to give you the opportunity to set that out. So, as the letter to Dame Kathryn Thirwall and to Dame Victoria Sharp concern both the interest of both your constituents and Mr Elphicke, how did you balance the competing public and private interests?

NE It didn’t concern the interests of Mr Elphicke in any way. Mr Elphicke was not – it is only in his name – he was not a party – he was not represented – he was not a party – he was not required to be at the hearing. His lawyers didn’t have to represent him at the hearing - Mrs Justice Whipple sets that out in her judgement. She didn’t require him to be there because it doesn’t actually involve him – it was an application by The Guardian newspaper to release information that the court held that related to the other 36 individuals - not including Mr Elphicke and not including me obviously, so it had nothing to do with Mr Elphicke or his case.

KS OK. So, therefore you would not have needed to consider recusing yourself from this matter because there was no conflict between your public role and your private interests at the time because there wasn’t one?

NE I didn’t have private interests at the time – at this particular juncture it was public knowledge that I had filed for divorce so, as I say, I think that one can make assumptions around the private that might not be entirely correct there but in relation to the actual position it was very much the case that I had, I felt, a constituency and parliamentary duty to discharge and the way in which I

satisfied myself that that was proportionate and reasonable and separate - was through the process of all the advice that I took – I spoke to the Leader. I spoke to the Leader of the House, I spoke to criminal lawyers, I spoke to five extremely experienced parliamentarians who include a hatful of privy counsellors, a former cabinet minister and a minister – people who between them have got between them probably a 100 years’ experience in the House. I took time and I took advice because I knew that this was a really important and complex matter and I wanted to make sure that I got it right. When I wrote the letter, the letter makes it clear that we are joining together and that I am joining in my capacity as a sitting Member for Dover and Deal in relation to the vulnerable witnesses who are my constituents and that is absolutely clear on the face of the letter. And that’s why also in relation to the question as to whether it should be on parliamentary paper, that is also entirely appropriate and indeed essential that it was written on parliamentary paper because I wrote the letter as an MP; I was discharging my obligations as an MP. This was not a hearing which affected Mr Elphicke or at which he was present except in a titular fashion – a nominal fashion - and I worked with all those people and I took a great deal of advice as well as looking at the issue myself because it is actually a very interesting issue, which I have been reading rather more than I ever expected to do over the last few months so I think I took every step including making it clear that the capacity I was joining the letter and the reason I was writing the letter was as a parliamentarian and I think that was the right thing to do.

KS OK. Can I just clarify something – so you spoke with the Speaker and you spoke with the Leader – are you saying that they supported or approved your letter? Can you tell me what role the Speaker and the Leader played in this particular matter?

NE Absolutely. As I mentioned in relation to Speaker’s Counsel, I haven’t said that the Speaker has approved the letter – I have not raised that in any way. The relevance of the letter to the parliamentary proceedings is in relation to the 2014 Report and the role of members correspondence to the matter of parliamentary proceedings so that is why. That is the relevant connection – the resultant from the proceedings in parliament which were obviously by the way of the Business Question. I think this is probably set out most clearly – at least, I hope it’s most clearly – in the letter that I sent you in relation to it. So, what did I do? I discussed the issues that had arisen as they affected my vulnerable constituents – I explained the harm that is set out in the letter. I explained that the other MPs and the Peer had agreed to publicly release their character statements – so there’d be no criticism of their motives or the substance of public policy that we were raising, I explained that we wanted to raise this in the House, and I asked for his guidance on how best to raise it in the House.

KS ‘His’ being the Speaker or the Leader? Sorry Mrs Elphicke....

NE The Speaker. So, the Speaker was fully aware, as the question sets out that this was a matter on which we had concern on the principle that related to a matter on which a decision was being made and he suggested that Business Questions would be a good way to raise it – particularly in the timeframe – because as I mentioned to you the judge had set down a timetable which had required responses by the Friday. And at the moment as you’ll know the methods for raising questions in particular with coronavirus, have been extremely limited so the normal ways in which

one would approach - a variety of ways in which you could raise matters in parliament are simply not available - and have not been available for most of this pandemic. So the meeting with the Speaker was to outline exactly what the issue was including the fact that there was an upcoming hearing – to outline the fact that it was affecting my constituents - to outline the fact that we were concerned that this was sufficiently serious from a public interest perspective to be raised on the floor of the House and to ask him, in view of that, how best we could raise that issue and as I say he recommended that we put it in for Business Questions.

KS So, what you are saying is that he wasn't aware of and therefore there was no question of him supporting any letter to be written. You were seeking his advice about the best way to raise it as a public interest matter on the floor of the House. Is that right?

NE We were seeking, I think the important thing which will become more apparent when you get the advice note from the Speaker's Counsel is that we were asking him for permission to raise this matter on the floor of the House – that is within the Speaker's discretion in relation to something which was a matter – that was going to be decided by a judge in relation to the disclosure but which was not the criminal trial, which had concluded by way of sentence and verdict by that time.

NE So it was an ancillary matter that wasn't related to Mr Elphicke's trial and conviction and Mr Speaker was made aware of – I discussed that with him – and the reasons why we thought it was an important issue to be raised on the floor of the House and on the basis of that he gave his permission for us to ask a question over this particular matter which we did so. He was obviously in the Chair when the question was asked – there was no objection made to the Speaker – no objection made from the Shadow Leader of the House, Valerie Vaz, also a member of the Labour Party, like Helen Hayes – no objection made from the Shadow Leader – no objection made from the floor of the House from any side - and the question asked and answered.

KS And, of course, the Chamber and the questions that are asked there are entirely the Speaker's domain. My question is about clarification of the Speaker's awareness of and support for your letter. You are not suggesting that he was aware of or supported your letter, are you?

NE What I am saying is that this was a parliamentary proceeding and the letter was 'resultant from' it.

KS But was he aware of your letter and supported it?

NE I have given you my answer to that and I think the relevance of that will be clear when you get the right information about why this matters.

KS And, what about the Leader then? You said you specifically took advice from them?

NE	<p>So, the Leader – I notified the Leader of the House in the usual way to make sure that he knew the question that was going to be asked and the context again, like the Speaker, the context of why it was being asked – and specifically raised to the attention of the Leader that it related to a question within the context of a specific case but about which we were trying to raise a matter of principle that we felt was essential to raise as a matter of public interest and a matter of policy and I think that is reflected in the Leader’s remarks when he makes that very distinction that I would hope that he would make in any such matter. So, I absolutely drew it to his attention and also to the context of why it was that, notwithstanding of the fact that it was a specific case, we were seeking to raise this important matter of principle and you can see from his answer that he, like us, is addressing the important matter of principle and suggests that actually this is something that is perfectly proper to be referred to, and be taken forward in the right way.</p>
KS	<p>OK. Thank you.</p>
NE	<p>And I believe that the letter we wrote is resultant and consequent and follows from that course of action in the House. It was parliamentary business on which we were writing to the senior judges seeking to make this important distinction and in doing so, making sure that we were addressing it to the senior judges and not, as I have explained, before solely or directly to the judge in the case precisely for the same reason as the Leader of the House refers to because we were trying to raise an important – really important matter of principle that I still think needs to be addressed.</p>
KS	<p>OK. Thank you. As you were raising concerns on behalf of your constituents, can you help me understand how the other five co-signatories came to be involved with the letter? Did you invite them to join you on this – discussing this matter of principle or ...? How did that happen?</p>
NE	<p>I don’t understand the question.</p>
KS	<p>OK. So I’ll ...</p>
NE	<p>Are you saying how did we get to the stage where we were working together on the letter?</p>
KS	<p>Yes.</p>
NE	<p>So, I think I bumped into Theresa in the House and we had a chat about it and she was thinking about what her position was and how she was going to respond to it. She wasn’t aware particularly of the impact that it had had in relation to my constituents – she was understandably concerned. We discussed the issue and it was clear that it was, you know, a matter that was one that was really quite an important one, for the reasons that I have outlined, then we got to a stage when all the parliamentarians thought – as I said – the best thing to do was to raise the matter of public interest to make sure we raised the matter of principle and that they would release their letters in order that the matter could be raised and the relevance of the constituency interest is not raising the individual constituent’s issues because you can see from the letter there is nothing that actually refers to Mrs A as worried because it relates to x, y and z or she would</p>

like the third word in the third paragraph redacted – that’s what was happening through the criminal teams it is relating to a class of people –who have been impacted on this to illustrate the severity of the issue and the impact so that the underlying issue could be considered and addressed by those who we felt were best able to address and consider it. Who was not the individual judge in the case because she is deciding the case on current law and procedure, as she should do, and we were not seeking to influence that in any way.

KS OK. I would like to now just turn to the statement to the media that accompanied the publication of the references provided by your colleagues and I understand that you led on the drafting of that statement. Is that correct?

NE No.

KS OK. Can you tell me how the statement came to be drafted then, please?

NE I think the first draft was provided by Theresa but I would have to check.

KS Right.

NE We worked on the draft like we did on the letters.

KS OK. So you followed the same process – one of you drafted it and others ...

NE Others commented, others contributed until we got to a draft that everyone thought reflected the best position that we wanted to achieve in the circumstances. Yes.

KS OK. So do you recall then how the final statement was approved and agreed?

NE I think it was probably circulated and then everyone said yes or no. I mean that’s what happens - you get to a point where everyone then goes yes or no.

KS OK.

NE I mean that’s what happened to the letters as well, it’s the same all the way through.

KS OK. Thank you. I want to share a draft letter with you now, Mrs Elphicke, and as you heard earlier, neither [name redacted] nor I are terribly good at technology but we will give it a go, so, [name redacted], over to you, and practise your sharing skills please.

[name redacted] shares the letter.

KS OK. So, this is a letter that was not sent, Mrs Elphicke, and I just wanted to check with you - do you recognise this letter as your initial draft?

NE	It certainly looks like an earlier draft, yes.
KS	OK. And please can you explain why this draft letter is considered – is classed as a formal complaint.
NE	<p>Because this letter was reflecting all of the comments and discussions we had had in relation to the issues that my constituents had raised with me. This was the first putting down of a kind of big splurge, if you like, of all of the issues that there were in the matter and from this we then winnowed the issues that were actually issues that related to matters of principle and those issues which should be raised with the criminal legal team in relation to either the representation issue or particular matters in the case so I encouraged the individual constituents concerned to try and raise this directly with the criminal lawyers, in some cases they did, and in some cases they felt constrained in doing so and then as I have mentioned in my letter to you, I do have constituents who feel that they had not been, you know, dealt with in the right way, on this. And I have written to you that they still wished me to take their matters up on their behalf about how their own representation was made in this matter and why provision was not made to allow them to present their issues in private but instead of in front of the world's media. That's not something that I've progressed. I am aware that some of them have also written directly to the judges already, their own complaint letter, and I advised them that if they had concerns then they should – they should feel free to raise those letters and make those complaints. It was apparent that they didn't have a place and they were not the right way to go about things for what we were trying to achieve here. So this is, if you like, the splurge of all of the issues and concerns that have been raised and the final letter reflects what is our intention of the issues to raise with the senior judges for the reasons that I have outlined. And those issues related to the constituents' complaints have been dealt with either by the constituents direct as complaints or I say are ones which they would like me to help make complaints because making complaints about matters in judicial terms is not, you know – is another area ripe for reform, I would suggest – but in relation to their own position what was unusual about this particular situation was that they don't have the normal right of appeal because they weren't actually the party – the party was the newspapers so their ability to make their concerns known is much more constrained than it would be in any other kind of matter – including any civil matter. So, this is the draft – it looks like – I mean – I am fairly sure this looks like the draft letter I was referring to being from the first to the last draft there were some 150 revisions. The final draft reflects our intention. This draft, if you like, reflects the smorgasbord of issues that there were and I took great care to distinguish the issues to go to the criminal team – or to encourage the constituents to raise with the criminal team – the issues that should go in the final letter to the senior judges and those that were absolutely not appropriate to go to the final, to the senior judges in this letter.</p>
KS	And that would include presumably removing the calling for the removal of Mrs Justice Whipple from the proceedings because that would be an attempt to interfere with a live judicial proceeding?

NE	<p>Judges do get removed from time to time. I think I referred to one of those in my letter to you and there has been a recent case where that has happened and that, in my world experience, would be more unusual – a relatively unusual thing to happen. There have been judges who have been accused of bias and asked to remove themselves and they have or haven't removed themselves, so, it does happen, from time to time but it is clearly out with the parliamentary remit and that's why it doesn't appear anywhere in the final letter. It does reflect the strength of feeling of some of my constituents which I think is perhaps unsurprising given the enormity of the impact where you have a situation where people are self-harming and threatening to kill themselves. So, given the magnitude of the impact on individuals I don't think that it was surprising that some of them felt that this was a judge who perhaps hadn't considered the needs of vulnerable constituents, particularly where they had issues of mental health concerns already on the information that the judge had before her. But as a parliamentarian, in this context, that was not my role and that was not my job and I did not put that in the final letter and it was removed and that was the right thing to do and I am pleased that we did that because I do think the final letter that we ended up with absolutely reflected our intent - which was to let Mrs Justice Whipple decide whatever she thought was appropriate in the context of the hearing, having the five MPs and Peer exiting themselves from that process, by the release, in order that we could raise these important issues of principle that, I as say, I still think need to be addressed.</p>
KS	<p>Okay. Thank you.</p>
NE	<p>But to be clear I have not myself made any complaint about Mrs Justice Whipple. I am aware that some of my constituents has written direct to senior judges but I have not done so in my parliamentary capacity, including as constituency MP.</p>
KS	<p>OK. Thank you. The final question from me, Mrs Elphicke, is Lord Freud apologised to the House of Lords and to the judiciary and said that he had made an error of judgment in being involved with this letter. What are your views on that, please?</p>
NE	<p>I have read the Lord Commissioner's response and it obviously doesn't reflect all the steps that were taken in relation to this matter. I also understand that that is the decision that the Lord Commissioner took in relation to the House of Lords. I think in relation to the House of Commons, the question as I have seen this is - did I act in such a way where I took all reasonable steps that I could take to make sure that I did things in the right way for the House in which I sit – which is the Commons and not the Lords. I can't really speak to the Lords – they don't have constituents – and I don't think Lord Freud was wrong to support the position of releasing his reference. Because he was in. The Guardian newspaper had made it clear that their application to court was to get the letters of the MPs so therefore I think it was important for Lord Freud to decide whether he thought that he had the same issue in relation to influence that actually he wouldn't want his decision in relation to his letter to be influenced by the MPs having made the comment and released theirs but that is really a matter for him and obviously I am aware that he has apologised and clearly if you decide we that have done the wrong thing and acted in a wrong way then the consequence will follow from that and I will accept that and I will learn from that.</p>

NE	<p>But I do feel, I still feel that this was an incredibly serious matter - that didn't involve me at a personal level – but did have an extraordinary impact on my constituents and exposed that there was something which as a matter of policy needed to be addressed in how the judicial system managed in the modern age and ensured that people's privacy and ability to get representation in matters that affected them was properly considered – all the more so when people are very vulnerable – and that is something in which in other settings the courts have been very good about – they have been very good at making specific provision for vulnerable people and for considering privacy issues. But this isn't an area that hasn't ever had anywhere near this level of scrutiny and it has been an area where – it hasn't just been an area that's been looked at in any significant way and I think this case – this situation – what it did – it identified that there is a serious policy issue to be considered.</p>
KS	<p>Right. Thank you. Mrs Elphicke, that is the end of my questions now – just to give you the opportunity to make any other comments or ask any questions of us and then [name redacted], if you can set out the next steps please on what will happen next. So, over to you Mrs Elphicke, if you have got any questions and we will do our best to answer them, or any comments on anything if you feel you haven't had the opportunity to set out?</p>
NE	<p>Well, I think the obvious – so clearly - I have got a couple of things I am going to send in to you which I will do so following this and I would like the opportunity to write in formally about several matters that I have raised in Speaker's Counsel's letter because I would like the opportunity to set out why I have taken the steps that I have particularly taken and made the assessment and I think it important that the position is looked at in the round on this.</p>
NE	<p>There are a couple of other comments I wanted to make, if I may. The first is that it doesn't actually – it doesn't make sense to me as a new MP that we can say something in parliament and not write a letter about it afterwards, and that is at the heart of this issue. We raised it in parliament, we wrote a resultant letter and now the question is whether writing a letter about something we that raised in parliament is wrong. And I do think that what the 2014 Report is highlighting is the risk of parliamentary rules not keeping pace with the modern role of the constituency MP and indeed the role of MPs today. And this is something which the Committee is, I understand, going to look at again in light of a number of issues arising in relation to the use of stationery.</p>
KS	<p>Yes.</p>
NE	<p>I tried very hard to take advice from everyone to get to the right solution. I have to say, in that regard, I was certainly not aware that Speaker's Counsel had this informal role that she describes. I am not aware of any MP that I've come across who would speak to Speaker's Counsel in the informal way that she has described. I have checked her role. I have checked the information available to me and I attended all the Chamber's briefings with the Speaker in relation to the operations of the House and this was not made known to me at any time. In any event, Speaker's Counsel rightly says that it is not her role to advise the Members in relation to their work. And I think in relation to that work we are Members of Parliament, we are not lawyers,</p>

we don't have legal teams, in fact we don't have access to a Members' legal team to cover this sort of issue in the House and the idea that we should. I am not sure in what way the steps that I have taken could have been improved and obviously I am sure that will be something that you will tell me if that is the case. So, I think I tried very hard to look at the right solution – I did consult authorities – I consulted the parliamentary authorities in the shape of the Speaker about the issue that had arisen that I wanted to raise with the other MPs. I asked the question in the House. Followed up with letters, not just to the senior judges but also to the Justice Secretary and the Attorney General. So raised an issue that was very very clearly identified as a matter of principle that had arisen in this matter. So, if I find that I am still under criticism, I feel that it's a lot of experienced seniority that got it wrong. And that at no point did anyone say that it was improper. The only impropriety that was suggested would be not telling Mrs Justice Whipple the reason for the references having been released on the grounds of the policy matter and therefore not copying her in – which was of course exactly the comment which the Lord Chief Justice makes in relation to that communication and that was done – she was copied on the face of it – she did receive the letter – that was done. So that was the key piece of advice was make sure that you effectively don't go behind judges back in raising an issue because that might be misconstrued and if you raise it only with the judge – that might be misconstrued, so therefore the approach that was taken was to raise it as a matter of principle for the reasons we have explored with the senior judges, copy it to Mrs Justice Whipple so everything was transparent and above board. There is no question in relation to any of our actions other than the fact that we were entirely transparent and above board. We raised the matter publicly – we raised the letters and copied them to the judge in the matter – we really tried to do everything that we could – the MPs and Peer had released their own character references – we tried to avoid any suggestion that we were doing anything other than raising a very serious matter which had arisen in relation to this that we felt should be considered from a policy perspective.

NE The second thing I wanted to raise is that policy isn't created in a vacuum, it's based on experiences and that people have experiences sometimes that they should have, and they have experiences that sometimes they shouldn't have. Here was a situation where the harm and distress caused was considerable and it's important for that to be recognised as it draws attention to why this is a policy matter around the rights of privacy and representation that does need to be addressed in this modern social media age. Was I upset that some of my constituents were so distressed that they were considering self-harming over the fear of media exposure? Of course I was. And I was upset that anyone in this country could find themselves in such a position. Social media and vile abuse is something that is an absolute blight and it is the subject of considerable attention from a policy perspective across the spectrum and I do think that that should include the judicial system. There are considerable privacy protections for some participants in the justice system but not others and I think that it could be of great benefit to consider the particular circumstances where privacy rights are affected in relation to other participants without that being seen as a criticism of a particular judge or a particular decision as Mrs Justice Whipple made very clear that there were a range of issues that were raised by these private individuals from the fear of social media to potentially having damaging employment prospects that she said were not relevant in a legal sense to the legal issue before her. And that's why it is a matter that is proper for debate in parliament because it is about the guidance and

	<p>procedures in the justice and administration system and where the balance lies. The administration system is for senior judges and that's who we wrote to. Parliamentary privacy and balance issues are primarily for parliament. And that's why I took the actions that I did and I do remain of the view that this is an important policy matter that needs to be addressed.</p>
KS	<p>OK. You've been very candid and very clear, Mrs Elphicke, and I am grateful to you for that. Let me just invite [name redacted] to just talk us through next steps, please.</p>
SP	<p>What we will do now, Mrs Elphicke, we will have to wait for the transcript to be typed up – then we will send you a copy of the transcript and we might be sending you further questions just for clarification if anything arising from this interview. I note you want to send us comments in relation to Speaker's Counsel so it is up to you, if you want to wait until we send the transcript or you want to send it before that. We are aiming to send the transcript by the end of the week and by early next week at the latest. Is that sort of clear?</p>
NE	<p>That's fine – I think I will probably wait for the transcript in that case particularly if you have further questions coming out of that. That would probably be the easiest rather than popping in a letter before but entirely up to you.</p>
SP	<p>Thank you</p>
KS	<p>OK. Fine. That's very helpful, Mrs Elphicke, thank you, again, for your time today and thank you for your thorough and full responses to the questions and for your additional comments which are clarifying your perspective. That's been very helpful indeed. So, I look forward to hearing further from you and [name redacted], if you can make sure we do get that by the end of the week, I would be very grateful. Thank you.</p>
NE	<p>Thank you very much for your time. Bye</p>

I am responding to your request for final comments by Tuesday 30 March 2021 before your final adjudication. In reaching that adjudication, I would be grateful if you could consider the matters raised to date, as well as those set out in this letter by way of completeness.

The issue raised was one of an important matter of policy and principle about the naming and publication of character references, including the effect of such matters on individuals in a modern social media age.

This issue has a broader impact outside of any individual case. As such, the issue was raised in Parliament and thereafter by correspondence to all those in a position to consider it, namely Parliament, the senior judges and the senior law ministers. All three parts of the system – from privacy law to practice directions and sentencing guidelines – are relevant to the consideration of this issue. Accordingly, it was raised with all three parts of the system on the same day.

I attach in this regard my email to the Justice Secretary and Attorney-General that same day, which references both the Parliamentary proceedings and attaches the letter to the senior judges, which states *“For the avoidance of doubt, it is the principle of the matter rather than any particular case, and the likely impact on the justice system should such information, not referred to in open court, be released in past, present or future cases.”* Of course, in practical terms it has not been possible to further progress any such policy discussions at this time.

In relation to myself, I became involved in this matter given the extremely harmful impact it had on a number of my constituents. I felt that it was my duty to do so, so that the issues could be considered and in the hope that such harm as my own constituents experienced could be avoided to others in the future. I did not have a personal interest in this matter, directly or indirectly through association.

In the circumstances and in view of the extensive steps and care taken, I would be very disappointed if you did conclude that I and other MPs had acted in such a way so as to reach the threshold of bringing Parliament into disrepute under paragraph 17 of the Code.

There are three issues which have been highlighted during this enquiry process which, given their importance, I take this final opportunity to address, namely:

- (i) our intentions as expressed through the drafting of the letter;
- (ii) my own position with regard to actual or perceived conflict; and
- (iii) the relationship between the Parliamentary proceedings and resultant correspondence.

(i) Our intentions - the process of refining the letter

The final letter to the senior judges (dated 19 November 2020) was achieved by a process of around 150 revisions. This reflects a winnowing to our true intention, and a distillation of the various concerns raised, in order to pinpoint and present those matters of policy and principle which we raised in Parliament and are expressed more fully in the final letter.

I have offered to, and with this letter provide, a marked comparison between that early and final letter and that does demonstrate that great care was taken to distinguish:

(a) matters which were to be discarded as irrelevant/ inappropriate. In my interview, it was said that Mr Elphicke's case was described at length in the letter to the senior judges. It was not. It was irrelevant to the matters that we were raising in that letter and that is reflected in the letter which was sent. Also were removed any references to complaints about Mrs Justice Whipple, including whether she should hear the matter, such issues had been raised with me by my constituents, some of whom have themselves, and separately, made complaint about their treatment. That was not appropriate to this letter, and so was removed.

(b) individual matters which constituents should raise for the attention of the court, which were to be raised through criminal lawyers.

(c) wider issues of policy and principle that were appropriate and right to go in the final letter - being ones for the senior judges in respect of their administrative/judicial capacity, along with Parliament, and the most senior law Ministers, namely the Justice Secretary and Attorney-General would be asked to consider.

While we directed and addressed the letter to the senior judges, we copied it to Mrs Justice Whipple as a matter of courtesy so that she should see that the MPs who otherwise would be subject to her decision had voluntarily published their references in order to raise the issues of principle set out in the letter.

Moreover, we also raised the matter publicly in order be open and direct about the policy issues that we were raising as Parliamentarians.

(ii) Acting in my professional capacity – no Conflict of Interest

In my interview you asked as the letter concerned “both the interests of both your constituents and Mr Elphicke, how did you balance the competing public and private interests?”. As discussed, there was no private interest. I wish to be absolutely clear about this:

- I did not give evidence or take part in Mr Elphicke's trial in July 2020. This is a matter of public record.
- I filed for divorce from Mr Elphicke in July 2020. This is a matter of public record.
- R v Mr Elphicke in so far as it concerns Mr Elphicke and Mrs Justice Whipple had previously concluded by sentencing on 15 September 2020. This is a matter of public record.

- The matters in issue on 25 November 2020 did not concern Mr Elphicke. Indeed Whipple J said “The dispute lay between the Media and the character referees.”¹ This is a matter of public record.
- Moreover, the Judge did not require Mr Elphicke to attend or be represented² at the hearing, and he was not. This is a matter of public record.
- R v Mr Elphicke may have been the case title, yet, as the Judge made clear, the hearing was between the Guardian newspaper/ other media and 34 or so individuals, not including either Mr Elphicke or me.
- The letter to the senior judges is entirely and unmistakably clear about my capacity as a Member of Parliament. It says

“Many of these most vulnerable witnesses are Mrs Elphicke’s constituents, and they have raised such matters of harm and distress with her directly. She therefore joins us as a signatory to this letter in her capacity as the sitting Member of Parliament for Dover and Deal.”

This was covered in my original letter to you. I was extremely dismayed that this was raised in my interview. I am, as I said I was, acting as a Member of Parliament with a direct constituency interest, as I have a public duty to do. That I have, or could be perceived to have, any personal conflict of interest by way of nominative association in this matter is wholly and completely incorrect.

(iii) Parliamentary Sub-Judice – Discretion of the Speaker

The Standing Orders of the House do not allow matters which are sub-judice to be raised in Parliament, other than at the discretion of the Speaker.

This is explained in Erskine-May’s authoritative “Parliamentary Proceedings” to which I had regard, as my previous submission refers. Erskine-May states at para 21.19 “*Subject to the discretion of the Chair ... matters awaiting the adjudication of a court of law should not be brought forward in debate.*” The resolution states “*That, subject to the discretion of the Chair... the House in all its proceedings ... shall apply the following rules on matters sub judice...*”. It continues “*Successive Speakers have exercised the discretion provided for them in the resolution to allow matters to be discussion on which (although they fall within the strict terms of the sub judice rule) they have considered that no substantial risks of prejudicing proceedings would arise*”.

In other words, it is not a blanket ban – indeed it states that “Successive Speakers” have allowed discussion to take place on sub-judice matters.

Erskine-May then confirms at para 22.21 “*The rules by which the House abides on matters sub-judice apply equally to questions.*”

In relation to the publication of the character references, this was a separate and discrete ancillary matter which does not easily fit within the language of the relevant Standing Order. This is reflected in the language used in the final letter which reflects the Standing Order approach to conclusion by way of verdict and sentence in criminal matters.

However, and in any event, care was taken as if it was covered by Standing Orders, and I note that Speaker's Counsel is of the view that it did. The decision as to whether a matter can be raised is a decision for, and at the discretion of, the Speaker, and the Speaker alone.

As Hansard shows, in this instance, the Speaker did permit the question to be asked and answered, as he – and he alone - is entitled to do as Speaker. Moreover, no objection was made in relation to this from any Member present.

As I said at my interview, it is difficult to reconcile being able to raise a matter in Parliament and not write a letter about it afterwards. As MPs we do this all the time. It is a central, and commonplace, part of the job.

Speaker's Counsel seems to suggest in her observations to you that we should have asked the Speaker not just about raising an issue in Parliament, but also have asked him to approve the letter we wrote about it afterwards.

With respect to Speaker's Counsel, I would never ask the Speaker to sign off my letters. With 650 MPs, including his own postbag, that is hundreds of thousands of letters. That would not be a practical course to take.

However, this relationship between correspondence and Parliamentary Proceedings has been considered by the relevant Committee and I am surprised that Speaker's Counsel did not make reference to this.

In particular, the 2013/14 Report, draws attention to the evidence of the Clerk of the Commons where he advises a "*pragmatic test in each case*" as to "*how closely what the Member (or witness, or parliamentary official) did or wrote was connected to actual proceedings in the House.*" It goes on to report that such proceedings may be "*actual or foreseen*" and that such proceedings include matters such as the "*tabling of a motion, question or amendment*". This can include constituency matters. Indeed, for most of us as MPs that is what we usually table motions, questions or amendments about, our constituency matters. As can be seen, this is a different position to the implication of Speaker's Counsel that the degree of Parliamentary Proceedings is relevant (ie Business Question or debate). Proceedings for these purposes include all and any such matters, be it tabling a motion, question or amendment.

I fully accept that the Lord Chief Justice may have been unaware that this matter had been duly raised in Parliament and with the Senior Law Ministers. That certainly explains him writing to the Speaker with regard to our letter and his misunderstanding about it. Realising the Lord Chief Justice's misunderstanding we acted swiftly to rectify it with him saying "*Nothing in our*

correspondence was intended to challenge the judge's authority" and to Mrs Justice Whipple "we do not in any way challenge your authority to take the decision on publication" and "We would again emphasise that highlighting this in Parliament is not meant, in any way, to interfere with the judicial process."

Accordingly to decide that letters - which direct relate to a contribution which is held in order in the House itself and are necessary to advance policy matters raised in respect of it – are so improper as to bring Parliament into disrepute would be a harsh conclusion given the care that was taken and given that this was a matter which unquestionably had a severe and significant impact on certain members of the public, namely my constituents, as set out previously to you.

Throughout this matter, I hope that you see that I took every step and all reasonable care to do the right thing and certainly in no way to intend to act in any way improperly as has been suggested.

Enclosure 1: Email from Mrs Natalie Elphicke MP to Rt Hon. Robert Buckland MP and Rt Hon. Suella Braverman MP, 19 November 2020

Today Bob Stewart asked a question in Business Questions to the Leader of the House which relates to the attached letter which has been sent to to Dame Victoria Sharp and Dame Kathryn Thirlwell from six parliamentarians.

The question and answer is set out below for ease. I would be grateful if we could arrange to meet with you urgently to discuss how best to address this matter for the reasons set out in the attached letter. For the avoidance of doubt, it is the principle of the matter rather than any particular case, and the likely impact on the justice system should such information, not referred to in open court, be released in past, present or future cases.

In the current case, I have a number of extremely distressed constituents and the handling of this matter has caused mental harm and considerable distress to vulnerable people, who had simply done their civic duty in accordance with the sentencing guidelines.

Bob Stewart (Beckenham) (Con)

The Guardian newspaper has applied for the release to the media of character references that were provided to a judge solely to assist in sentencing during a criminal trial. If allowed, this would be a fundamental change of practice, with far-reaching consequences for the criminal justice system. Will my right hon. Friend allow time for an urgent debate on this vital matter?

Mr Rees-Mogg

It would obviously be wrong for me to comment on a specific case, but my hon. Friend raises a concerning point. If people have, in a generality, given evidence to a trial on the understanding that is confidential, it risks people not being willing to give such evidence in future if what is believed to be confidential turns out not to be. A just system requires certainty, whatever degree of certainty that is. In individual cases, I understand that it is a matter for the trial judge, under rule

5 of the criminal procedure rules, but I will of course refer this matter to my right hon. and learned Friends the Lord Chancellor and the Attorney General.

Enclosure 2: Draft of letter of 19 November 2020 from Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP to Dame Kathryn Thirlwall, Senior Presiding Judge (England and Wales), and Dame Victoria Sharp, President of the Queen's Bench Division with drafting amendments and comments.

Not reproduced here.

I acknowledge receipt of your communication of the 8th December and am, first, saddened that you have been dragged into what is patently and transparently a party-political device.

To answer your specific questions:

1. I am aware of the rules regarding the use of House provided stationery.
2. I am fully aware of the rule regarding the use of Crown Portcullis.
3. I did not need to take advice from the House authorities before sending the joint letter of the 19th November. Having been a Member of the House for thirty-seven years I did not feel that this was required.
4. Ditto.
5. The letters sent on the 19th and 22nd November were Parliamentary letters and as such were entirely properly written on (Green Portcullis) Parliamentary headed notepaper.
6. I believe that the answer to this letter is set out in full in my letter sent to the Lord Chief Justice on the 26th November (copy enclosed).
7. I do not know whether or not any of the referees - other than myself of course - were constituents of mine and that issue is not relevant: this is a matter of Parliamentary principle.
8. It is a matter of record that I did submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke. That letter is enclosed together with a copy of the letter (which you clearly have already) sent to Dame Kathryn Thirlwall and Dame Victoria Sharp. This I am afraid is only a draft copy - the original is not in my possession.

My own letter to Lord Burnett, sent in confidence - but I assume that it is in order to provide you a copy - was sent in response to his Private Secretary's letter (he did not write it himself of course) sent in response to our letter and dated the 20th November. I note with wry amusement that that letter, complaining about the misuse of Parliamentary stationery, was sent on Lord Chief Justice's headed notepaper!

Finally, as I have indicated I believe that the use of Parliamentary headed notepaper was entirely justified in this case and in any event would be covered by the provision for "limited personal use". I would respectfully submit therefore that there is absolutely no case to answer.

Enclosure 1: Email of 26 November 2020 from Rt Hon. Sir Roger Gale MP to the Lord Chief Justice, Lord Burnett of Maldon.

I have been afforded sight of the letter sent by your Private Secretary by email to Mrs Natalie Elphicke MP in response to the letter sent by myself and colleagues to the President of the Queen's Bench Division, Dame Victoria Sharp DBE and Lady Justice Thirlwall.

I should first correct the impression apparently gleaned by your Private Secretary suggesting that this letter was released to the Parliamentary Correspondent at the Press Association: it was not. Second, your Private Secretary raises the concern that this letter was written on "House of Commons note paper". This is entirely proper as it was a letter from Members of Parliament to the recipients on official Parliamentary business.

For the avoidance of any further misunderstandings may I state clearly that this letter is sent to you personally and in confidence and I would welcome your personal response.

It is not clear to me whether or not you have actually seen the original letter yourself but your Private Secretary has expressed the concern that Members of Parliament have sought to "influence the decision of a Judge in a matter of which he or she is seized". As a Member of Parliament of 37 years standing and as a Privy Counsellor I do not need to be reminded that "the independence of Judges extends to being free from interference by judicial colleagues" or that those decisions "must be free to make their decision independently of pressure or influence from all, including legislators".

Your Private Secretary appears to have missed the thrust of the letter.

Mrs Justice Whipple (Whipple J) had apparently decided to hold a hearing in respect of an application by the Guardian Newspaper for the release of character references in respect of Mr Elphicke.

It is the view of myself and my colleagues that those letters, if placed in the public domain, could set a dangerous precedent that would damage the prospect of future references in other cases being made available in support of an individual. My purpose in writing was quite simply to seek to protect the Parliamentary confidentiality of our constituents that is the foundation of our work and I would respectfully suggest that we in turn must be free to carry out our work in the trust of those that whom we are elected to represent and without the threat of the publication of confidential documents.

We have released to the Press our own testimony in respect of Mr Elphicke to make it absolutely plain that we are not seeking to protect ourselves.

This is not the first time that the Guardian Newspaper has sought to exploit Parliamentary correspondence. I was personally involved in seeking - happily successfully - to protect the release of confidential constituency casework to the Guardian following the conviction and sentencing of Mr Jonathan Aitken, formerly the Member of Parliament for South Thanet.

The constituents formerly represented by Mr Charlie Elphicke have offered testimony on the basis of assistance given to them by Mr Elphicke in sometimes sensitive cases. I hope again we can agree that it would be entirely improper for any of that information to be made public through a "fishing trip" by a national newspaper using the Courts as a vehicle to secure their release.

The concern and urgency was that it would have been absolutely pointless to have raised this issue after the event - by which time the damage would have been done - hence our letter to the President of the Queen's Bench Division and the senior presiding Judge. There is no suggestion that the hearing should not properly have been held but simply that it should have been held in private rather than in public and I am concerned that that did not prove to be the case.

I would hope that even now there will now be a recognition of the real concern in this matter which has nothing to do with the case of Mr Charlie Elphicke but is to protect the rights of confidence of our constituents.

Enclosure 2: Letter of 20 November 2020 from [name redacted], Private Secretary to the Lord Chief Justice of England & Wales, to Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP.

As per WE2 above

Enclosure 3: Character reference dated 20 August 2020 provided by Rt Hon. Sir Roger Gale on behalf of Mr Charlie Elphicke

I am Roger James Gale of [address and date of birth redacted].

I have served as the Member of Parliament for North Thanet since 1983.

I am aware that Mr Elphicke has been convicted on three counts of sexual assault and my observations are made in the knowledge of the Court's findings.

Charlie Elphicke first approached me to seek my advice, entirely properly, when he was considering applying for the candidacy for the South Thanet parliamentary seat in 2006. He was subsequently selected to fight the Dover seat which he won in 2010 and held until he stood down from Parliament in 2019.

Charlie Elphicke has been known to me throughout his Parliamentary career, which has included service as a Lord Commissioner ('Whip'), as a hard-working, courteous, diligent and caring MP. During his time in office he earned, I believe deservedly, the respect and affection of even those of his constituents who were not of his political persuasion. In the course of nine years we have worked together on many of the local issues facing East Kent and on matters of wider political concern. I have been impressed by his readiness to try to see both sides of an argument before intelligently arriving at his own considered position.

I hope and expect that Charlie Elphicke's very considerable acts of public service will be taken into account by those charged with the responsibility of determining his future.

Enclosure 4: Draft of letter of 19 November 2020 from Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP to Dame Kathryn Thirlwall, Senior Presiding Judge (England and Wales), and Dame Victoria Sharp, President of the Queen's Bench Division.

As per WE6 above

KS	...the recording to you and the transcript of the meeting and any copy that we keep will be held securely in line with the House's Data Protection Policy. Let me just start off by saying this process is inquisitorial, not adversarial. You can be absolutely assured that I am committed to independent, impartial, thorough and fair processes, and the purpose of this meeting is to ask you some questions, hear your views on advice received from the [Director of Customer Service and Delivery] and [Speaker's Counsel], and to ask you some follow up questions from the ones that you've already been asked in writing. I just think it's very helpful to meet face to face albeit virtually then we can have a conversation.
KS	There's also an opportunity for you to ask any questions that you might have or make any wider points that you'd like me to consider, as I consider this particularly matter. We'd just gone through the fact that the meeting is being recorded, a transcript of the meeting will be provided to you and after the meeting I'll also outline in writing the next steps that my enquiry will take.
KS	So, I hope that's sufficient reassurance for you about what we're going to do and how we're going to do it. I've got a number of questions I want to go through Sir Roger, if I may please.
KS	We sent you a copy of advice that we received from Speaker's Counsel, from [Speaker's Counsel] and from [Director of Customer Service and Delivery] and I wanted to ask you, first of all, have you had the opportunity yet to read the advice from Speaker's Counsel and from [Director of Customer Service and Delivery]?
RG	Yep.
KS	Okay, thank you. And would you like to amend anything you've put forward in your initial submission in light of the advice that they've given?
RG	No. If you want me to quality that I will, but no.
KS	Okay. That's fine, that's fine. Let me just go through the next point then, just to look specifically at the advice from [Director of Customer Service and Delivery]. You'll be aware that he has advised that writing a personal reference for another former Member does not form part of parliamentary function and the permitted modest use of stationery does not apply. I wonder, what your views are on that advice?
RG	I think he's absolutely wrong. My – and indeed – you know I'll come onto the Speaker's Council in a moment, but I think he's absolutely wrong.
RG	I wrote the reference that I wrote as a Member of Parliament. I am an elected Member of Parliament. It was written very deliberately as a Member of Parliament. It is because I am a Member of Parliament that I know Mr Elphicke. It is because I am a Member of Parliament that I've had dealings with him over very many years.

RG	And, I believe that that use of that paper for that purpose was entirely appropriate. It's not the first time that I've done it, and I doubt that it will be the last. And, that's forgive me, not any comment upon anything that you may say. But I can recall one particular case, for example, relatively recently where a young man who is highly impressionable got into bad company who went before courts was due to be going into the army, had a good career ahead of him and a disciplined one, which was what the lad needed.
RG	I had no hesitation in using parliamentary paper then to write a reference to the court saying that I did not consider that it would be in the public interest for him to face the sentence that would effectively make his embryonic career impossible. I am delighted to say that the courts looked favourably upon that. And, as a result he is now a first-rate serving soldier.
KS	Okay.
RG	So, as I said this isn't – and I think that – I think historically (phone rings) – sorry – I think historically there are probably other occasions when I've done similar things.
KS	Okay. And the young man that you've just described Sir Roger, was he a constituent?
RG	No, actually.
KS	Right.
RG	He wasn't technically.
KS	Right.
RG	But he was a young man that I know and have known since – actually, since he was two which is a bit terrifying. But he's somebody that I've known and watched grow up. As I say he's highly impressionable, the sort of lad who's very easily led and therefore needs leading, and he's in exactly the right place now in the army because he's being well led. And he's doing very well.
KS	Okay.
RG	And as I've said, I don't have any problems with this – I've – over thirty-seven years and I've been meticulously careful, I think to use House facilities for the appropriate purposes. And as I said the letter that I wrote on Mr Elphicke's behalf which was requested – well, I wasn't requested, I was asked if I would like to write a reference and I said, "Yes, absolutely. I will."
KS	Okay.
RG	That's not to – and the letter makes it perfectly plain of course, that's not to seek to justify in any way what Mr Elphicke did. But if you're asked to comment upon somebody's character, you'd have to

	comment upon the person you know. And the person that I know is not the person that appeared in court.
KS	Okay. Thank you. And therefore I must ask why do you consider a character reference for a friend to fall within your range of parliamentary functions?
RG	It's not simply a character reference for a friend. I was asked by Mr Elphicke's solicitors, I think who originated the enquiry, probably having been told that I was somebody who knew Charlie well, would I be prepared to provide a character reference. And I had no hesitation whatsoever in doing so. Just for the record I did – I think I did the same thing again for somebody I knew very well, for Jonathan Aitken.
KS	Right.
RG	And just for the record because I think this is important, this is not remotely party political as far as I'm concerned. Steve Ladyman, my next-door neighbour in Thanet for ten years was a Labour Member of Parliament, who was also if you choose to use those words, "a friend". Had Steve been in trouble of a similar nature – he wasn't – but had he been – knowing Steve as I knew him, again as a constituency Member of Parliament who was kind and generous and very good with his constituents, I would have written exactly the same letter on Steve's behalf.
KS	Thank you. That's very helpful. Thank you, Sir Roger. If I turn now to the advice of Speaker's Counsel and I know that you – you wanted to come onto that. If I can quote to you from [Speaker's Counsel] advice. [Speaker's Counsel] has advised that, and I quote: "It would be particularly improper for them..." (that's you and your colleagues) "...to use the authority and status conferred on them as Members' of Parliament to influence the outcome of legal proceedings, or as a minimum in a way that could appear to be attempting to influence those proceedings." I wonder, what your views are on that advice?
RG	Well, first of all I am mildly surprised that the Speaker's Counsel has chosen to offer any opinion at all in this matter. I suppose it's up to her whether she does or not. And she was asked for it by you, but we don't have access to Speaker's Counsel. And just for the record the only time I think I've ever – probably the only times I've ever sought advice has been from the Clerk of the House of Commons. So, of course as a lawyer.
RG	But, I don't normally do it because I've been around, I'm old enough and ugly enough I thought to know my way around the system fairly well. So far as Speaker's Counsel is concerned, as I say I am surprised that she has been willing to say what she's said in the way that she's said it. Particularly, well of course I don't know what information you've provided her with.
RG	But had she for example, seen my letter to Lord Bernard because without seeing that which was a – by the way that letter still awaits the courtesy of a response – but without seeing that she would only have had one side of the story. I don't think that what I and my colleagues did was in any way

	improper. The phrase has been used, and you used it a few moments ago, “seeking to influence the outcome of a court case”. That is patently and absolutely, not the case.
KS	Right.
RG	I noticed that the Lord’s Counsel said the same thing.
KS	I was quoting from [Speaker’s Counsel] advice Sir Roger, it wasn’t my own –
RG	No, but it has been suggested that by a number of people – you know – that this is – and it’s sort of becoming part of the folklore now that we tried to interfere with a court case. No, we didn’t. Absolutely not. Again, I’ve been around long enough to know that there is a separation of powers and we are, I think as a breed normally studiously careful. In this instance there was a clear point of parliamentary principle at stake, which is the relationship between a Member of Parliament and his or her constituents. We may come onto it in a minute, but I had the same issue again twenty years ago, or whatever it was with Jonathan Aitken, and ironically the same newspaper. I don’t for the record, actually believe it’s right for a newspaper to seek to use the courts to secure information on which they then presumably intended to base a story, which effectively is what The Guardian newspaper tried to do.
RG	But, the point in principle, I have no problem at all – one of the reasons we published our own letters was to make it abundantly plain that we were not seeking to hide anything ourselves. But we all deal with very harrowing cases sometimes and those are highly confidential. A member of the public has to know that they can come and see their Member of Parliament without fear or favour, and without it being broadcast on the radio or published in the papers.
RG	And I have an absolute rule, and have had for thirty-seven years which is that I never, ever comment at all upon casework to a newspaper or a radio station, even if the subject of that has themselves been to the paper and said, “You can talk to Roger because he’s been trying to help me.” For why, because you can’t be a little bit pregnant and if you do it once, then everybody says you’ve got to be able to do it.
KS	Yes.
RG	I’m sorry, as far as I’m concerned, it’s completely ringfenced. I will not comment on constituency casework. Now, constituents have to know that they are having their confidentiality protected.
RG	Some of Mr Elphicke’s constituents as I understand it, were approached for references, and they are some people that he helped who will be very ordinary people, who will have had very real problems, who will sought the Member of Parliament’s assistance and he will have helped them and they’ve said as a result, “Yes, of course, I’m prepared to say he was kind, and he was generous, and he was decent and you know he – he really helped me when I – when I needed help.” And you know, that happens over and over again, and of course it’s never – the irony is that it’s never reported because it shouldn’t be reported.

RG	In this instance there's for me – and I believe very strongly in principle, there was a clear issue that had these letters – not ours – but these private letters from constituents been published, that would have set a very dangerous precedent. Because, thereafter nobody would've felt safe in writing a reference of this kind for anybody at all, because they would have been doing so in the knowledge that it could well appear in a newspaper. And I understand sadly, that two of my parliamentary colleagues actually have suffered abuse as a result of the publication of their letters. I may have done too, but I don't know because I don't read my own social media. It's not something that I choose to do for probably fairly obvious reasons.
KS	It sounds like a –
RG	Why – Why inflict pain and damage on myself? There's no point in it.
KS	Well it sounds like a very sensible –
RG	I don't think the Speaker's Counsel was right in saying that this was an interference in a case, it was not. The letter was very clear indeed. It said it sought a consideration of the situation.
KS	Okay.
RG	The generality, not the specific., the generality. Now the specific – yes, of course had to be used as an example. It would have been a very odd letter to write if there hadn't been a reason for writing it.
KS	Of course.
RG	But the specific was not the issue. The case of being tried, Charlie had been sentenced as yes, he had been – sorry, Charlie had been found guilty, and as far as I'm concerned that's not a live case.
KS	Okay.
RG	If there was a live case at all, it was the one being held in the interests of The Guardian newspaper.
KS	Okay. Let me just pause there. [name redacted] you've got your hand up?
SP	Yes, I just wanted to clarify just – just for the sake of – just of thoroughness that [Speaker's Counsel] was sent all the information. So, I didn't want you to think she was only sent – she was sent what you had responded to and everything. So, she had all the documents. I just thought that it would be important to clarify that.
KS	Okay.
RG	Well, if she had then I'm even more surprised and disappointed. She certainly didn't, I can't speak for my colleagues because I haven't discussed it with them. But she certainly didn't do me the courtesy

	of asking me what the situation was, or how I saw it before she responded to you. And at the very least, that is a discourtesy.
KS	Okay.
RG	If I were in that position – if I was going to reply at all and I probably wouldn't – well I would've replied courteously to you and said, "Sorry, I can't comment." But given that she had chosen to respond, I think at the very least she might've discussed it with me.
KS	Okay. Let me turn to the letters now to the judiciary, Sir Roger, can you tell us please what role you took in drafting and approving the three letters that were sent?
RG	I can't actually remember who originally drafted – some – somebody must've drafted something to set the ball rolling.
KS	Yes.
RG	Thereafter, as far as I'm aware and I haven't yet copies of all the drafts of everything. In fact, I haven't even got the full copy of the final letter that was sent. But I had most certainly read it very carefully and I was absolutely satisfied that it was completely proper and within bounds and on that basis, I signed it. And I take full responsibility for the fact that I signed the final letter. I'm not – I wouldn't dream of trying to suggest that it was anybody else's fault and "not me guv".
KS	Right.
RG	I read it, and I signed it.
KS	Right. Thank you. And what was the specific outcome you were hoping to achieve in sending the letters? What is it you were wanting to achieve by sending the letters?
RG	Precisely, the review of the situation, and if possible, I suppose in this particular instance an indication that any hearing that was going to be held would be held in private, rather than in public. Because immediately of course, the thing is held in public, the newspaper has got what it wants.
RG	And Ms Stone, I think that you are probably aware of this – I can't remember what I actually said in my submission to you, but I know that I said to Lord Bernard, very clearly, as far as I'm concerned and I'm unique in this respect – The Guardian newspaper has got previous.
KS	Right.
RG	This is not the first time in my political lifetime that they tried to do the same thing in a rather different way I grant you, but nevertheless The Guardian when it bankrupt Jonathan Aitken, got its hands on I think from memory – eleven tea chests full of papers and books. Most of those were valuable books, the sorts of things that Jonathan had collected, a signed copy of Jonathan's autobiography of Richard

	Nixon – that sort of thing, which were worth money. And as part of his bankrupted state The Guardian newspaper was entirely within its rights to flog it for whatever it could get for them. I have no particular problem – I think it's rather distasteful, but I have no particular problem with that.
RG	What I do have a problem with is the eleventh box, if it was the eleventh, was solely very private constituency casework papers. And most Members' of Parliament have files, and then have files within files that are "Do not destroy ever" bits of paper. You've probably got some as well. They are things that are so sensitive – that – relating to other people's business – that they should never be destroyed, but they must never be released. And I probably got half a dozen in that category which I keep to myself. And those were some of Jonathan's papers and I know because I know what was in some. I don't know the detail, but I know the broad thrust of them. And I had to fight like a wildcat to the last minute, literally before going up into the chamber to make a statement to the House. And I had to take on Mr Aitken's lawyers and beat them into a corner, and threaten to name and shame them, if they chose to try and publish any of these papers.
RG	You may not know, and actually I don't know now, but I think I'm right in saying that even now and certainly then, parliamentary papers are not protected in the way that a lawyer's papers are, or a doctor's papers are. I find it quite astonishing that they're not, but they're not. Or, they weren't.
RG	And I don't – Patrick Cormack said he would get the regulations changed but I don't think they ever were. So, it is a very potentially, a very serious situation indeed. And it goes right to the heart of parliamentary responsibility and accountability. And that's why I feel – and I do feel as you understand – I feel very, very strongly about this.
KS	I do indeed and I'm very grateful to you, Sir Roger, for explaining so clearly and so candidly your passionate belief that this is a point of parliamentary principle and please believe me when I say I'm listening very, very carefully to what you have to say.
KS	I want to – to turn now to the oversight responsibility that you set out in your letter of the 19 November and I'll just read you the relevant paragraph from your letter. It says, "We therefore believe that it is important for you as senior judges with relevant oversight responsibility, to consider the crucially important matters of principle which are at stake in this case." Could you help me understand please what oversight responsibility did you think these judges had, and how did you expect that responsibility to be fulfilled?
RG	I suppose in glorious hindsight it might have been better to have written straight to the Lord Chief Justice. I am not particularly expert in the arcane structures of the legal profession. Or, indeed the exact seniority. Who the addressees were is one thing I that I didn't have any say over. I certainly didn't complain about it and I took it, I think probably correctly for granted that somebody's done their homework and said if you want to do this, these are the people you need to approach. If it had been me doing it solo, I would probably have written straight to the Lord Chief Justice. On the basis that if I want an answer from a company, I'd write to the Managing Director and if he chooses to pass it down the chain to somebody else to answer that's fine by me, but I go in at the top, because that is going in at what I regard to be the right level.

RG	So, I would probably have written to the Lord Chief Justice but I – my understanding is that these were the two people who were potentially in a position to exercise that judgement to look at the situation, to understand where we were coming from, and why we were saying what we were saying. And I would have thought – I’m disappointed in the response, I would have thought there would have been a sharp intake of breath and an “ouch”, we need to look at this more carefully because we are in danger of setting a precedent.
KS	Right.
RG	There’s no point in trying to intervene after the event. I mean it had to be done – you know it did have to be done fairly quickly and it was done fairly quickly. I don’t – I don’t personally believe it was the wrong thing to do, and I think that Speaker’s Counsel has come back to – was wrong in drawing the conclusions that she has drawn from this. Because it was not, patently not, an attempt to interfere with the courts of justice in a particular case.
KS	Okay. Thank you. You raised in your response to my initiation letter, that the letter that was sent to the senior judges “...was an attempt to protect the parliamentary confidentiality of our constituents.” Could you explain that a little bit more please? Or do you feel you’ve explained that?
RG	I think I probably have but for the sake of clarity, these particular people were not my constituents, so far as I am aware – one of them might’ve been, I don’t know. So, I’m not actually concerned with who they were, I’m concerned with what they were. What they were is ordinary people who were constituents who have a right, [unclear] human rights law apart from anything else – to privacy. And when they wrote that what they wrote, I’m quite sure they did so in good faith as a testimony to somebody who may have done lots of wrong things. In this case – have been found so guilty so clearly had, but that is not what’s in dispute. But so far as they were concerned, Mr Elphicke had done a good job –
KS	Right.
RG	In a kind and proportionate way. And you know I have to say – obviously I’m disappointed with the manner in which he has behaved privately, but his public persona I stand by every word that I said in my reference because the man that I knew – know was kind and generous and thoughtful and considerate and diligent and painstaking and looked after his constituents in the way that I can only begin to know by how I look after mine.
KS	Thank you. Thank you. The statement to the media, Sir Roger, I’d like to talk just briefly about your accompanying statement to the media that went along with the publication of your references. Could you explain please what was your role in drafting that media statement?
RG	Again – I mean – again, I’m not absolutely certain who drafted it, and I – and I don’t want that to be material because I take responsibility for what I issued under my name – others can say what they - they think for themselves. So whoever drafted it, the purpose in issuing it – you couldn’t – if you think

	<p>about it logically you couldn't have said out of the blue with no reason at all – you know our five statements or however many were issued – I don't know whether they were all issued. Certainly, Theresa's and Adam's and mine and Bob Stewart's were published I know – I don't know whether Lord Freud's was or not. But we needed to make it plain that this was not an attempt to hide our involvement in these references. I have no problem whatsoever if the courts had turned round to me (computer froze) I find it necessary to publish your statement which would have been actually unusual as a (unclear) I think that this is common practice. It isn't. I'm not saying it has never been done before, but it isn't common practice. That is absolutely – I know, I've checked it out. I know that that is a matter of fact, very senior lawyers have told me: "No, we just don't do that". Because these are supposed to be private letters written in mitigation of an offence. We wanted to head off The Guardian's attempt to get their hands on other potentially salacious material. That is why the letters were published. And I think it's important that everybody understands that. Now you can't just publish five letters into the ether with no reason for doing so, I mean you do actually have to justify as to why we're doing it.</p>
RG	<p>The – In the letter I think that the Lord Chief Justice sent to Natalie – and again I haven't got a copy of it in front of me but I have a copy of my response – he obviously said we released this to the Press Association. That is absolutely untrue. We did not. That letter that was sent to the – to the judges was a private letter, it wasn't quoted from in the press release. The fact that a letter had been written was stated but it wasn't quoted from in any way, shape or form, very deliberately. Because – I and I suspect – I would've insisted on it if the others hadn't. If I write a letter to the Prime Minister and it's a rude letter, and it will surprise you to know that I have on occasion, written rude letters to the Prime Minister, I don't publish them because that's a private piece of correspondence between me and the Prime Minister, the same with a judge.</p>
RG	<p>I can't actually recall – well I can because I've cited one instance – I can't recall whether I've written to any other judges, I probably have in my time. But I certainly wouldn't publish them because that is – unless I'd made it plain in the letter, I am making this communication public. But there would be no point in doing that because if you write a letter you want a response, and you don't get a response or the one you want by going public with it. What we actually wanted was to achieve a result, and the result we were after was a rethink on the dangers of releasing these other statements. So, that was the background to the statement that was issued by us.</p>
KS	<p>Okay. Thank you. I just wanted to share a draft of a letter with you. And if you just give us a moment for [name redacted] to – to get this up on the screen – the wonders of modern technology. It didn't quite work out a minute ago, but we're hoping it's going to do – we're going to do slightly better now, if you'd just give us a moment, Sir Roger.</p>
SP	<p>Has it come up yet?</p>
KS	<p>Nope. Oh yes, there it is.</p>
RG	<p>Yep it has come up now. Yes. Right. Yep. Okay.</p>

KS	So, this is a draft of a letter Sir Roger...
RG	Yep.
KS	And I'd very much welcome your views on the – the content of it. And I just wonder if you've seen this letter before. Perhaps [name redacted] you would scroll down slowly, slowly so Sir Roger can –
SP	So, Sir Roger just to explain that you did send this back in your responses and I think this is the only draft of the letter you actually have, because you don't have the original you explained in your letter.
RG	Right.
SP	So, this is the one you've sent to us.
RG	Right.
SP	Does it does it ring a bell?
RG	No. But it was written quite a long time ago so –
KS	Okay.
SP	Okay. This is what you sent us though in response to the initiation letter.
RG	Right.
KS	And I'm – And I'm particularly interested to – to know, Sir Roger, if you could help me understand please, why this draft letter is classed as a formal complaint? And in it the draft calls for the removal of Justice Whipple from the proceedings?
RG	Well it says at the top, "Draft not for publication", and it was clearly a draft.
KS	Right.
RG	I suspect – I actually don't recall this particular draft but if I sent it to you, it must have been in my possession. But I know that the letter was very carefully read by all colleagues, and in the light of various concerns that individually we expressed, it was redrafted probably two or three times – I admit I don't know how many times because we wanted it to be correct and – sorry I can hardly see the darn thing – what am I looking at?
KS	Let me just – let me just read one extract to you. It says, "Given the above, it is our strong view that Whipple J should be removed from taking any further part in these proceedings and in this case."

RG	That, as I said is an early draft and it was amended, precisely because it's – it's sent out the wrong message.
KS	Yeah – and – and you would agree that – that would be and perceived to be an attempt to interfere with a live judicial proceeding, wouldn't it?
RG	Well it would be an attempt to interfere with something if it had been sent, but it wasn't. Whether it's a live judicial proceeding is a different matter. It would – this phrase, "a live case", has been used to refer to the Elphicke case. This was peripheral to the Elphicke case. This was to do with a request brought by The Guardian newspaper which is a rather different issue. In fact, it's a very different issue.
RG	Because this was to do with a newspaper trying to use the court and there is an irony in this because we are being criticised for apparently trying to interfere with the court, where we didn't. When it appears to be all right for a newspaper to use the court for wholly other purposes. And I don't think – forgive me those two are not entirely compatible. But this letter that you've shown me was not sent. That's not the final –
KS	Right.
RG	I know it's not the final version. And had it been, it wouldn't have been signed off by me, or probably any of the other four people involved.
KS	Okay. It's - that's useful to – to hear, because obviously your name is the first name on the list at the bottom of the letter, and obviously you've explained that it's a draft, and it was revised and wasn't sent. So, thank you very much.
RG	And I genuinely don't know who drafted it.
KS	Right.
RG	I've checked back on everything I've got in my computer and I haven't got any of this at all, to my surprise. But I haven't got any of it so – and I haven't deleted it, I promise you.
KS	Right.
RG	It's just not there. So, I – I don't know where it originated from. But what I do know is that better brains than mine will have looked at this, people like Theresa who is probably rather more thorough than me and have immediately spotted that this was out of order, which that draft is.
KS	Okay.
RG	I have no quarrel with that whatsoever. It is out of order and I would not have signed that. And as I said, neither I suspect would any of the others, but it wasn't sent.

KS	<p>Okay. Thank you. Thank you very much. My final question, Sir Roger, before kind of telling you the next steps are – Lord Freud, you’ll be aware has acknowledged that his involvement in these letters was in his view an error of judgement and he’s apologised both to the House of Lords and to the judiciary. How do you feel about that? Is that something you would be minded to do, or – ?</p>
RG	<p>No, no. I’m sorry. I hate to disappoint you because I’d love to be able to say yes, but the answer is –</p>
KS	<p>No, no. I’m just – I’m just asking for your views Sir Roger, that’s –</p>
RG	<p>That’s – I’m trying to find – well, of course when you want something you never find it. First of all I’m surprised and not a little disappointed that the House of Lords Commissioner has chosen to take that action in the way that it has been done, prior to any of these hearings taking place. Because it seems to me that there is some danger that one could influence the other. And I – In fact, I’ve got it. The thing that I picked out of the Freud report – mostly, you’ll understand from what I’ve said I disagree with. I disagree with the premise of it. But the – so I think that the Commissioner – the Lords Commissioner was actually wrong.</p>
RG	<p>But the thing that I find unfortunate, bordering on offensive is that the Lords Commissioner says, “Lord Freud in choosing to leverage his position as a parliamentarian to seek to influence the trial judge”, which he didn’t. “By writing in private to two other senior judges”, which he did, so did we all. “And acting carelessly by failing even to consider the constitutional propriety of doing so, has failed to act on his personal honour.” And the Lords Commissioner says, “It is an inherent dishonour in choosing to use his position in that way.” I do, actually find that offensive. I – whatever else I am – I am an honourable man. I’ve done my job in the way that I’ve chosen to do it at the expense of my family, in terms of time and money for thirty-seven years. I’ve resigned as a Parliamentary Private Secretary on a point of principle, and in doing so sacrificed an embryonic ministerial career. Because I believe that I had to vote against the government of the day on a particular issue, and I did. Otherwise I would almost certainly have been – probably not a senior, but maybe a junior minister. I don’t regret it in the slightest. I can look myself in the mirror every morning and know that I’ve done the right thing.</p>
RG	<p>I’ve taken on causes when necessary, in the interests of what I believe to be justice. I’m not a lawyer, but I do know right from wrong. I ask you to understand that I, and my colleagues were, and remain genuinely concerned about the precedent that has now unfortunately been set. I regard it as dangerous. But what we did was not dishonourable. You can argue, and you may argue that it was wrong, and I contest that.</p>
RG	<p>But that’s – that’s not the point. I do not think that Lord Freud, or any of the rest of us have acted in any way dishonourably. And I am saddened that the Lords Commissioner chose that form of words to use. And I am surprised, therefore, that Lord Freud was put in a position where he had to apologise for that. I think that was wrong.</p>

KS	It's one of the – one of the differences between the Lords and the Commons Sir Roger, that they have in their code. That's the word that they use in their code. We don't have that in our code. And having met you before with a different hat on I am absolutely confident that you are committed to justice, and the principles of matter of justice, and are a very passionate advocate for your constituents. So, be in no doubt that I am very, very well aware of that.
KS	So, let me talk you through the next steps now. I want to thank you again for meeting with me this afternoon and for your candid and fulsome answers to my questions. As I said at the start of the meeting, I'm going to provide you with a transcript of the meeting for your records and a copy of the recording. I'll also outline in writing the next steps that my inquiry will take. [name redacted], my colleague here is your point of contact within my team. If there is anything further you want to submit, if you do have any further questions, then [name redacted] will be only too happy to answer those, and to do so as quickly and as expediently as possible. We are meeting with your other colleagues as I'm sure you'll know over the course of the next week or so. And we are permitted because I am acutely conscious of the stress involved in these particular matters, and we want to – to try to bring this to a close.
KS	That's not to say we will sacrifice the thoroughness and fairness for expediency, but we are aware of the challenges that are presented to members when these inquiries are taking place. So, I just wanted to give you some assurance of that. Do you have any questions or comments at this point, Sir Roger?
RG	One minor observation. It sort of pales into insignificance to some extent – this originated as I understand it, as a complaint by a – an opposition member about the use of parliamentary stationery, and somewhere along the line it sort of metamorphosed into something completely different. Whether at the behest of the Lord Chief Justice, or who I'm not entirely certain what triggered the rest of the inquiry, but just on the parliamentary notepaper issue I've – I've made it plain I believe that my use of paper for the reference was absolutely proper, and I've indicated to you that I've done it on other occasions as well. I also think that the use of green Portcullis paper for the letter sent to the judges, the one that the five of us signed was also an entirely proper parliamentary use. I do want to reinforce that because this was not, as it's been suggested an attempt to influence a court case. This was a matter of – to us, parliamentary principle and it was a parliamentary letter.
RG	It wasn't a personal letter, it wasn't – it was a private letter. Certainly, we kept it private. We didn't publish it, as I've said, but it was a parliamentary letter written by Members of Parliament defending what (feedback noise, inaudible) – what is that? Sorry, something crashed in. What I still believe to be a parliamentary principle. And that is why that letter was written on parliamentary paper. And I don't think that the Head of the – I don't mean this disparagingly, but I can't remember his correct title, but the Head of the Stationery Department, I don't think understands why that was done in that way. And I – I stand by absolutely the fact that these letters were written as parliamentary letters and that therefore, the use of the portcullis paper, which I do take care of, was entirely proper.
KS	Okay. Sir Roger, thank you very much for that. That's very clear. As I say we'll be in touch as soon as we able to be. Once we've concluded our other interviews, and if in the meantime you do have

	any further questions or comments then please do feel free to contact [name redacted], she'll be only too happy to help you.
RG	I don't think I have. But likewise – if – you know when this conversation is over you think, “Oh gosh I wish I had asked him that”, then feel free to.
KS	Will do.

I would like to think that having heard the facts the Commissioner is now persuaded that the use of parliamentary paper for what were emphatically parliamentary purposes was entirely proper.

However, as you have been kind enough to approach me I have attached, for the sake of completeness, the earlier letter that I supplied to the courts in mitigation for a young man who was known to me (a former but not at the time a constituent). You may recall that I referred to this in my interview. I have, of course, redacted B's name (although I cannot remove it from the title of the attachment) but this was also provided on Parliamentary paper and I understand that the Judge in that case was kind enough to ask Defence Counsel to thank me for taking the trouble to write. The outcome, happily, was in that case positive!

Enclosure not reproduced here

Thank you for your letter of 8th December concerning the complaint submitted to you regarding recent correspondence relating to the publication of references submitted to aid the courts in making sentencing decisions. I believe that the complaint is not justified and I would ask that you dismiss it, for the reasons set out in this letter.

In relation to the matters which are the subject of the complaint, I cooperated with my colleagues Bob Stewart, Theresa Villiers, Sir Roger Gale and Natalie Elphicke. Given those circumstances, I have felt it appropriate to engage with them in formulating my response to your letter. So whilst this is my individual response, I understand that their replies may contain very similar content.

I have tended also to use the pronoun “we” in setting out much of what happened, reflecting the collaborative nature of the decisions made and the correspondence sent. However, this should not be taken as an assertion about the actions and involvement of my colleagues (they can speak for themselves on that), only as a means to make this response simpler to write.

I have provided answers to your list of questions Annex One attached to this letter.

Background to the correspondence sent to judges

I was asked in August last year by BCL Solicitors LLP, the lawyers representing Charles Elphicke, former MP for Dover, if I would be prepared to provide a character reference to assist the court in determining what sentence should be imposed following his criminal conviction. I agreed to do so and a copy is attached to the email copy of this letter as Annex Two. For convenience, Annex Two also contains a copy the references provided in the case by my colleagues, Bob Stewart, Theresa Villiers, Sir Roger Gale and Lord Freud.

Such references are routinely provided to the courts and defendants are encouraged to submit them. They are not intended to excuse the actions which led to the conviction, only to give the judge an understanding of the offender’s past character and conduct.

As you will see from Annex Two, the testimonials provided acknowledge the wrongdoing for which Mr Elphicke has been found guilty, but highlight the work he carried out for his constituents during his time as MP for Dover.

After sentencing took place, the Guardian Newspaper made an application to the court for publication of all references and were subsequently joined in this by Associated Newspapers and The Times. The trial judge, Mrs Justice Whipple, announced that a hearing would be held in open court to decide whether to publish the references.

Concern was expressed to Natalie Elphicke by members of the public who had provided references about disclosure of their identity and the personal matters which they had shared with the court. Some of these individuals are Mrs Elphicke’s constituents and they told her of their distress about the prospect of publication.

Mrs Elphicke has provided the following examples:

“Constituent A: a vulnerable individual who had a suicidal episode when they were informed about the Guardian application.

Constituent B: had a rear emergency exit added to their garden because they were so frightened of media intrusion.

Constituent C: is undergoing cancer treatment and had a significant mental collapse on hearing about the Guardian application. They were unable to respond personally to the court. A family member responded on their behalf but could not put the full details of the situation because they were concerned about the media knowing additional information about their medical condition.

Following the decision to publish, Constituent A had a further suicidal episode and I was contacted by another constituent in the following terms “Can you ring [Constituent A, they] is threatening suicide...”. A constituent said they felt “violated”.

On 19th November, the five Parliamentarians published the references we provided, along with a statement expressing the view that references from members of the public should be not be disclosed.

We believed that this would help inform public debate and we hoped that it would mean our perspective would be given a fair hearing. We wished to avoid the practice of providing character references from being misrepresented by the media. We believed that there were distinct issues at stake in relation, firstly, to references provided by people in elected office and, secondly, to those provided by ordinary private citizens. We did not wish these important distinctions to be blurred. By publishing voluntarily, we were attempting to remove the personal element (ie the question of whether references we had submitted would be disclosed) so that the important matter of general principle could be looked at separately.

We wanted to highlight real concern about the privacy of members of the public without this being viewed as a means to prevent the references we provided from being made public. We believed that putting our testimonials in the public domain would assist the court in enabling the focus to be primarily on questions relating to privacy of members of the public, without the matter being overshadowed by media interest in the references provided by Members of Parliament.

As a result of the Guardian’s disclosure request, those members of the public who had provided references now found themselves having to consider making legal representations to court. These people did not have lawyers to assist them (unlike the media who were able to instruct a leading media law barrister). Indeed some feared making any representations at all because it could impact on any confidentiality they might enjoy and lead to their identities being disclosed even before any ruling by the judge. As is often the case, a number of these people turned to their MP for help.

We felt publication could have a chilling effect on ordinary, private individuals being less willing to engage in the criminal justice system in the future. We believed that it was legitimate to speak up on the issue of principle raised by the case.

At the same time as publicly disclosing the references we had written, we wrote a letter to senior judges, Dame Kathryn Thirlwall and Dame Victoria Sharp (the Senior Presiding Judge and the President of the Queen's Bench division). You have seen a copy of this letter which is included in your initial disclosure bundle. Because of the involvement of her constituents, Mrs Elphicke added her name to this correspondence.

You will see that we asked Their Ladyships to consider the principles relating to disclosure of character references. We illustrated our concerns by referring to the members of the public who were distressed about the Guardian application. We did not ask Their Ladyships to interfere with the judge's decision and we sent a copy of the letter to Mrs Justice Whipple.

In advance of publishing the references, Mrs Elphicke briefed both the Speaker and the Leader of the House about serious concerns which had been raised with her by constituents about potential public disclosure of sensitive personal information they had provided and the serious impact such potential disclosure was having on them (as set out above):

"I requested and had a meeting with the Speaker to outline the issues that had arisen and to seek his guidance on how best to raise the matter in Parliament. I notified the Speaker in order to make sure the substance of the issue could be considered properly in Parliament as it affected my constituents. The other MPs and peer would be publicly releasing their own character statements voluntarily so that there could be no criticism as to their motives or actions in relation to their support and concern on the substantive issues. Given that Justice oral questions had recently taken place and was therefore not scheduled for some time, he suggested that we apply to raise it during Business Questions to the Leader of the House.

Application for business questions is currently by way of ballot. Bob Stewart and I applied for the ballot to ask the question. Bob was successful in the ballot.

In accordance with usual practice, the question was notified to the Leader of the House through his PPS in the usual way, ahead of Business Questions, including the context of the question. This included notifying the Leader that steps were being taken for the release of the relevant character references by the MPs and peer so that no issue of personal interest or impropriety could arise."

Shortly before publication of the references from MPs on 19th November, Bob Stewart asked a question in the Chamber on the general issues raised by the case, the Hansard report of which is as follows:

Bob Stewart

The Guardian newspaper has applied for the release to the media of character references that were provided to a judge solely to assist in sentencing during a criminal trial. If allowed, this would be a fundamental change of practice, with far-reaching consequences for the criminal justice system. Will my right hon. Friend allow time for an urgent debate on this vital matter?

Jacob Rees-Mogg

It would obviously be wrong for me to comment on a specific case, but my hon. Friend raises a concerning point. If people have, in a generality, given evidence to a trial on the understanding that is confidential, it risks people not being willing to give such evidence in future if what is believed to be confidential turns out not to be. A just system requires certainty, whatever degree of certainty that is. In individual cases, I understand that it is a matter for the trial judge, under rule 5 of the criminal procedure rules, but I will of course refer this matter to my right hon. and learned Friends the Lord Chancellor and the Attorney General.

You will have seen from the correspondence that you have been sent that [name redacted], the Private Secretary to the Lord Chief Justice, responded on 20th November to our letter to senior judges in a negative way. We wrote to the Lord Chief Justice on 22nd November to seek to provide reassurance that were not in any way attempting to improperly interfere with the judicial process, only to draw attention to the important principles involved in the case. At the same time we wrote to Mrs Justice Whipple, to provide her with reassurance on this point. She was also provided with a copy of our letter to the Lord Chief Justice.

We did not publish any of our correspondence with judges. We do not know with certainty how it entered the public domain, but we assume it may have been disclosed by the office of the Lord Chief Justice, along with [name redacted]'s letter of 20th November. Opposition Spokesman, Helen Hayes MP, then submitted her complaint to you.

The complaint

Our actions did not contravene either paragraph 16 or 17 of the Code of Conduct for Members. Nor are they inconsistent with any other aspect of the Code of Conduct or any related rules on use of the Crowned Portcullis image or Parliamentary headed paper and postage.

Paragraph 17 – Damage to the reputation or integrity of the House of Commons

As well as trying cases, senior judges have an additional role in which they act in an administrative and legislative capacity in relation to the criminal justice system. For example, the Lord Chief Justice chairs the Criminal Procedure Rules Committee and, with the Lord Chancellor, issues Practice Directions for the criminal courts.

We believe that it was legitimate and appropriate to raise our concerns about the principle of disclosure of character references with senior judges in their administrative/legislative capacity. Such matters could well be the subject of Practice Directions, and they are regularly debated by MPs in the media, in Parliament, and in other fora, without this being viewed as interfering with matters which are the preserve of the courts.

There is also the option for Parliament to legislate on the rules which should be applied in the courts, a further reason why MPs can and should comment on such matters. The 9th December judgement of Mrs Justice Whipple (attached to the email copy of this letter as Annex Three) on disclosure of references confirms that the case engaged important points of principle relating to the administration of justice, privacy and human rights.

There are many examples of Members of Parliament speaking up on matters related to the criminal justice system. Hansard records one such instance, as far back as 1883, of an MP highlighting concerns about representation in the criminal courts, including comment on matters falling within the administrative responsibilities judges have for formulating general rules of court procedure ([https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59_db-f589-41c7-90fb-be506e0d2a72/SupremeCourtOfJudicature\(NewRules\)](https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59_db-f589-41c7-90fb-be506e0d2a72/SupremeCourtOfJudicature(NewRules))).

We recognise that the decision on disclosure of references in the Guardian application was solely a matter for Mrs Justice Whipple and we asked in our 19th November letter only that the Lady Justices “consider the crucially important matters of principle which are at stake in this case”.

We of course accept that the senior judges (unless sitting as the Court of Appeal in a particular case) cannot interfere in a judicial decision of a trial judge. We did not intend our 19th November letter to suggest that they should, only that they consider the important general principles at stake in decisions they might take in the future in their administrative/legislative capacity.

We regret any perception this might have engendered in the Lord Chief Justice that we were asking Justices Thirlwall or Sharp to interfere with the trial judge’s decision. We were surprised and concerned by the response from the Lord Chief Justice’s Private Secretary. We would provide the reassurance that His Lordship has misunderstood our letter of 19th November. We took immediate steps to try to remedy that in our letter of 22nd November to him in which we emphasised once again that it was the general principle which we wished to raise and that of course the decision in the Guardian application was properly a matter for Mrs Justice Whipple alone.

We would provide the further reassurance that we were not, as appears to be implied in the 20th November letter from [name redacted], in any way seeking to ‘go behind the back’ of Mrs Justice Whipple. We copied her into both our letters to senior judges.

We would point out that it is an everyday aspect of MP constituency correspondence to raise matters with Ministers where concern is expressed about a general principle with reference to a

particular case. In many such instances, the Minister will be unable to intervene in, or comment on, the individual case. Indeed in some circumstances there may be important reasons why they cannot comment or get involved, for example if some form of quasi-judicial or administrative appeal process is underway.

But no one doubts that an MP can write to a Minister, in such circumstances, asking them to consider the general principles raised by an individual case. Including the details of the particular case is an important means to convey to the Minister the motivation for the correspondence, the practical importance of the issue, and the potential impact on members of the public.

What marks our correspondence in this matter out as unusual is that the decision-makers were judges acting in their administrative/legislative capacity, not Ministers. But, as set out above, senior judges have a role in issuing practice directions and managing the criminal justice system and therefore do have important powers over the general rules applying in our courts regarding matters such as disclosure. The context related to serious concerns raised by individual constituents and the impact of disclosure rules on them, but what we asked the judges to do was look at the general principles at stake.

Whilst I cannot be certain whether any of the constituents in question were mine (and only some of them were Mrs Elphicke's), you will appreciate that MPs routinely become involved in matters of importance raised by people who are not constituents. That includes signing joint letters regarding matters of particular relevance to the constituents of colleagues. You will know that Section 21 of the rules confirms that pursuance of constituents' interests, whether relating to specific cases or relevant policy matters, is not limited to those of the individual MP concerned.

A finding that a Member of Parliament has caused "significant damage to the reputation and integrity of the House of Commons" under paragraph 17 of the Code of Conduct is very serious. Whilst recognising the sensitivities which apply regarding the relationship between legislators and the courts, we would argue that it would be unjustified and disproportionate to conclude that the threshold for paragraph 17 has been met when, for the reasons set out, a common sense reading of our correspondence shows that it falls within the remit of activity which it is correct and proper to undertake as Members of Parliament.

Moreover, we would highlight the steps taken to brief the Speaker and the Leader of the House on our concerns. Neither indicated that asking a question about the Guardian application and the principles relating to disclosure of character references was in any sense "out of order". As set out above, following a suggestion from the Speaker, a question was asked by Bob Stewart on the floor of the House during Business Questions. No concerns were raised by the Speaker, the Leader of the House, or other MPs, about the propriety of the question rendering it "out of order" for the purposes of Parliamentary procedure.

The rules on "Parliamentary sub-judice" are not engaged in relation to this question, or our correspondence with judges, since these constraints on matters raised in the House of Commons

come to an end when criminal proceedings have concluded with a verdict and sentence (Erskine May paragraph 21.19).

By making the references we submitted public, we took active steps to try to prevent there being any suggestion that our actions were intended to prevent publication of our identities or references or to improperly influence the decision on whether to publish them.

The careful steps taken to get this matter raised in Parliament, including consultation with the Speaker, provide a further reason why it would be both surprising and unjustified to view our correspondence with judges as damaging the integrity or reputation of the House of Commons.

Paragraph 16, House of Commons stationery and the use of the Crowned Portcullis

We believe that use of House of Commons headed paper and the Crowned Portcullis was justified both in relation to (1) original character references to the Court; (2) letters of 19 and 22 November to senior judges.

I want to set out why I believe the use of Portcullis Parliamentary headed paper for the MP references is justified. Members of Parliament are regularly asked to provide references for people in their capacity as MP. These would most often be references for constituents, but by no means always.

It is very doubtful that any of us would have been asked to provide references in this case had we not been Members of Parliament. Moreover, our knowledge of Mr Elphicke derived largely from knowing him during his time as MP for Dover, and you will see that much of the content of the references focus on his work and contribution when he was a Member of Parliament.

It should also be noted that Mrs Justice Whipple, in her judgement in the media application, indicates that whether an individual holds elected office is something the courts will take into account in deciding whether the identity of a character referee should be disclosed. In those circumstances, use of Parliamentary headed paper assists the court because it gives the judge transparent information on the office held by the referee.

Should there be any doubt on the legitimacy of use of Portcullis Parliamentary paper, these references would in case be covered by the “reasonable personal use” provision in the rules.

Letters of 19th November to Their Ladyships Dame Kathryn Thirlwall and Dame Victoria Sharp and of 22nd November to the Lord Chief Justice and Mrs Justice Whipple

As set out above, we believe it was legitimate and appropriate to address our concerns about the general principles relating to disclosure of character references to senior judges. That was the intended effect of our letter. It is correct to use HoC Portcullis headed paper for corresponding with a public body on matters of principle and policy (Annex 3 ‘Stationery Rules’, para 8, 3rd bullet point).

Matters relating to the criminal justice process are routinely ones on which MPs comment and make representations. It is clearly part of their role to examine and comment on issues concerning the operation of the court process and this justifies the use of the Crowned Portcullis in our letters.

In relation to the decision to copy in Justice Whipple to our correspondence and write to her on 22nd November, we had been invited by the judge to make representations to her as people who had provided references (as mentioned in Justice Whipple's judgement at page 11). The original character references were, quite properly, submitted on headed paper and therefore use of headed paper for the follow-up requested by the court was also appropriate.

Postage

I cannot be sure whether or not I used Parliamentary postage for the reference I sent – though I believe it is probable that I did. I understand from Natalie Elphicke that Parliamentary postage was not used for the correspondence with the judges. I am not clear on whether my colleagues used Parliamentary postage for the references they wrote. But for the reasons set out above in relation to use of headed paper and the Crowned Portcullis, use of Parliamentary postage would have been justified and appropriate.

Conclusion

In conclusion, we did not seek to improperly interfere with Mrs Justice Whipple's decision. We kept her informed of our correspondence and always acknowledged that the matter was one for her to determine. Nor did we ask senior judges to interfere with her decision, only to consider the general principles for the administration of justice highlighted by the case in their administrative/legislative capacities. In these circumstances we consider that our correspondence relating to this matter was an appropriate use of Parliamentary headed paper and did not damage the reputation or integrity of the House of Commons. The complaint should not therefore be upheld.

Appendix 1: Response from Mr Adam Holloway MP to the Commissioner's questions of 8 December 2020

1. Are you aware of the rules regarding the use of House-provided stationery and pre-paid postage?

Yes

2. Are you aware of the rule regarding use of the crowned portcullis?

Yes

3. Did you take advice from the House authorities before sending your letter of 19 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

I did not but Mrs Elphicke briefed the Speaker and the Leader of the House, as set out about in my covering letter. She kept me informed regarding these meetings.

4. Did you take advice from the House authorities before sending your letter of 22 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

See the answer to question 3.

5. When sending your letters of 19 and 22 November 2020, did you consider using other stationery, such as party headed paper or your own personal notepaper? If you did, please explain why you decided against doing so.

I did not give consideration to using other stationery. For the reasons set out in my covering letter, I believe that this matter is one which justifies the use of Parliamentary stationery and the Portcullis logo.

6. Why did you decide to send your letters of 19 and 22 November 2020? Did anyone ask you to write those letters and, if so, who?

I have set out the background and reasons for the correspondence sent in my covering letter.

7. Can you confirm if any of the personal referees referred to in your letters of 19 and 22 November 2020 are your constituents?

I do not know the addresses of the members of the public providing references so cannot confirm whether they are constituents or not. I understand from Mrs Elphicke that a number of the personal referees are her constituents.

8. Did you also submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke? If so, please share with me a copy of that character reference and any other correspondence that you submitted to the Court.

I did submit a pre-sentencing character reference. A copy of this reference is contained in Annex Two attached to the email sending on my covering letter. For convenience, the other Parliamentary references are also included in Annex Two.

The joint MP letter from MPs to senior judges of 19th November (contained in your disclosure bundle) was copied to Mrs Justice Whipple, as was the letter to the Lord Chief Justice dated 22nd

November. You have also seen the covering letter to Mrs Justice Whipple dated 22nd November. This was the only correspondence I sent to the judge.

9. If you did submit a pre-sentencing character reference, or any other correspondence to the Court, please can you confirm whether House-provided stationery or/and pre-paid postage was used?

I used Parliamentary headed paper and therefore the Crowned Portcullis. I cannot remember if I used Parliamentary postage to send the reference though I probably did.

Appendix 2: Mr Adam Holloway MP's pre-sentencing character reference for Charlie Elphicke, 2 September 2020

I have known Charlie Elphicke for around 15 years, from around the time I was elected to Parliament and he was a Prospective Parliamentary Candidate looking for a seat.

He is a highly intelligent, warm, kind, friendly and open person. Quite unlike the person described in the tabloid press.

Since these allegations have been made against him he became a much less self-confident individual - losing none of his warmth or kindness but losing almost completely his shine.

Since his conviction he is a ghost of himself - quieter, withdrawn, baleful.

I am obviously writing this knowing the Court's recent findings.

Appendix 3: Mrs Justice Whipple's Ruling on Disclosure of Character References, 9 December 2020

Not reproduced here

KS	Let me say first of all, thank you so much both of you. Mr Holloway - may I call you Adam – is that alright?
AH	I would much prefer that.
KS	Okay, well I'm Kathryn for this purpose and may I call you [name redacted], is that okay?
GC	Yes, of course.
KS	Well thank you and my colleague [name redacted] is with us. [name redacted] is a member of my team leading on this matter in my office. And first of all, can I say to both [name redacted] and to Adam, thank you so much for agreeing to meet with me today. I'm very grateful to you for your time. I just think it's really helpful to have a kind of face to face albeit virtual conversation.
KS	Just so I can set out a few things for you and the first thing I need to say to you is that I need to give you an absolute assurance my investigations are always independent, impartial, thorough and fair. Those are the principles on which we set work on in my team. The process is inquisitorial, not adversarial.
KS	So, we're looking to get information from you and the purpose of this meeting is to hear your comments on the advice received from both [Director of Customer Service and Delivery] and [Speaker's Counsel], and ask some follow up questions of you. And of course, there is going to be an opportunity for you to ask any questions that you might have, or to make any broader points that you might want me to consider.
KS	[name redacted] – it's very good of you to be Adam's supporter. I'm afraid you can't respond to any of my questions on Adam's behalf. But obviously if you feel you need to just take a couple of minutes out of the meeting to discuss things and then come back then that's of course fine.
KS	We are recording this meeting. It's just helpful to have a kind of verbatim record and obviously a transcript of the meeting will be provided to you. And we keep copies of recordings securely in line with the House's Data Protection policy. I will also provide you with a transcript of the meeting and I'll provide a copy of the recording. And then I'll set out the next steps that my inquiry is going to take.
AH	So, can I start by saying that I very much welcome this. I love the fact that you're speaking to us rather than write great reams of material because as you know as far as I'm concerned to be sort of held up for damaging the reputation of Parliament, when I thought what I was doing was a good and positive thing for my constituents, you know and for a guy who you know made some pretty bad decisions so I really welcome this opportunity.

KS	Okay, that's great and as I said Adam, I'm very grateful to you for your time today. So, let me open up with a couple of general questions then, and we've sent through the advice that we've taken from Speaker's Counsel and from [Director of Customer Service and Delivery].
KS	Can I ask, have you read the advice that we received from Speaker's Counsel and from [Director of Customer Service and Delivery]? Have you had the opportunity to look at that?
AH	I have but to be honest, in the preparation of this, I was much more focussed on our original letter to the judge, [unclear] Elphicke and the letter to the Lord Chief Justice.
KS	Okay. It might be then you take the opportunity to read the advice from Speaker's Counsel and from [Director of Customer Service and Delivery], and then come back to [name redacted] if there's anything you would like to amend in your submissions so far, in light of the advice that they've given.
AH	Well I've just from memory and yes, I'll certainly come back on both those points but I mean the thing from [Director of Customer Service and Delivery] and I mean I think he was asked about me providing a personal reference. I didn't provide Charlie Elphicke with a personal reference. Charlie Elphicke is, you know, I mean I know him, but he's not one of my mates. I wrote a reference for a fellow Kent MP, which I would have done for a fellow Kent Labour MP. I would have done for someone who lived in Kent who I knew.
AH	So, as far as I'm concerned that wasn't a personal reference. But certainly it was connected with my job. I mean I was writing because I was a fellow Kent MP and my understanding is that you know one of the principles of the justice system is that you establish who you are. I suppose I could have written a letter saying – you know – put a reference – you know with little St Mary's route and road map of Kent – you know – "Yours, sincerely, Local Resident, Adam Holloway". But that would just – it would never even have occurred to me. I wasn't doing a sort of a favour to one of my mates.
KS	Right, I see. That was going to be one of my questions actually. Based on [Director of Customer Service and Delivery's] advice –my question was going to be: Why would you consider a character reference for a friend to fall within your range of parliamentary functions? But you've just been very clear that you don't consider Mr Elphicke to be a friend, and you consider your writing to be part of your parliamentary function. Would that be right?
AH	Yeah, I mean – you know – I know Charlie Elphicke, but I mean I've never had a drink with him. I've never had a cup of coffee with him, you know – I mean I've written him two letters since he's been in prison because I'm that kind of guy. But I mean Charlie Elphicke you know wouldn't come to my fifty-fifth birthday party with – if I had five hundred guests.
KS	Right. Okay, that's very clear, thank you. And just to pick up on what Speaker's Counsel has said and I'll just remind you what she's said. So [Speaker's Counsel] advised that it would be, this is a quote from her: "... particularly improper for them (that is you and your colleagues who wrote) used the authority and status conferred on them as Members' of Parliament to influence the outcome of

legal proceedings, or as a minimum in a way that could appear to be attempting to influence those proceedings.” I wonder Adam, what are your views on that advice?

AH Well I would completely disagree with it, but I’ll come back to that in a minute. I mean I don’t know what the Speaker’s Council has got to do with me trying to communicate to senior judges, something that would have a very serious detrimental effect potentially on my constituents.

So, let me if I may just sort of rewind a little bit. So, I wrote a character reference for Charlie Elphicke for the reasons I’ve already given you. We then had The Guardian trying to get these character references to associate evil Tory MPs with convicted sex offender, which is a pretty uncomfortable position, but you know I am the sort of guy who if one of my friends – you know my proper friend’s went to prison for something, I wouldn’t just drop them. I’d continue to visit them.

AH So, it was a pretty very uncomfortable feeling with this – with basically hostile people trying to associate you - with a - you know with quite a serious crime. So, that’s a very uncomfortable position. Then you get a phone call from Natalie Elphicke, saying you know she’s got constituents who Charlie helped when he was the MP – very personal things. She’s crying on the phone to me, I think about one of them who says they’re gonna top themselves. So, I’m now aware personally that it’s not very nice when a newspaper threatens to associate you with something like this. Then we’re getting from her the stuff that’s going on with her constituents, and then I’m thinking – hang on a minute, so in future my constituents write a letter in support of someone – I don’t know if you read Ken McDonald’s excellent article – the former director of public prosecutions’ excellent article about these things –this sort of last opportunity for some redemption when people have done things badly wrong.

AH So, I’m thinking I don’t want my constituents to be in the same position which I think was the motivation of everybody else. And if you read the letter that we sent to the judges - of course it talks about Natalie Elphicke’s constituents and therefore I guess you could say the case. But you know it also says that – that the whole of the second page you know, “Media interests future and retrospective implications consequences to sentencing practice”. I mean as far as I’m concerned, I was in no way trying to influence the judge. That was clearly a judge who wouldn’t be influenced anyway. What I was trying to do was to prep my constituents against what would happen in future. Given the background of how I was feeling about the fact that I was being associated with this, and almost tarred by this, and the feelings of Natalie Elphicke’s constituents’ and therefore the future feelings of mine. That was – I mean – this will sound like an odd thing to say Commissioner, but truly I’m not sort of standing here feeling that I’ve done something wrong. I honestly feel that you know that I was trying to do the right thing.

KS Okay, you’ve set that out very clearly Adam. Thank you very much for that. I do want to turn now specifically to the letters, and if you could tell me please, what role did you take in drafting and approving the three letters that were sent to the judiciary?

AH Um I would say very limited. I would I say that I looked at them probably in a cursory manner once they’d been written, but I was in full support of their objectives and my understanding of their objectives and that I feel that now reading the original letter and the statement, you know the

statement here which refers to “would set a dangerous precedent” “this impacts to the sentencing process by leaving many private individuals unwilling to provide such references because of the potential publicity and intrusion to which private lives could be subjected.” So, you know I would’ve read this stuff. But no I mean this was mostly written by the two lawyers in the group of people which would’ve been Natalie and Theresa Villiers. And I think – I just spoke to Natalie a minute ago, just to ask because I did suppose you might ask whether we had any legal advice writing the letter, and Natalie says they did, but it’s better if that comes from her.

KS Okay, that’s fine, thank you for that. And you’ve set out the outcome that you were hoping to achieve by sending the letters. Can I just ask you to just go over that bit again, just so that I’ve got that? So, what outcome were you hoping to achieve by sending the letters?

AH Well it’s a bit like when you – I don’t know – you might write to a minister about a situation with a constituent and you might say at the end of the letter – you know this looks like an area of policy that we should look at in future so this doesn’t happen again. So, you’re not trying to influence the current set-up for your constituents – you’re trying to adjust what might happen in the future. So I mean of course I care about Natalie Elphicke’s constituents, but I mean it didn’t even occur to me that we were trying to interfere in the case. And I mean the justice system doesn’t work like that. MPs don’t write letters and senior judges don’t go “Ooh we better do that”. It wasn’t about that – it was about those things I just quoted – you know – “it sets a dangerous precedent”.

KS Yes, okay. So in the letter of the 19 November I’ll just read this paragraph to you. It says: “We therefore believe that it is important for you, as senior judges with relevant oversight responsibility, to consider the crucially important matters of principle, which are at stake in this case prior to any disclosure of names of any members of the public or of references they’ve provided to the court.” So, thinking about that “oversight responsibility” what “oversight responsibility” did you think that these judges had, and how did you expect that responsibility to be fulfilled?

AH I’m really sorry, I’m not a lawyer, I don’t really understand the question. All I would say is I put that in the context of what this letter to me is about, which is media interest and future retrospective implications and consequence to sentencing practice.

KS Okay, thank you. How would you explain then that a large section of the first letter, the 19 November letter, talks specifically about the Elphicke case? You’ve already set out very clearly that your ambition was to think about the future and the impact on your own constituents and what might happen to them if this to be allowed. So, how do you explain then that a large section of the first letter talks specifically about the matter relating to Mr Elphicke?

AH Well, I suppose because that was the reason the thing had come up. I mean I think I’ve written – I’m quite sure I’ve written character references for people before, but it’s never occurred to me that they would be made public. I don’t think it’s ever happened before as far as I know. This – what was happening in this case was a completely new thing. I mean I’m pretty sure that’s the case. I don’t think it’s ever happened before. So, I would’ve thought the answer is that that is materially relevant if you’re talking about what’s going to happen in future.

KS Okay, thank you. Thank you very much. That's very clear. I wonder, the paragraph that I just read out gives the appearance that you are hoping for some action by the senior judges that you are writing to. What kind of action do you think you were trying to get them to undertake?

AH As I've said already, the only action that I wanted was for people to look at this so that this didn't happen to my constituents, because I knew how uncomfortable it was basically being associated with a sex offender.

AH Yes. That was the action I wanted.

KS Okay, thank you. That very clear Adam, thank you very much. I want to turn if I may to your statement to the media. And there was an accompanying statement to the media with the publication of the references. What was your role in drafting the statement to the media?

AH Again, that would have been very limited. That was almost certainly me just reading a thing – yeah – putting my name on it.

KS Okay, very good.

AH I think – but I actually – but I have to say I think it's rather a good statement.

KS Okay, and presumably that's why you agreed to have your name put to it?

AH Correct.

KS Okay.

AH I mean – but you know to be very candid – I do probably a hundred and fifty emails a day – not pursuing sort of Tory boy agendas but helping people here. That's what Georgina and I do. I mean the last time we did something that either of you on the call would recognise as sort of politics or [unclear], I mean it's incredibly rare. Literally, I mean what – what does a backbench MP do? I'm basically a cross between a very sinful parish priest and a very incompetent social worker. That is what we do, and we do hundreds and hundreds of cases per – well certainly per month. I mean hundreds of thousands over the course of fifteen years. And in ninety-nine per cent of them what we're trying to do is the right thing by people who we're charged with representing. So, I certainly won't pretend to you that this is something that I scratched my head over and spent days thinking of and wondering where I could get a budget to get legal advice over this. It's not – this was just another of the many, many things you do with your constituents' interests in mind.

KS Okay.

AH I mean there's absolutely nothing in it for me writing the original Charlie reference – nothing in it for me – just only downside. There's nothing in it for me writing to judges about general principles. I'm

not – we're not doing anything for ourself and that's why as I say I sort of –I find it quite confusing that I'm up against the the Commissioner for Standards – you know who's there to make sure that people like me stay the right side of the line and do the right thing, and yet I'm standing here feeling that certainly my motivation was completely to do the right thing by these people.

KS Adam you've made that really clear and I thank you for that. I thank you for your candid response on that. Finally just in terms of questions – [name redacted] –I wonder if you would share the draft letter please.

SP Of course, just give me one minute. I had it all ready to go, and now hold on just give me 2 secs while I find it.

KS Okay.

SP Can you see that?

KS Yes.

SP Is that the right letter? Because I've got two screens going on so it's really difficult for me to see.

KS Um – I – I don't think that's the draft letter ...

SP No, that isn't. Hold on. Bear with me.

SP That's the one that was sent.

KS Yes.

SP This is a draft of a letter. Here it is now.

KS Okay, thank you.

SP Can you see that?

KS Yeah, who is this a draft from and to? Or, rather from? [name redacted], can you help us?

SP Yes. Sorry I'm just going to open it. So, it's a draft – if I get this – can you see it when I lowered it? It's a draft that was sent to us and it's a draft that was drafted before the actual letters were sent out. So, it's another version of the letters that were sent out on the 19 November. But this draft wasn't actually sent out. Have you ever – does this ring a bell with you?

AH Ah no, I – I don't think I've ever seen that.

KS Okay.

AH Well who wrote it?

KS Well, this is what we're trying to establish Adam. It's a draft of a letter and if you haven't seen that before

AH [name redacted] after this shall we – shall we go through my emails? But I don't remember seeing that at all.

KS Okay. Because this letter is classed as a formal complaint and it calls for the removal of Justice Whipple from the proceedings. And I wondered if on reflection you would consider this letter, a draft letter, to be an attempt to interfere with a live judicial proceeding?

AH I don't know I haven't read the letter. But I don't live in South America and I don't call for Judges to be removed from cases.

KS Okay. This letter does call for Justice Whipple to be removed from proceedings.

AH Yeah well – I mean I can't comment on a letter that I don't think I've ever seen. And if I have, I certainly didn't read that bit. I mean I've got no knowledge of this letter.

KS Okay, can you just go to the right to the bottom of the letter [name redacted] please.

SP Yeah, I've just got it up on my screen. Can you see it? So, it's – that paragraph in question is –

AH I'm presuming you're going to say my name's under there?

KS Yes.

AH Oh right – yes. Yeah, well – I mean I don't think that. I wasn't involved in writing that letter and I don't think I've ever seen it.

KS Okay. Your name – your name is on it, Adam.

AH Sure, but that – that doesn't mean I was involved in drafting it or that I saw it.

KS Okay. Right, well that's very helpful.

AH Well I mean I do get a hell of a lot of emails and it is perfectly possible that I got that and I opened it and I read it. But I've got absolutely no recollection of that. I would be staggered, and I don't think I've ever seen that letter before.

KS Okay, thank you. That – that's very helpful.

- AH** And, and sorry the final point, just because my name is on it, in the same way that when I read this one, the one that was actually sent. The first time I would have seen that letter I suspect, because I don't think I suggested any changes, it would have also had my name at the bottom of it.
- KS** Okay, thank you. Just I come, to ask you if you have any kind of questions or comments you will be aware that Lord Freud has subsequently acknowledged that it was perhaps an error of judgement to be involved in this correspondence and he's apologised both to the judiciary and to the House of Lords. I wonder, has that given you cause to rethink or do you not feel that that's a line of action that you would want to take?
- AH** I mean, for me what was I doing? This was about essentially a constituency matter – well not a constituency matter – but something that would affect my constituents. A policy thing that would affect my constituents so you'll make a judgement as to whether or not my association with this letter warrants an apology to Parliament, or whatever. All I can tell you, is that my motivation from the beginning, to this very moment was in no way self-interested. It was only ever going to – there was no upside to me in anything. Writing a letter to someone who was just been convicted of is not something eighty per cent of MPs would do because they're canny and they put themselves first. I mean I don't set myself up as being sort of altruistic or anything, but I I wanted to provide that little [unclear] – where this wonderful, wonderful article by Ken McDonald, where he says – um – “that these....”
- KS** What's the date of that article Adam? I'd be very interested to read that.
- AH** It's really good. It's Monday 23 November in The Times. I'll email it to you afterwards if you like. Or, [name redacted] can you email it now?
- KS** I'd be very, very interested to read that. It sounds like it's going to be very helpful.
- AH** But what he says is, he says “this is quintessentially a fair moment. Perhaps the only moment in a criminal trial when the whole challenges the particular, when inevitability and justice collide.” So you know that's where I was coming from. And as I say, I think if you sort of – you know you were at King's College London and you did one of these sort of bogus surveys on MPs, you'd probably find that eighty per cent of people wouldn't do that. So that was my motivation for the original letter, and my motivation was as I've said a couple of times it was by the way that I felt by the fact that The Guardian were trying to associate me with this, and the reason that we released our letters before there had been any judgement from the judge is that we hoped that that would prevent the letters of the of the Elphicke constituents from being done.
- AH** But I wasn't trying to force the judge into that. I was just trying to take away the sort of public interest of the MPs. And then my motivation for signing that letter was because of that feeling that – that I had, and I didn't want that for my constituents in this moment where the general collides with the particular.

KS	Okay, that's very clear. Thank you. Let me outline the next steps Adam and what I'm going to do is I'll provide you with a copy of the transcript of our conversation for your record and a copy of the recording. I'll also outline in writing the next steps that my inquiry will take.
KS	[name redacted] is available for you to contact if you have any further questions or any other information you think would be useful, and I very much look forward to receiving the article from you or from [name redacted].
KS	I guess all that remains is to say to you if you have any questions or comments that you would like to make at this point.
AH	I mean I think I've made them really. I just feel that from my perspective there was no – I wasn't – motivated to affect any judge at all. Mrs Justice Whipple will quite clearly from the press coverage was somebody like all judges who was going to do what they thought was the right thing to do.
AH	To me this was about you know a thing about my constituents. You know I'm not a lawyer – you know I've read theology at university. I don't understand these sort of big issues but I do know that it's a big issue if in future people can't give these references without fear that they're going to be sort of tarred with the brush of the person who's being convicted, when actually all they were trying to do, was do a decent and compassionate thing.
KS	Okay, that's very clear. Thank you. [name redacted] let me just check with you, is there anything that I've missed, or anything that I haven't included in our conversation with Adam today?
SP	No, that covers everything. Thank you, Kathryn.
KS	Okay. So, Adam we will be in touch. I look forward to receiving the article. It's been very good to meet you. Thank you very much for your clarity and for your honesty. If there is anything please do get in touch with [name redacted] and if there's anything further we need, we'll be back in touch with you.

I am writing to give you as requested my further comments on the responses you have received from [Director of Customer Service and Delivery] and [Speaker's Counsel], as well me commenting on the note you sent to [the Clerk of the Journals] after our meeting. I have also dealt with the issue of the first draft of the Mrs Justice Whipple letter.

[Director of Customer Service and Delivery's] E-mail / Your note to [the Clerk of the Journals]

My concern about [Director of Customer Service and Delivery's] e-mail is that he had been asked to confirm what advice he would have given to me (had he been asked) about using House-provided stationery to send out a personal reference for a former Member.

I do not think it fair to seek his advice on the reference where the personal nature of that document is treated as a foregone conclusion, particularly when you are aware (certainly by the time you came to write to [the Clerk of the Journals]) that this is in dispute.

Having seen your letter to [the Clerk of the Journals] of 4th March, presumably drafted after my call with you, my concerns are compounded – you refer again in this to “a personal reference” yet make no mention of the information I gave to you verbally about the context in which that reference was made.

As a recap what I said in our meeting in regard to stationery included:

- Charlie Elphick is not one of my mates
- I wrote a reference for a fellow Kent MP, and would have done the same if he was from the Labour party
- It was not a personal reference, but one I wrote because of my job
- It is a principle of the Justice system that people establish who they are and what they do
- I have never had a drink or a cup of coffee with him
- I have written him two letters since he has been in prison because “I am that kind of guy”
- If I had a 55th birthday party with 500 guests I would not have invited him

However, in your letter to [Director of Customer Service and Delivery] and now in your letter to [the Clerk of the Journals] the pre-sentencing character reference has metamorphosed into a “personal reference”, pre-judging the issue of whether my letter amounted to a breach of Para 16 of the Code and the Stationery Rules.

My letter refers to Charlie's personal attributes and my impression of the impact of the trial on him. I focused on this because I thought it would be the most helpful insight that I could provide to the Judge to assist in the exercise of sentencing – his work as MP for Dover and Deal being a matter of public record. My view is that the essence of a character reference (if it is to be of any

real use) is to provide personal information about someone's character. This (quite obviously) does not automatically render it something done in a personal capacity.

It is regrettable that the opportunity for [Director of Customer Service and Delivery] and [the Clerk of the Journals] to provide independent opinions as to whether it is in order for an MP to provide a pre-sentencing character reference on House-provided stationery has now been lost.

However, I would suggest a fairer and impartial way to proceed would be to send both of them a transcript of our call and a copy of this section of this e-mail and ask them to give a view on whether providing a pre-sentencing character reference on House-provided stationery amounts to a breach of the rules. Please let me know if you are content to proceed on this basis.

As I said in my original letter to you, MPs frequently provide character references for constituents and others and if it is the case that some or perhaps all of these references may be regarded as outside the scope of an MP's parliamentary duties, I would find it helpful for there to be some kind of clarification of the rules.

Finally, I note that you have asked [Director of Customer Service and Delivery's] if rule 5 is applicable here. I struggle to understand his reply to this – surely if my letter fell outside the scope of my parliamentary duties it would be eligible to be considered within this exemption yet he does not seem to accept this. I query this and wondered if you could clarify the position.

[Speaker's Counsel]

I was not aware that the Speakers Counsel nor any other source of legal advice was necessary or available to MPs when dealing with constituency or policy issues.

I can only reiterate that it was not my intention to influence the trial judge but only to protect my constituents in the future from going through an experience similar to that endured by Natalie Elphicke's.

I do not understand what the Speaker's Counsel has to do with me writing to senior judges on a point of policy for my constituents.

Draft Letter to the Judges

You raised in our call a draft of the letter of 19th November which I now understand to have included a request for Mrs Justice Whipple to be removed from the case.

I had never seen that letter before – Mrs Elphick checked and it was sent to a gmail address that I never use. As I said, had I seen it I would not have agreed with it.

Surely if this was a draft that those drafting did not use, then it is a clear indication from the letter they actually sent that they were not seeking the removal of the Judge from the case?

Not only would I consider this improper interference in the administration of justice, I cannot see what the purpose would have been of trying to remove the trial judge from the case (a live application from the Guardian was pending and would surely have to be decided by one Judge or another). My aim was to try to secure (through an approach to senior judges in their administrative capacity) a change in policy, not a different decision on the rules as they stood at the time.

Finally, may I quote from the Times article of the former Director of Public Prosecutions:

“But what of those ordinary members of the public who spoke up for Mr Elphicke? Are they, too, to be held up to public scorn — and if they are, by what measure does that raise the price of redemption?”

This is an important matter of policy, which in future would in future raise the price of redemption for my Constituents.

Thank you for your letter of 22nd March and its attachments.

You have kindly confirmed that you do not consider my use of house-provided stationery to provide a reference for Charlie Elphicke to be a breach of para 16 of the Code of Conduct.

You have now provided me with a copy of the draft letter to the Judges that you showed me on your screen in our recent meeting and you have indicated that I may provide additional comments about this draft.

As I made clear in our meeting and my subsequent e-mail to you, I did not read the draft of the letter to the senior judges which referred to the removal of Whipple J. This was because Natalie Elphicke sent it to my gmail account, which I rarely use. Whilst I did see that she had sent me an e-mail, I asked her to direct any future e-mails to my parliamentary e-mail account, which I monitor. I was not involved in any discussions about that first draft which I never even read, and I assume it was quickly discarded in favour of the version eventually sent. It remains my position that I intended only to highlight the need for (through an approach to senior judges in their administrative capacity) a change in policy to protect vulnerable constituents in the future.

Thank you for your letter concerning the complaint submitted to you regarding recent correspondence relating to the publication of references submitted to aid the courts in making sentencing decisions. I believe that the complaint is not justified and I would ask that you dismiss it, for the reasons set out in this letter.

In relation to the matters which are the subject of the complaint, I cooperated with my colleagues Theresa Villiers, Adam Holloway, Sir Roger Gale and Natalie Elphicke. Given those circumstances, I have felt it appropriate to engage with them in formulating my response to your letter. So whilst this is my individual response, I understand that their replies may contain some similar content.

I have tended also to use the pronoun “we” in setting out much of what happened, reflecting the collaborative nature of the decisions made and the correspondence sent. However, this should not be taken as an assertion about the actions and involvement of my colleagues (they can speak for themselves on that), only as a means to make this response simpler to write.

I have provided answers to your list of questions Annex A at the end of this letter.

Background to the correspondence sent to judges

I was asked in August last year by Ellen Peart of BCL Solicitors LLP, the lawyers representing Charles Elphicke, former MP for Dover, if I would be prepared to provide a character reference to assist the court in determining what sentence should be imposed following his criminal conviction. I agreed to do so and wrote one with advice from them. A copy of that testimonial is at the end of this letter as Annex B.

Such references are routinely provided to the courts and defendants are encouraged to submit them. They are not intended to excuse the actions which led to the conviction, only to give the judge an understanding of the offender’s past character and conduct.

As you will see my testimonial provided acknowledge the wrongdoing for which Mr Elphicke has been found guilty, but highlight the work he carried out for his constituents during his time as MP for Dover.

After sentencing took place, the Guardian Newspaper made an application to the court for publication of all references and were subsequently joined in this by Associated Newspapers and The Times. The trial judge, Mrs Justice Whipple, announced that a hearing would be held in open court to decide whether to publish the references.

Concern was expressed to Natalie Elphicke by members of the public who had provided references about disclosure of their identity and the personal matters which they had shared with the court. Some of these individuals are Mrs Elphicke’s constituents and they told her of their distress about the prospect of publication.

Mrs Elphicke has provided the following examples:

“Constituent A: a vulnerable individual who had a suicidal episode when they were informed about the Guardian application.

Constituent B: had a rear emergency exit added to their garden because they were so frightened of media intrusion.

Constituent C: is undergoing cancer treatment and had a significant mental collapse on hearing about the Guardian application. They were unable to respond personally to the court. A family member responded on their behalf but could not put the full details of the situation because they were concerned about the media knowing additional information about their medical condition.

Following the decision to publish, Constituent A had a further suicidal episode and I was contacted by another constituent in the following terms “Can you ring [Constituent A, they] is threatening suicide...”. A constituent said they felt “violated”.

On 19th November, five Parliamentarians (four MPs and one member of the House of Lords) published the references we provided, along with a statement expressing the view that references from members of the public should be not be disclosed.

We believed that this would help inform public debate and we hoped that it would mean our perspective would be given a fair hearing. We wished to avoid the practice of providing character references from being misrepresented by the media. We believed that there were distinct issues at stake in relation, firstly, to references provided by people in elected office and, secondly, to those provided by ordinary private citizens. We did not wish these important distinctions to be blurred. By publishing voluntarily, we were attempting to remove the personal element (ie the question of whether references we had submitted would be disclosed) so that the important matter of general principle could be looked at separately.

We wanted to highlight real concern about the privacy of members of the public without this being viewed as a means to prevent the references we provided from being made public. We believed that putting our testimonials in the public domain would assist the court in enabling the focus to be primarily on questions relating to privacy of members of the public, without the matter being overshadowed by media interest in the references provided by Members of Parliament.

As a result of the Guardian’s disclosure request, those members of the public who had provided references now found themselves having to consider making legal representations to court. These people did not have lawyers to assist them (unlike the media who were able to instruct a leading media law barrister). Indeed some feared making any representations at all because it could impact on any confidentiality they might enjoy and lead to their identities being disclosed even before any ruling by the judge. As is often the case, a number of these people turned to their MP for help.

We felt publication could have a chilling effect on ordinary, private individuals being less willing to engage in the criminal justice system in the future. We believed that it was legitimate to speak up on the issue of principle raised by the case.

At the same time as publicly disclosing the references we had written, we wrote a letter to senior judges, Dame Kathryn Thirlwell and Dame Victoria Sharp (the Senior Presiding Judge and the President of the Queen's Bench division). You have seen a copy of this letter which is included in your initial disclosure bundle. Because of the involvement of her constituents, Mrs Elphicke added her name to this correspondence.

You will see that we asked Their Ladyships to consider the principles relating to disclosure of character references. We illustrated our concerns by referring to the members of the public who were distressed about the Guardian application. We did not ask Their Ladyships to interfere with the judge's decision and we sent a copy of the letter to Mrs Justice Whipple.

In advance of publishing the references, Mrs Elphicke briefed both the Speaker and the Leader of the House about serious concerns which had been raised with her by constituents about potential public disclosure of sensitive personal information they had provided and the serious impact such potential disclosure was having on them (as set out above):

"I requested and had a meeting with the Speaker to outline the issues that had arisen and to seek his guidance on how best to raise the matter in Parliament. I notified the Speaker in order to make sure the substance of the issue could be considered properly in Parliament as it affected my constituents. The other MPs and peer would be publicly releasing their own character statements voluntarily so that there could be no criticism as to their motives or actions in relation to their support and concern on the substantive issues. Given that Justice oral questions had recently taken place and was therefore not scheduled for some time, he suggested that we apply to raise it during Business Questions to the Leader of the House.

Application for business questions is currently by way of ballot. Bob Stewart and I applied for the ballot to ask the question. Bob was successful in the ballot.

In accordance with usual practice, the question was notified to the Leader of the House through his PPS in the usual way, ahead of Business Questions, including the context of the question. This included notifying the Leader that steps were being taken for the release of the relevant character references by the MPs and peer so that no issue of personal interest or impropriety could arise."

Shortly before publication of the references from MPs on 19th November, I asked a question in the Chamber on the general issues raised by the case, the Hansard report of which is as follows:

Bob Stewart

The Guardian newspaper has applied for the release to the media of character references that were provided to a judge solely to assist in sentencing during a criminal trial. If allowed, this would be a fundamental change of practice, with far-reaching consequences for the criminal justice system. Will my right hon. Friend allow time for an urgent debate on this vital matter?

Jacob Rees-Mogg

It would obviously be wrong for me to comment on a specific case, but my hon. Friend raises a concerning point. If people have, in a generality, given evidence to a trial on the understanding that is confidential, it risks people not being willing to give such evidence in future if what is believed to be confidential turns out not to be. A just system requires certainty, whatever degree of certainty that is. In individual cases, I understand that it is a matter for the trial judge, under rule 5 of the criminal procedure rules, but I will of course refer this matter to my right hon. and learned Friends the Lord Chancellor and the Attorney General.

You will have seen from the correspondence that you have been sent that [name redacted], the Private Secretary to the Lord Chief Justice, responded on 20th November to our letter to senior judges in a negative way. We wrote to the Lord Chief Justice on 22nd November to seek to provide reassurance that were not in any way attempting to improperly interfere with the judicial process, only to draw attention to the important principles involved in the case. At the same time we wrote to Mrs Justice Whipple, to provide her with reassurance on this point. She was also provided with a copy of our letter to the Lord Chief Justice.

We did not publish any of our correspondence with judges. We do not know with certainty how it entered the public domain, but we assume it may have been disclosed by the office of the Lord Chief Justice, along with [name redacted]'s letter of 20th November. Opposition Spokesman, Helen Hayes MP, then submitted her complaint to you.

The complaint

Our actions did not contravene either paragraph 16 or 17 of the Code of Conduct for Members. Nor are they inconsistent with any other aspect of the Code of Conduct or any related rules on use of the Crowned Portcullis image or Parliamentary headed paper and postage.

Paragraph 17 – Damage to the reputation or integrity of the House of Commons

As well as trying cases, senior judges have an additional role in which they act in an administrative and legislative capacity in relation to the criminal justice system. For example, the Lord Chief Justice chairs the Criminal Procedure Rules Committee and, with the Lord Chancellor, issues Practice Directions for the criminal courts.

We believe that it was legitimate and appropriate to raise our concerns about the principle of disclosure of character references with senior judges in their administrative/legislative capacity. Such matters could well be the subject of Practice Directions, and they are regularly debated by MPs in the media, in Parliament, and in other fora, without this being viewed as interfering with matters which are the preserve of the courts.

There is also the option for Parliament to legislate on the rules which should be applied in the courts, a further reason why MPs can and should comment on such matters. The 9th December judgement of Mrs Justice Whipple on disclosure of references confirms that the case engaged important points of principle relating to the administration of justice, privacy and human rights.

There are many examples of Members of Parliament speaking up on matters related to the criminal justice system. Hansard records one such instance, as far back as 1883, of an MP highlighting concerns about representation in the criminal courts, including comment on matters falling within the administrative responsibilities judges have for formulating general rules of court procedure ([https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59db-f589-41c7-90fb-506e0d2a72/SupremeCourtOfJudicature\(NewRules\)](https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59db-f589-41c7-90fb-506e0d2a72/SupremeCourtOfJudicature(NewRules))).

We recognise that the decision on disclosure of references in the Guardian application was solely a matter for Mrs Justice Whipple and we asked in our 19th November letter only that the Lady Justices “consider the crucially important matters of principle which are at stake in this case”.

We of course accept that the senior judges (unless sitting as the Court of Appeal in a particular case) cannot interfere in a judicial decision of a trial judge. We did not intend our 19th November letter to suggest that they should, only that they consider the important general principles at stake in decisions they might take in the future in their administrative/legislative capacity.

We regret any perception this might have engendered in the Lord Chief Justice that we were asking Justices Thirlwell or Sharp to interfere with the trial judge’s decision. We were surprised and concerned by the response from the Lord Chief Justice’s Private Secretary. We would provide the reassurance that His Lordship has misunderstood our letter of 19th November. We took immediate steps to try to remedy that in our letter of 22nd November to him in which we emphasised once again that it was the general principle which we wished to raise and that of course the decision in the Guardian application was properly a matter for Mrs Justice Whipple alone.

We would provide the further reassurance that we were not, as appears to be implied in the 20th November letter from [name redacted], in any way seeking to ‘go behind the back’ of Mrs Justice Whipple. We copied her into both our letters to senior judges.

We would point out that it is an everyday aspect of MP constituency correspondence to raise matters with Ministers where concern is expressed about a general principle with reference to a particular case. In many such instances, the Minister will be unable to intervene in, or comment on, the individual case. Indeed in some circumstances there may be important reasons why they

cannot comment or get involved, for example if some form of quasi-judicial or administrative appeal process is underway.

But no one doubts that an MP can write to a Minister, in such circumstances, asking them to consider the general principles raised by an individual case. Including the details of the particular case is an important means to convey to the Minister the motivation for the correspondence, the practical importance of the issue, and the potential impact on members of the public.

What marks our correspondence in this matter out as unusual is that the decision-makers were judges acting in their administrative/legislative capacity, not Ministers. But, as set out above, senior judges have a role in issuing practice directions and managing the criminal justice system and therefore do have important powers over the general rules applying in our courts regarding matters such as disclosure. The context related to serious concerns raised by individual constituents and the impact of disclosure rules on them, but what we asked the judges to do was look at the general principles at stake.

Whilst the constituents in question were not mine (and only some of them were Mrs Elphicke's), you will appreciate that MPs routinely become involved in matters of importance raised by people who are not constituents. That includes signing joint letters regarding matters of particular relevance to the constituents of colleagues. You will know that Section 21 of the rules confirms that pursuance of constituents' interests, whether relating specific cases or relevant policy matters, is not limited to those of the individual MP concerned.

A finding that a Member of Parliament has caused "significant damage to the reputation and integrity of the House of Commons" under paragraph 17 of the Code of Conduct is very serious. Whilst recognising the sensitivities which apply regarding the relationship between legislators and the courts, we would argue that it would be unjustified and disproportionate to conclude that the threshold for paragraph 17 has been met when, for the reasons set out, a common sense reading of our correspondence shows that it falls within the remit of activity which it is correct and proper to undertake as Members of Parliament.

Moreover, we would highlight the steps taken to brief the Speaker and the Leader of the House on our concerns. Neither indicated that asking a question about the Guardian application and the principles relating to disclosure of character references was in any sense "out of order". As set out above, following a suggestion from the Speaker, a question was asked by myself on the floor of the House during Business Questions. No concerns were raised by the Speaker, the Leader of the House, or other MPs, about the propriety of the question rendering it "out of order" for the purposes of Parliamentary procedure.

The rules on "Parliamentary sub-judice" are not engaged in relation to this question, or our correspondence with judges, since these constraints on matters raised in the House of Commons come to an end when criminal proceedings have concluded with a verdict and sentence (Erskine May paragraph 21.19).

By making the references we submitted public, we took active steps to try to prevent there being any suggestion that our actions were intended to prevent publication of our identities or references or to improperly influence the decision on whether to publish them.

The careful steps taken to get this matter raised in Parliament, including consultation with the Speaker, provide a further reason why it would be both surprising and unjustified to view our correspondence with judges as damaging the integrity or reputation of the House of Commons.

Paragraph 16, House of Commons stationary and the use of the Crowned Portcullis

We believe that use of House of Commons headed paper and the Crowned Portcullis was justified both in relation to (1) original character references to the Court; (2) letters of 19 and 22 November to senior judges.

Character references provided to the court

The reference I provided to the court was on Parliamentary stationary and used the Crowned Portcullis logo.

I want to set out why I believe the use of Portcullis Parliamentary headed paper for the other three MP references is justified. Members of Parliament are regularly asked to provide references for people in their capacity as MP. These would most often be references for constituents, but by no means always.

It is very doubtful that any of us would have been asked to provide references in this case had we not been Members of Parliament. Moreover, our knowledge of Mr Elphicke derived largely from knowing him during his time as MP for Dover, and you will see that much of the content of the references focus on his work and contribution when he was a Member of Parliament.

It should also be noted that Mrs Justice Whipple, in her judgement in the media application, indicates that whether an individual holds elected office is something the courts will take into account in deciding whether the identity of a character referee should be disclosed. In those circumstances, use of Parliamentary headed paper assists the court because it gives the judge transparent information on the office held by the referee.

Should there be any doubt on the legitimacy of use of Portcullis Parliamentary paper, these references would in case be covered by the “reasonable personal use” provision in the rules.

Letters of 19th November to Their Ladyships Dame Kathryn Thirlwell and Dame Victoria Sharp and of 22nd November to the Lord Chief Justice and Mrs Justice Whipple

As set out above, we believe it was legitimate and appropriate to address our concerns about the general principles relating to disclosure of character references to senior judges. That was the

intended effect of our letter. It is correct to use HoC Portcullis headed paper for corresponding with a public body on matters of principle and policy (Annex 3, para 8, 3rd bullet point).

Matters relating to the criminal justice process are routinely ones on which MPs comment and make representations. It is clearly part of their role to examine and comment on issues concerning the operation of the court process and this justifies the use of the Crowned Portcullis in our letters. In relation to the decision to copy in Justice Whipple to our correspondence and write to her on 22nd November, we had been invited by the judge to make representations to her as people who had provided references (as mentioned in Justice Whipple's judgement at page 11). The original character references were, quite properly, submitted on headed paper and therefore used of headed paper for the follow-up requested by the court was also appropriate.

Postage

I understand from Natalie Elphicke that Parliamentary postage was not used for the correspondence with the judges. Personally, I did use Parliamentary postage for the reference I sent into Charlie Elphicke's barrister. But for the reasons set out above in relation to use of headed paper and the Crowned Portcullis, use of Parliamentary postage would have been justified and appropriate.

Conclusion

In conclusion, we did not seek to improperly interfere with Mrs Justice Whipple's decision. We kept her informed of our correspondence and always acknowledged that the matter was one for her to determine. Nor did we ask senior judges to interfere with her decision, only to consider the general principles for the administration of justice highlighted by the case in their administrative/legislative capacities. In these circumstances we consider that our correspondence relating to this matter was an appropriate use of Parliamentary headed paper and did not damage the reputation or integrity of the House of Commons. The complaint should not therefore be upheld.

Annex A: Responses to questions from the Standards Commissioner

1. Are you aware of the rules regarding the use of House-provided stationery and pre-paid postage?

Yes

2. Are you aware of the rule regarding use of the crowned portcullis?

Yes

3. Did you take advice from the House authorities before sending your letter of 19 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

I did not but Mrs Elphicke briefed the Speaker and the Leader of the House, as set out about in my covering letter. She kept me informed regarding these meetings.

4. Did you take advice from the House authorities before sending your letter of 22 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

See the answer to question 3.

5. When sending your letters of 19 and 22 November 2020, did you consider using other stationery, such as party headed paper or your own personal notepaper? If you did, please explain why you decided against doing so.

I did not give consideration to using other stationery. For the reasons set out in my covering letter, I believe that this matter is one which justifies the use of Parliamentary stationery and the Portcullis logo.

6. Why did you decide to send your letters of 19 and 22 November 2020? Did anyone ask you to write those letters and, if so, who?

I have set out the background and reasons for the correspondence sent in my covering letter.

7. Can you confirm if any of the personal referees referred to in your letters of 19 and 22 November 2020 are your constituents?

I do not know the addresses of the members of the public providing references so cannot confirm whether they are constituents or not. I understand from Mrs Elphicke that a number of the personal referees are her constituents.

8. Did you also submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke? If so, please share with me a copy of that character reference and any other correspondence that you submitted to the Court.

I did submit a pre-sentencing character reference. A copy of this reference is contained in Annex B attached to the email sending on my covering letter.

The joint MP letter from MPs to senior judges of 19th November (contained in your disclosure bundle) was copied to Mrs Justice Whipple, as was the letter to the Lord Chief Justice dated 22nd November. You have also seen the covering letter to Mrs Justice Whipple dated 22nd November. This was the only correspondence I sent to the judge.

9. If you did submit a pre-sentencing character reference, or any other correspondence to the Court, please can you confirm whether House-provided stationery or/and pre-paid postage was used?

The reference I submitted did use Parliamentary headed paper and the Crowned Portcullis. I did use Parliamentary postage to send the reference. I believed both were justified.

Annex B: Character reference provided by Colonel Bob Stewart MP for Mr Charlie Elphicke, 5 August 2020

My name is Robert Stewart, date of birth [content redacted], and my home address is [content redacted]. I am a Member of Parliament and have previously served in the Army for 28 years. I have known Mr Charles Elphicke since the 2010 General Election and we have been colleagues and friends since then.

The charges on which Mr Elphicke has been found guilty are serious and his behaviour has been unacceptable, however, I want to provide a few words which might help the court to decide the appropriate sentence.

As a colleague Charles has always been friendly, supportive and helpful with advice on a wide variety of topics both to me and others. As a constituency MP he was extremely hard working and an effective champion for the residents of Dover and Deal. I considered him a friend throughout the last 10 years and, as such, I am very sad to see him in this situation, albeit because of his own folly.

Clearly, Charles has made enormous mistakes but he has already been hugely punished by the breakdown of his marriage, the disgrace of this conviction, losing his parliamentary seat and the almost certain consequence that he will not be able to practice as a lawyer again. It is clear to me that he is full of remorse for his actions and the pain they have caused his victims.

Kathryn Stone (KS) Well, let me just explain what we're going to do today Colonel Stewart, if I may. The purpose of the meeting is to hear your comments on the advice received from both [Director of Customer Service and Delivery] and [Speaker's Counsel], and to ask you some follow-up questions. Of course, having supported another Member of Parliament previously, you'll know that I'm committed to impartial, thorough and fair process, I'm very, very interested to hear what you have to say. It's an inquisitorial process not an adversarial one and there will be a chance for you to ask any questions you might have or make any wider points that you want me to consider.

Bob Stewart (BS) Yes, okay

Kathryn Stone (KS) The meeting's being recorded and a transcript of the meeting will be provided to you in due course for your records and a copy of the recording will be held securely in line with the House's data protection policy. And after the meeting as well as providing you with a transcript I'm going to provide you with a copy of the recording and outline in writing the next steps.

Bob Stewart (BS) I don't think you need to send me a copy of the recording, it would be nice to have the transcript because you know [name redacted] he looks a fairly respectable chap.

Kathryn Stone (KS) Let me say again Colonel Stewart thank you for your time. I hope that we don't detain you for too long. Have you read the advice that I received [Speaker's Counsel] and [Director of Customer Service and Delivery]?

Bob Stewart (BS) Yes, I have

Kathryn Stone (KS) And I wonder having read that advice is there anything you would like to amend in the submissions that you put forward, having that advice is there anything you want to change having read that?

Bob Stewart (BS) No, I don't think so. I guess I disagree with the advice to be honest.

Kathryn Stone (KS) Okay, right, okay

Bob Stewart (BS) I think, you know the first thing is I've never ever in my life done anything that's improper you know and in a way I feel a bit hurt to be honest that anyone would imagine that I would do something improper. Everything I've done, particularly in this matter, has been to try to help constituents. Not my own self-interest I have to say. Absolutely. Everything I've done has been, well, Charlie Elphicke wasn't a close friend okay, when I wrote the er, but I mean I can see him being a bit silly at times but he was a good MP

so when I wrote the letter I was writing on parliamentary paper because I was writing as an MP about another MP and another MP's performance in the same way as I write, you know, recommendations and things for other people, you know, when someone asks I give a recommendation. Sometimes I say no, sometimes I say yes but most certainly when I am writing as a MP, I write as an MP and I was writing as an MP to the court for what in the military we call a plea in mitigation of punishment. It wasn't suggesting in any way that Charlie Elphicke wasn't guilty. In fact, he was a prat frankly. Perhaps that doesn't translate very well onto the thing but [unclear]. I was commenting on his performance as a Member of Parliament and that's what I did and I took very careful advice from his solicitor, you know, before I wrote it.

Kathryn Stone (KS) Okay

Bob Stewart (BS) In fact I sent a draft to the solicitor and I said "what about this" and they suggested amending it because, you know, to make it proper and that's what I did and I sent it on parliamentary paper because I believed that was the way I should do it.

Kathryn Stone (KS) Well let's come to that character reference then and [the Director of Customer Service and Delivery], who is the adviser on such matters, has advised that writing a personal reference for another former member doesn't form part of the parliamentary functions and the permitted modest use of stationery Rule 5 doesn't apply. What are your views on his advice?

Bob Stewart (BS) I don't agree with it to be honest. I mean, I think I'm perfectly entitled to write something. Well if I can't do it, how do I do it? I mean, I know that Theresa used normal stationery but I'm writing as an MP about a former MP who I'd worked with for what 9 years. And surely I'm allowed as a Member of Parliament to make a comment about a former MP when they've actually been found guilty. I'm not disputing that. I'm not trying to interfere with the judge but I'm trying to do what I used to do in the military time and time again, which is write a plea in mitigation of punishment. Not that he doesn't deserve to be punished but actually to explain the circumstances that, you know, I'd seen him operate in. Made no comment on what he'd been found guilty of and I felt it was absolutely right and I can't see, I mean I'm worried now that what can you use parliamentary stationery for if you can't write to, you know, a court about a former MP. There's something seriously wrong. Although I totally accept the judgement of an expert as a non-expert I don't really see what I've done wrong [unclear] so I thought I was well within the law, the rules on it. I didn't know I was against, I was operating anywhere near the line.

Kathryn Stone (KS) Well let's try, let's try and work our way through it Colonel Stewart because it really is an opportunity for us to explore this with you and to hear your views about it and I'm most grateful to you for your kind of honesty now and thank you for that.

Bob Stewart (BS) Well you wouldn't expect me to be anything else would you Commissioner but honest!

Kathryn Stone (KS) Of course not. And again having met before that is entirely what I would expect from you so thank you. Let me ask you then just picking up on that point about [Director of Customer Service and Delivery's] advice being wrong. Why would you consider a character reference for a friend or an acquaintance perhaps to fall within your range of parliamentary functions?

Bob Stewart (BS) Because I knew them. Because, you know, I knew the guy. He was a member of parliament. I'm writing as a member of parliament about a former member of parliament. I might not use parliamentary paper if it was a friend in court. I wouldn't might do it but in fact he was a member of parliament and he ceased to be a member of parliament at the election and, you know, I felt it was perfectly proper to write a reference to a court, in confidence I thought, [unclear] in confidence, without publicising it and actually having taken advice from Elphicke's solicitors who, [unclear], BCL solicitors, and they gave me advice on what I should write, the solicitors themselves. [unclear] I wrote they said, I wrote what I wanted but in fact I did actually pass it through the solicitors because the last thing I want to do is to offend any system and I wanted to do it properly and that's what I felt I was doing.

Kathryn Stone (KS) Okay, thank you. And to turn now to Speaker's Counsel. [name redacted] is Speaker's Counsel and has been for some years now and she's advised, and I quote, "it would be particularly improper for them (that's you and your colleagues) to use the authority and status conferred on them as Members of Parliament to influence the outcome of legal proceedings or, as a minimum, in a way that could appear to be attempting to influence those proceedings". What are your views on [Speaker's Counsel] advice?

Bob Stewart (BS) In what respect Commissioner? Are you talking about the plea in mitigation or writing to judges?

Kathryn Stone (KS) I'm talking about writing to judges.

Bob Stewart (BS) Well, again I wrote as a member of parliament, to be honest I didn't really do, the work was done by Natalie who has a legal background and others, but I agreed with that was said. But I felt as a member of parliament, I could

write that because it was a matter of principle. Deep principle. I'm really quite concerned because Natalie told me, and in the evidence I wrote to you as well, that at least one, perhaps two of her constituents had threatened suicide by the fact that if their names were published in the public record and we the MPs said okay, fine, let's, you know, put our stuff out so that no-one accuses us of trying to [unclear] the system. Well, that's what we thought. Put it out. But the principle is we were arguing about and I take that principle to my own constituency. My own, I don't want constituents of mine frightened to go to court because what they might say about, for example, medical or mental stuff might actually suddenly be made public and their names as well and I thought, I thought that actually such things were not made public but maybe I'm wrong, maybe this, maybe you know, judges, I could be wrong, in which case I apologise if I'm wrong but I have always thought that pleas in mitigation, forgive me it wasn't a plea in mitigation, it was a letter to the Lord Chief Justice to say look we are concerned as members of parliament, or I'm concerned, I've got to speak for myself, I can't speak for the others, I'm concerned that constituents of mine might be put off putting their views to court. Not to influence the court on its judgement, after that, the judgement has been made: they're guilty. Okay, but after that guilty plea I think it's fair enough that actually people put in their own mitigation to the judges and in my case I felt that okay fine I'm a public person, I'm a member of parliament, I've put up a plea in mitigation of Elphicke, I certainly didn't comment on the judgement of the court, I certainly didn't make any comment about judges or anything like that but I just said what his impression [unclear]. And with regard to people in Elphicke's constituency, and outside, who wrote, several of them, and it's hearsay, I didn't see it, but Natalie told me that several people were actually at wits end about the idea that a judge would then publish what they'd written openly so all their neighbours could know and actually she said, and I've totally [unclear] her view, she's a lawyer herself, that people were so concerned about it one actually threatened suicide. That had an impact on me because I thought well if it works down there in, you know, Dover, it certainly works in Beckenham my own constituency and I don't want people, I want people to trust the legal system that if people say can you actually send a letter in mitigation after, you know, the sentencing, not the sentencing, after the verdict of the jury, try to give another aspect of this person rather than, you know, an image which the press actually went to town on Elphicke, you know, sex crazed whatever it was, you know, the press he got all that stuff. I mean I, to be honest it's not the bloke I knew.

Kathryn Stone (KS) No, and of course

Bob Stewart (BS) And it was really unfair and I felt that was not acceptable to me. And I tried [unclear], we're four of us, four MPs made those pleas. I haven't seen what the others wrote to be honest. I didn't look at it, I haven't seen. All I did was write what I thought was right and I said my impression of him and that was it and I put that to the court and when [unclear] you hear that the Guardian newspaper is going to court and little people who've given evidence in good faith, presumably in the assumption that it wouldn't necessarily be publicised, or I don't know, I mean I was quite prepared to allow my own, what I had written, to be publicised. They, you know, then they're petrified and what's the implications of that? It's the long term I'm worried about. That actually from now on, you know, if this comes in it will stop people giving pleas in mitigation to court and it's the principle that I was arguing, nothing to do with bloody Elphicke. So sorry, I'd better not use "bloody". Please don't think [unclear]

Kathryn Stone (KS) No, no, no and of course entirely coincidentally, entirely coincidentally, Mr Elphicke has today, two hours ago, lost his appeal.

Bob Stewart (BS) Has he? Well, so he's still doing two years?

Kathryn Stone (KS) Yes

Bob Stewart (BS) Okay

Kathryn Stone (KS) Let's go onto the letters to the judiciary then rather than the character references. Can you tell us what role you took in drafting and approving the three letters that were sent? You seem to be suggesting, Colonel Stewart, that those letters were drafted by others rather than you?

Bob Stewart (BS) Yes, I signed them so they're my responsibility. I signed them, don't think that I'm trying to get out of that. I didn't draft them but I looked through them and actually said well that's fine, that's exactly the way I feel, I don't have a problem with signing that letter. That's my [unclear].

Kathryn Stone (KS) And what was the outcome you were hoping to achieve in sending the letters to the judiciary?

Both speak, words unclear

Bob Stewart (BS) The whole purpose in a way, yes, you could say I'm trying to influence but not, not deep down. I felt the principle was wrong. The principle that if, you know, the high court judges who decide on the way ahead say okay the principle is we can publish pleas in mitigation, people can apply and get them, in a FOI perhaps, if that's the case I don't think that's right. And what

I was trying to do, and what we are trying to do, was to try to say to the judges look this there's a danger here that actually justice will not be served if actually people are reluctant to come forward for the very simple reason they might be pilloried in forum of public opinion. You know, and they might just actually, their next door neighbour might discover they had some, something that they didn't want to be known public and that apparently, and again I haven't seen these, apparently some of the stuff that went to the court was pretty private about how Elphicke had helped them overcome, or present a case, or something on a rather personal matter and if that become public it would hurt them greatly. None of the MPs, you know, could be hurt on that sort of [unclear] because we were talking actually as MPs about his performance.

Kathryn Stone (KS) Okay, thank you. Let me just read you a little extract from the letter of 19th November

Bob Stewart (BS) Okay

Kathryn Stone (KS) So you say the letters to the judiciary says "we therefore believe it is important for you, as senior judges with relevant oversight responsibility, to consider the crucially important matters of principle that are at stake in this case". What oversight responsibility did you think these judges had and how did you expect that responsibility to be fulfilled Colonel Stewart?

Bob Stewart (BS) Well, exactly what I've said already; that they have oversight of how they direct other judges, Ms Whipple I think in this case, but they have oversight as to how to direct judges on it and I mean these high court judges say look we're not very keen on the idea of publishing, publishing letters. I refer you to the, here look I've got my own paperwork here, somewhere, forgive me, I'm just finding it. This Ken McDonald letter.

Kathryn Stone (KS) Ah yes.

Bob Stewart (BS) You know, he was the Director of Public Prosecutions.

Kathryn Stone (KS) He wrote to the Times didn't he?

Bob Stewart (BS) Yes, he did.

Kathryn Stone (KS) 23rd November

Bob Stewart (BS) This is a quintessential firmament. Perhaps the only moment in a criminal trial when the whole [unclear], this is we're talking about pleas in mitigation, when inevitability and justice collide, and most criminal lawyers believe that

in this second phase they just may learn something useful. Not just that Elphicke or whoever it is [unclear], you know, has done something wrong and has been found guilty but actually there's another side to it and here he goes specifically but this saving grace may now be under attack from a surprising quarter, for a few months ago Charlie Elphicke, the former Conservative MP for Dover was convicted of sexual assault and sent to prison. No doubt about that. The court found that. That's it. And now it is reported that the Guardian newspaper want character references providing for his sentence to be made public. Presumably, to expose those who wrote them to the public gaze. Yuck. That's exactly what we don't want for little, forgive me, I don't mean little, people who are actually innocent of anything and just trying to do what their duty is. For who could no longer think it is a liberal view to find anything redeeming to say about a man convicted of sexual assault particularly when he's a Tory Brexiteer. Well that's rather irrelevant, I don't give a damn about that particularly. Obviously there is a question about, take that out, you don't need [unclear].

Kathryn Stone (KS) No, no, I think it is, I think it's very interesting Colonel Stewart and [name redacted], for your information, [name redacted] has a copy of that letter written by Ken McDonald, which does give an interesting contextual piece around these matters.

Bob Stewart (BS) Commissioner this is the point, he goes on but what of those ordinary members of the public who spoke up for Mr Elphicke, this is after the MPs have published their letter, are they too to be held up to public scorn. Because we have, I mean I understand that the two ladies concerned, women, probably shouldn't use ladies anymore, have received considerable trolling as a result of this being published. You know I'm not very happy with that. I haven't. I'm not very happy with that. Are they too to be held up to public scorn, if they are by what measure does this raise the price of redemption. Now McDonald was a DPP, previous DPP, and that's his view so at least there's wriggle room here you know and it's the principle, forgive me banging on, I'm normally shorter than this, it's the principle that made me actually sign up to those letters, the principle.

Kathryn Stone (KS) Okay, okay. I think you've been very clear about the principle and I want to come back to that in a minute but let me just turn now to your statement to the media. And I would like to talk about your accompanying statement to the media that went along with the publication of your references. So what was your role in the drafting of the statement to the media Colonel Stewart?

Bob Stewart (BS) I agreed it.

Kathryn Stone (KS) You agreed it. Okay, thank you very much, thank you. I now want to share a draft of a letter to you and [name redacted] would you mind please sharing this on our screens. This is the magic of technology Colonel Stewart, we might have to talk amongst ourselves for a moment while [name redacted] gets to grip with it.

[Name redacted] Can you both see that on screen?

Kathryn Stone (KS) Yes, I can see it. I'm having to peer rather unattractively at my screen [name redacted] but I can see it. If you can make it a little bit bigger that would be very helpful.

[Name redacted] Colonel Stewart can you see it as well?

Bob Stewart (BS) Just about. It's small but yes.

Kathryn Stone (KS) Okay. Colonel Stewart let me explain to you what this is. This is a draft of a letter and I wonder if you have seen this draft before and in what context. [name redacted] if you could just scroll down to the next part of the letter please. And of course, we can send this to you. It goes through the points you've made already, it goes through representation.

Bob Stewart (BS) I'm sure there's a point. Is this the letter, Adam Holloway rang me about an hour ago and said have you seen a letter. I said what letter and he said something about trying to get rid of the judge or something.

Kathryn Stone (KS) Yes

Bob Stewart (BS) I said [unclear]. Well if that's what we're talking about, never seen it before.

Kathryn Stone (KS) Okay, so

Bob Stewart (BS) I don't know where it's come from, but it is certainly is not

Kathryn Stone (KS) Okay. It does have your name on the bottom of it.

Bob Stewart (BS) Yes, well, I'm sorry but I haven't signed that letter and I have not agreed it.

Kathryn Stone (KS) Okay, and

Bob Stewart (BS) Can you just show, [name redacted] can you show me where it says what Adam warned me about?

Kathryn Stone (KS) Yes

- [Name redacted] So there's a sentence here at the top which says this is, in our view, is an irresponsible approach about which we make a formal complaint and then further towards the end given the above it is our strong view Whipple J be removed from taking any further part in these proceedings and in this case.
- Bob Stewart (BS) Absolutely not. I would never have agreed that. You're trying to remove a judge.
- Kathryn Stone (KS) Yes
- Bob Stewart (BS) You know, as a member of parliament. There's the three, you know, there's the judiciary, legislature, and government. For goodness sake, if I'd seen that I would actually have disassociated myself from it immediately. I've never seen that.
- Kathryn Stone (KS) Okay, thank you that's very helpful Colonel Stewart.
- Bob Stewart (BS) Well, I don't know where it's come from but it's certainly I've never seen it.
- Kathryn Stone (KS) Okay, it was sent to us by one of your colleagues as part of their response to my initiation letter.
- Bob Stewart (BS) Well I've never seen it.
- Kathryn Stone (KS) Okay
- Bob Stewart (BS) If I had I'd be having a brainstorm because certainly my immediate reaction is just this.
- Kathryn Stone (KS) Okay, thank you. [name redacted], would you mind taking that down from the screen now please.
- [Name redacted] Yes, I'll have to work out how to do that.
- Kathryn Stone (KS) Okay, is it easier to share it rather than try to. Thank you very much.
- Bob Stewart (BS) I'm quite shocked actually the idea you know that MPs can remove a judge. I mean that is, that is, you know, a bit like Cromwell frankly. You know, no, no I can't see that.
- Kathryn Stone (KS) Well as I said, it's a draft of a letter. It wasn't sent but it was certainly written in the name of all of you.

- Bob Stewart (BS) By who?
- Kathryn Stone (KS) I've no idea, I'm trying to establish that.
- Bob Stewart (BS) Well, I'd dearly like to know, they're trying to actually besmirch my reputation with something like that. I actually get angry about the idea, I'd love to see a copy, would you mind sending me a copy of that because I'm quite I'm, look, I'm very calm, [unclear] not in any way, well I'm a bit upset by it, someone might actually suggest I would do that. Goodness me, you know.
- Kathryn Stone (KS) Well that's very helpful, thank you and I've come to the end of the things that I wanted to just clarify with you Colonel Stewart and I want to say again thank you to you for meeting with me and for your frank and candid answers.
- Bob Stewart (BS) It's actually a pleasure if you don't mind me saying, a pleasure. You're not in any way aggressive, you know, the style is quite right. The fact of the matter is, you know, I want this matter, I feel my honour being impugned, is that the right word, I'm a [unclear] so I don't know and I haven't done anything wrong. I've done everything, I've done everything I thought I should do with honour and dignity, and properly, in accordance with what I think a member of parliament should be able to do and that's protecting my constituents, first and foremost.
- Kathryn Stone (KS) And that takes me to my final point, if I may Colonel Stewart. That is of course Lord Freud has acknowledged that he made an error of judgement and has apologised to the House of Lords and to the judiciary, and I wonder what you thought about his actions in making that apology and acknowledging the error of judgement?
- Bob Stewart (BS) Well I don't really know, I never saw what Lord Freud did, I've never actually spent time worrying about it. To be honest all I'm concerned about is what I've done, you know, the, if it is your judgement, your considered judgement that I've done wrong, I'll accept that, okay, but in my heart of hearts right now I'm not convinced I have because I really utterly believed that I was doing the right thing. And as I've mentioned before, I didn't do it with an ulterior motive. I have no motive. I have no skin in this fight you know. I'm not going to [unclear], I knew Elphicke, I know Natty, I think actually as an aside she's done, she's been astonishingly [unclear] to, if I might put that in, I can't understand why she's still sticking with someone like that but, you know, I hope that's made public.
- Kathryn Stone (KS) No

Bob Stewart (BS) I just wonder why, how she can do it, but, you know, what, without her Elphicke would be at sea without a paddle in a rowing boat frankly. And I'm quite prepared to go see Elphicke but it's not to say you're all innocent man, you're not, you're an idiot, you're a bloody idiot but my principle all my life has been, and will remain, don't kick a man or a woman when they're down. It's that time where you stand with them and give them a hand up and that's the principle I actually follow. My father when I went to Sandhurst, and he was a highly decorated infantry type with a military cross, and two mentions in dispatches, gave me one word of advice, two words actually, two sentences. Robert, he said, always remember the Queen gets diarrhoea. In other words everyone's human. Don't be impressed by them just because they've got position. And secondly, always remember to look downwards before you look upwards. And that principle, I'm looking downwards at someone like Elphicke, who has lost everything, family, wife, career, his reputation, and he's in prison, and I would do that for anyone. I'd certainly do it for a constituent and I certainly believe that when someone is down you help them up and that is the way I feel I have acted and I hope you will accept that's my view. I may have got it wrong. It may be your judgement that I've done something wrong, it may be your judgement, after all I did speak in the House of Commons to, I did actually ask, stand up, now where I have got it, you've read my

Kathryn Stone (KS) Yes, yes. We've seen that.

Bob Stewart (BS) I don't need to repeat it. I said, you know, to the Speaker this doesn't look right and The Leader of the House said no, no it doesn't look right, you know, I totally understand, you've got a point, you know, we don't want people being put off going to court to give evidence and so that was the, from that after I'd asked that question I had no problem with writing to the judges. Not to question the judges, not [unclear] judge, but just to say on the point of principle, you guys as the leaders of the judiciary, do you really want people, it's a real danger that people won't be prepared to go to court to do these pleas because they will be concerned about their own situation. I don't want that, actually no-one would want that and I don't think the judges want that and I hope, and that's what we were trying to do. My goodness, no way was I trying to actually change the judge, yes, in a way I could be guilty of trying to influence the judge in so far as saying when you're issuing out instructions to as to how courts should be run, I'm a bit worried that we might actually put people off going to court. Not anything to do with [unclear]. I've banged on enough, I've spoken far too long.

Kathryn Stone Well Colonel Stewart let me say this, I am very grateful to you for your time this afternoon. We will be in touch with what happens next. [name redacted]

is your point of contact in my team. If you think of anything else, if you've got any questions or if you've got any queries, please contact [name redacted] he's only too happy to help you. I do appreciate that these sort of investigations are very difficult and very stressful. We're hoping to deal with this as expediently as possible but that won't be at the expense of thoroughness and fairness, so if you could just bear with us and we will be back in touch with you as soon as possible. We have a couple more meetings like this with your colleagues, there's a couple more people left to speak with but please if you do have any further queries contact [name redacted] and we will be back in touch with as soon as we can. It's been a pleasure to meet you again.

Thank you for your letter of 8th December concerning the complaint submitted to you regarding recent correspondence relating to the publication of references submitted to aid the courts in making sentencing decisions. I believe that the complaint is not justified and I would ask that you dismiss it, for the reasons set out in this letter.

In relation to the matters which are the subject of the complaint, I cooperated with my colleagues Bob Stewart, Adam Holloway, Sir Roger Gale and Natalie Elphicke. Given those circumstances, I have felt it appropriate to engage with them in formulating my response to your letter. So whilst this is my individual response, I understand that their replies may contain some similar content.

I have tended also to use the pronoun “we” in setting out much of what happened, reflecting the collaborative nature of the decisions made and the correspondence sent. However, this should not be taken as an assertion about the actions and involvement of my colleagues (they can speak for themselves on that), only as a means to make this response simpler to write.

I have provided answers to your list of questions Annex One attached to this letter.

Background to the correspondence sent to judges

I was asked in August last year by BCL Solicitors LLP, the lawyers representing Charles Elphicke, former MP for Dover, if I would be prepared to provide a character reference to assist the court in determining what sentence should be imposed following his criminal conviction. I agreed to do so and a copy is attached to the email copy of this letter as Annex Two. For convenience, Annex Two also contains a copy the references provided in the case by my colleagues, Bob Stewart, Adam Holloway, Sir Roger Gale and Lord Freud.

Such references are routinely provided to the courts and defendants are encouraged to submit them. They are not intended to excuse the actions which led to the conviction, only to give the judge an understanding of the offender’s past character and conduct.

As you will see from Annex Two, the testimonials provided acknowledge the wrongdoing for which Mr Elphicke has been found guilty, but highlight the work he carried out for his constituents during his time as MP for Dover.

After sentencing took place, the Guardian Newspaper made an application to the court for publication of all references and were subsequently joined in this by Associated Newspapers and The Times. The trial judge, Mrs Justice Whipple, announced that a hearing would be held in open court to decide whether to publish the references.

Concern was expressed to Natalie Elphicke by members of the public who had provided references about disclosure of their identity and the personal matters which they had shared with the court. Some of these individuals are Mrs Elphicke’s constituents and they told her of their distress about the prospect of publication.

Mrs Elphicke has provided the following examples:

“Constituent A: a vulnerable individual who had a suicidal episode when they were informed about the Guardian application.

Constituent B: had a rear emergency exit added to their garden because they were so frightened of media intrusion.

Constituent C: is undergoing cancer treatment and had a significant mental collapse on hearing about the Guardian application. They were unable to respond personally to the court. A family member responded on their behalf but could not put the full details of the situation because they were concerned about the media knowing additional information about their medical condition.

Following the decision to publish, Constituent A had a further suicidal episode and I was contacted by another constituent in the following terms “Can you ring [Constituent A, they] is threatening suicide...”. A constituent said they felt “violated”.

On 19th November, the five Parliamentarians published the references we provided, along with a statement expressing the view that references from members of the public should be not be disclosed.

We believed that this would help inform public debate and we hoped that it would mean our perspective would be given a fair hearing. We wished to avoid the practice of providing character references from being misrepresented by the media. We believed that there were distinct issues at stake in relation, firstly, to references provided by people in elected office and, secondly, to those provided by ordinary private citizens. We did not wish these important distinctions to be blurred. By publishing voluntarily, we were attempting to remove the personal element (ie the question of whether references we had submitted would be disclosed) so that the important matter of general principle could be looked at separately.

We wanted to highlight real concern about the privacy of members of the public without this being viewed as a means to prevent the references we provided from being made public. We believed that putting our testimonials in the public domain would assist the court in enabling the focus to be primarily on questions relating to privacy of members of the public, without the matter being overshadowed by media interest in the references provided by Members of Parliament.

As a result of the Guardian’s disclosure request, those members of the public who had provided references now found themselves having to consider making legal representations to court. These people did not have lawyers to assist them (unlike the media who were able to instruct a leading media law barrister). Indeed some feared making any representations at all because it could impact on any confidentiality they might enjoy and lead to their identities being disclosed even before any ruling by the judge. As is often the case, a number of these people turned to their MP for help.

We felt publication could have a chilling effect on ordinary, private individuals being less willing to engage in the criminal justice system in the future. We believed that it was legitimate to speak up on the issue of principle raised by the case.

At the same time as publicly disclosing the references we had written, we wrote a letter to senior judges, Dame Kathryn Thirlwell and Dame Victoria Sharp (the Senior Presiding Judge and the President of the Queen's Bench division). You have seen a copy of this letter which is included in your initial disclosure bundle. Because of the involvement of her constituents, Mrs Elphicke added her name to this correspondence.

You will see that we asked Their Ladyships to consider the principles relating to disclosure of character references. We illustrated our concerns by referring to the members of the public who were distressed about the Guardian application. We did not ask Their Ladyships to interfere with the judge's decision and we sent a copy of the letter to Mrs Justice Whipple.

In advance of publishing the references, Mrs Elphicke briefed both the Speaker and the Leader of the House about serious concerns which had been raised with her by constituents about potential public disclosure of sensitive personal information they had provided and the serious impact such potential disclosure was having on them (as set out above):

"I requested and had a meeting with the Speaker to outline the issues that had arisen and to seek his guidance on how best to raise the matter in Parliament. I notified the Speaker in order to make sure the substance of the issue could be considered properly in Parliament as it affected my constituents. The other MPs and peer would be publicly releasing their own character statements voluntarily so that there could be no criticism as to their motives or actions in relation to their support and concern on the substantive issues. Given that Justice oral questions had recently taken place and was therefore not scheduled for some time, he suggested that we apply to raise it during Business Questions to the Leader of the House.

Application for business questions is currently by way of ballot. Bob Stewart and I applied for the ballot to ask the question. Bob was successful in the ballot.

In accordance with usual practice, the question was notified to the Leader of the House through his PPS in the usual way, ahead of Business Questions, including the context of the question. This included notifying the Leader that steps were being taken for the release of the relevant character references by the MPs and peer so that no issue of personal interest or impropriety could arise."

Shortly before publication of the references from MPs on 19th November, Bob Stewart asked a question in the Chamber on the general issues raised by the case, the Hansard report of which is as follows:

Bob Stewart

The Guardian newspaper has applied for the release to the media of character references that were provided to a judge solely to assist in sentencing during a criminal trial. If allowed, this would be a fundamental change of practice, with far-reaching consequences for the criminal justice system. Will my right hon. Friend allow time for an urgent debate on this vital matter?

Jacob Rees-Mogg

It would obviously be wrong for me to comment on a specific case, but my hon. Friend raises a concerning point. If people have, in a generality, given evidence to a trial on the understanding that is confidential, it risks people not being willing to give such evidence in future if what is believed to be confidential turns out not to be. A just system requires certainty, whatever degree of certainty that is. In individual cases, I understand that it is a matter for the trial judge, under rule 5 of the criminal procedure rules, but I will of course refer this matter to my right hon. and learned Friends the Lord Chancellor and the Attorney General.

You will have seen from the correspondence that you have been sent that [name redacted], the Private Secretary to the Lord Chief Justice, responded on 20th November to our letter to senior judges in a negative way. We wrote to the Lord Chief Justice on 22nd November to seek to provide reassurance that were not in any way attempting to improperly interfere with the judicial process, only to draw attention to the important principles involved in the case. At the same time we wrote to Mrs Justice Whipple, to provide her with reassurance on this point. She was also provided with a copy of our letter to the Lord Chief Justice.

We did not publish any of our correspondence with judges. We do not know with certainty how it entered the public domain, but we assume it may have been disclosed by the office of the Lord Chief Justice, along with [name redacted]'s letter of 20th November. Opposition Spokesman, Helen Hayes MP, then submitted her complaint to you.

The complaint

Our actions did not contravene either paragraph 16 or 17 of the Code of Conduct for Members. Nor are they inconsistent with any other aspect of the Code of Conduct or any related rules on use of the Crowned Portcullis image or Parliamentary headed paper and postage.

Paragraph 17 – Damage to the reputation or integrity of the House of Commons

As well as trying cases, senior judges have an additional role in which they act in an administrative and legislative capacity in relation to the criminal justice system. For example, the Lord Chief Justice chairs the Criminal Procedure Rules Committee and, with the Lord Chancellor, issues Practice Directions for the criminal courts.

We believe that it was legitimate and appropriate to raise our concerns about the principle of disclosure of character references with senior judges in their administrative/legislative capacity. Such matters could well be the subject of Practice Directions, and they are regularly debated by MPs in the media, in Parliament, and in other fora, without this being viewed as interfering with matters which are the preserve of the courts.

There is also the option for Parliament to legislate on the rules which should be applied in the courts, a further reason why MPs can and should comment on such matters. The 9th December judgement of Mrs Justice Whipple (attached to the email copy of this letter as Annex Three) on disclosure of references confirms that the case engaged important points of principle relating to the administration of justice, privacy and human rights.

There are many examples of Members of Parliament speaking up on matters related to the criminal justice system. Hansard records one such instance, as far back as 1883, of an MP highlighting concerns about representation in the criminal courts, including comment on matters falling within the administrative responsibilities judges have for formulating general rules of court procedure ([https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59db-f589-41c7-90fb-be506e0d2a72/SupremeCourtOfJudicature\(NewRules\)](https://hansard.parliament.uk/Commons/1883-08-11/debates/7aff59db-f589-41c7-90fb-be506e0d2a72/SupremeCourtOfJudicature(NewRules))).

We recognise that the decision on disclosure of references in the Guardian application was solely a matter for Mrs Justice Whipple and we asked in our 19th November letter only that the Lady Justices “consider the crucially important matters of principle which are at stake in this case”. We of course accept that the senior judges (unless sitting as the Court of Appeal in a particular case) cannot interfere in a judicial decision of a trial judge. We did not intend our 19th November letter to suggest that they should, only that they consider the important general principles at stake in decisions they might take in the future in their administrative/legislative capacity.

We regret any perception this might have engendered in the Lord Chief Justice that we were asking Justices Thirlwell or Sharp to interfere with the trial judge’s decision. We were surprised and concerned by the response from the Lord Chief Justice’s Private Secretary. We would provide the reassurance that His Lordship has misunderstood our letter of 19th November. We took immediate steps to try to remedy that in our letter of 22nd November to him in which we emphasised once again that it was the general principle which we wished to raise and that of course the decision in the Guardian application was properly a matter for Mrs Justice Whipple alone.

We would provide the further reassurance that we were not, as appears to be implied in the 20th November letter from [name redacted], in any way seeking to ‘go behind the back’ of Mrs Justice Whipple. We copied her into both our letters to senior judges.

We would point out that it is an everyday aspect of MP constituency correspondence to raise matters with Ministers where concern is expressed about a general principle with reference to a particular case. In many such instances, the Minister will be unable to intervene in, or comment on, the individual case. Indeed in some circumstances there may be important reasons why they

cannot comment or get involved, for example if some form of quasi-judicial or administrative appeal process is underway.

But no one doubts that an MP can write to a Minister, in such circumstances, asking them to consider the general principles raised by an individual case. Including the details of the particular case is an important means to convey to the Minister the motivation for the correspondence, the practical importance of the issue, and the potential impact on members of the public.

What marks our correspondence in this matter out as unusual is that the decision-makers were judges acting in their administrative/legislative capacity, not Ministers. But, as set out above, senior judges have a role in issuing practice directions and managing the criminal justice system and therefore do have important powers over the general rules applying in our courts regarding matters such as disclosure. The context related to serious concerns raised by individual constituents and the impact of disclosure rules on them, but what we asked the judges to do was look at the general principles at stake.

Whilst the constituents in question were not mine (and only some of them were Mrs Elphicke's), you will appreciate that MPs routinely become involved in matters of importance raised by people who are not constituents. That includes signing joint letters regarding matters of particular relevance to the constituents of colleagues. You will know that Section 21 of the rules confirms that pursuance of constituents' interests, whether relating specific cases or relevant policy matters, is not limited to those of the individual MP concerned.

A finding that a Member of Parliament has caused "significant damage to the reputation and integrity of the House of Commons" under paragraph 17 of the Code of Conduct is very serious. Whilst recognising the sensitivities which apply regarding the relationship between legislators and the courts, we would argue that it would be unjustified and disproportionate to conclude that the threshold for paragraph 17 has been met when, for the reasons set out, a common sense reading of our correspondence shows that it falls within the remit of activity which it is correct and proper to undertake as Members of Parliament.

Moreover, we would highlight the steps taken to brief the Speaker and the Leader of the House on our concerns. Neither indicated that asking a question about the Guardian application and the principles relating to disclosure of character references was in any sense "out of order". As set out above, following a suggestion from the Speaker, a question was asked by Bob Stewart on the floor of the House during Business Questions. No concerns were raised by the Speaker, the Leader of the House, or other MPs, about the propriety of the question rendering it "out of order" for the purposes of Parliamentary procedure.

The rules on "Parliamentary sub-judice" are not engaged in relation to this question, or our correspondence with judges, since these constraints on matters raised in the House of Commons come to an end when criminal proceedings have concluded with a verdict and sentence (Erskine May paragraph 21.19).

By making the references we submitted public, we took active steps to try to prevent there being any suggestion that our actions were intended to prevent publication of our identities or references or to improperly influence the decision on whether to publish them.

The careful steps taken to get this matter raised in Parliament, including consultation with the Speaker, provide a further reason why it would be both surprising and unjustified to view our correspondence with judges as damaging the integrity or reputation of the House of Commons.

Paragraph 16, House of Commons stationary and the use of the Crowned Portcullis

We believe that use of House of Commons headed paper and the Crowned Portcullis was justified both in relation to (1) original character references to the Court; (2) letters of 19 and 22 November to senior judges.

Character references provided to the court

The reference I provided to the court was not on Parliamentary stationary and did not use the Crowned Portcullis logo.

Whilst this aspect of the complaint does not therefore apply to me, for completeness I want to set out why I believe the use of Portcullis Parliamentary headed paper for the other three MP references is justified. Members of Parliament are regularly asked to provide references for people in their capacity as MP. These would most often be references for constituents, but by no means always.

It is very doubtful that any of us would have been asked to provide references in this case had we not been Members of Parliament. Moreover, our knowledge of Mr Elphicke derived largely from knowing him during his time as MP for Dover, and you will see that much of the content of the references focus on his work and contribution when he was a Member of Parliament.

It should also be noted that Mrs Justice Whipple, in her judgement in the media application, indicates that whether an individual holds elected office is something the courts will take into account in deciding whether the identity of a character referee should be disclosed. In those circumstances, use of Parliamentary headed paper assists the court because it gives the judge transparent information on the office held by the referee.

Should there be any doubt on the legitimacy of use of Portcullis Parliamentary paper, these references would in case be covered by the “reasonable personal use” provision in the rules.

Letters of 19th November to Their Ladyships Dame Kathryn Thirlwell and Dame Victoria Sharp and of 22nd November to the Lord Chief Justice and Mrs Justice Whipple

As set out above, we believe it was legitimate and appropriate to address our concerns about the general principles relating to disclosure of character references to senior judges. That was the

intended effect of our letter. It is correct to use HoC Portcullis headed paper for corresponding with a public body on matters of principle and policy (Annex 3, para 8, 3rd bullet point).

Matters relating to the criminal justice process are routinely ones on which MPs comment and make representations. It is clearly part of their role to examine and comment on issues concerning the operation of the court process and this justifies the use of the Crowned Portcullis in our letters. In relation to the decision to copy in Justice Whipple to our correspondence and write to her on 22nd November, we had been invited by the judge to make representations to her as people who had provided references (as mentioned in Justice Whipple's judgement at page 11). The original character references were, quite properly, submitted on headed paper and therefore used of headed paper for the follow-up requested by the court was also appropriate.

Postage

I did not use Parliamentary postage for the reference I sent. I understand from Natalie Elphicke that Parliamentary postage was not used for the correspondence with the judges either. I am not clear on whether my colleagues used Parliamentary postage for the references they wrote. But for the reasons set out above in relation to use of headed paper and the Crowned Portcullis, use of Parliamentary postage would have been justified and appropriate.

Conclusion

In conclusion, neither I nor my Parliamentary colleagues sought to improperly interfere with Mrs Justice Whipple's decision. We kept her informed of our correspondence and always acknowledged that the matter was one for her to determine. Nor did we ask senior judges to interfere with her decision, only to consider the general principles for the administration of justice highlighted by the case in their administrative/legislative capacities.

In these circumstances we consider that our correspondence relating to this matter was an appropriate use of Parliamentary headed paper and did not damage the reputation or integrity of the House of Commons. The complaint should not therefore be upheld.

I hope this response is helpful.

Attachment 1: Rt Hon. Ms Theresa Villiers MP responses to the Commissioner's questions of 8 December 2020

1. Are you aware of the rules regarding the use of House-provided stationery and pre-paid postage?

Yes

2. Are you aware of the rule regarding use of the crowned portcullis?

Yes

3. Did you take advice from the House authorities before sending your letter of 19 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

I did not but Mrs Elphicke briefed the Speaker and the Leader of the House, as set out about in my covering letter. She kept me informed regarding these meetings.

4. Did you take advice from the House authorities before sending your letter of 22 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.

See the answer to question 3.

5. When sending your letters of 19 and 22 November 2020, did you consider using other stationery, such as party headed paper or your own personal notepaper? If you did, please explain why you decided against doing so.

I did not give consideration to using other stationary. For the reasons set out in my covering letter, I believe that this matter is one which justifies the use of Parliamentary stationary and the Portcullis logo.

6. Why did you decide to send your letters of 19 and 22 November 2020? Did anyone ask you to write those letters and, if so, who?

I have set out the background and reasons for the correspondence sent in my covering letter.

7. Can you confirm if any of the personal referees referred to in your letters of 19 and 22 November 2020 are your constituents?

I do not know the addresses of the members of the public providing references so cannot confirm whether they are constituents or not. I understand from Mrs Elphicke that a number of the personal referees are her constituents.

8. Did you also submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke? If so, please share with me a copy of that character reference and any other correspondence that you submitted to the Court.

I did submit a pre-sentencing character reference. A copy of this reference is contained in Annex Two attached to the email sending on my covering letter. For convenience, the other Parliamentary references are also included in Annex Two.

The joint MP letter from MPs to senior judges of 19th November (contained in your disclosure bundle) was copied to Mrs Justice Whipple, as was the letter to the Lord Chief Justice dated 22nd

November. You have also seen the covering letter to Mrs Justice Whipple dated 22nd November. This was the only correspondence I sent to the judge.

9. If you did submit a pre-sentencing character reference, or any other correspondence to the Court, please can you confirm whether House-provided stationery or/and pre-paid postage was used?

The reference I submitted did not use Parliamentary headed paper or the Crowned Portcullis, it only referred to the House of Commons address. I did not use Parliamentary postage to send the reference.

Attachment 2: Pre-sentencing character reference from Rt Hon. Ms Theresa Villiers MP for Mr Charlie Elphicke, 7 September 2020

I am writing to provide a character reference for Charles Elphicke for use in relation to the court proceedings relating to his recent criminal conviction.

I know that Charles feels deep regret about what has happened. In deciding what punishment should be applied in this case, I hope the court will take into account his years of dedicated service to the constituents he represented in Dover for nearly a decade.

I have known Charles for almost exactly 20 years. We first met when he was kind enough to provide me with advice as a candidate in the 1999 European Elections.

Throughout those years, Charles has been a good friend and a loyal colleague, always courteous, respectful, kind and considerate, providing me with help and support on many occasions. He fought for the interests of his Dover constituents with determination and dedication. He was, for instance, crucial in ensuring that the austerity following the 2008 banking crash did not lead to a fire sale of the Port of Dover.

He was always professional and assiduous in carrying out his Parliamentary duties, working with me and his other colleagues in Parliament on many important projects aimed at changing our country for the better. He ensured that the voice of his constituents was heard at the highest levels of Government.

A criminal conviction is always a very serious matter, and I recognise the distress to the victims must have suffered. The court will be aware of the scale of the impact this case has had on Charles' professional and private life, an impact which he will no doubt experience for the whole of the rest of his life. I hope that this will be taken into account in the forthcoming decision on what punishment will be imposed.

Attachment 3: Ruling on Disclosure of Character References by Mrs Justice Whipple, 9 December 2020

Not reproduced here.

Kathryn Stone (KS): Let's get through this and let me start off by saying thank you so much for taking the time to meet with me and with [name redacted] today. I think it's better to meet face to face and we can just have a conversation. I need to explain to you that this is an inquisitorial process, not an adversarial process, and you can be absolutely confident that the process that we will undertake will be independent, impartial, thorough, and fair. I need to give you that assurance. And the purpose of the meeting is to hear your comments on the advice that I have received from [Speaker's Counsel] and to ask some follow-up questions from that advice. It is also an opportunity for you to ask any questions that you have or to make any wider points that you want me to consider. The meeting is being recorded and a transcript of the recording and a copy of the recording will be provided to you in due course. And we keep the recordings in line with the House's data protection policy, so after the meeting I am going to outline in writing next steps that my inquiry will take. You should also know that [name redacted] will be your point of contact in my office. If there is anything that you are not sure about, anything that is unclear, [name redacted] is the chap to contact and he will be only too happy to help you.

Kathryn Stone (KS): So, I've got some questions for you if I may and then we'll handover to you, and the first question that I've got Theresa is have you read the advice received from Speaker's Counsel?

Theresa Villiers (TV): Yes

Kathryn Stone (KS): Okay, and I wondered if you wanted to amend anything that you put forward in your initial submission in light of the advice from [Speaker's Counsel]. Has it changed any of your thinking or is there anything you want to amend in light of that advice?

Theresa Villiers (TV): I think broadly my response is still the same. I can't think of something specific that I want to add or say differently as a result of seeing the Speaker Counsel opinion.

Kathryn Stone (KS): Okay, thank you. I just wanted to read a particular line from [Speaker Counsel's] advice and she said, and I quote, "It would be particularly improper for them (for you and your colleagues) to use the authority and status conferred on them as Members of Parliament to influence the outcome of legal proceedings or as a minimum in a way that could be attempting to influence those proceedings". I wondered what your views are on that?

Theresa Villiers (TV): Well I want to try to provide the reassurance that the letter to the senior judges asked them to look at the general principles and as I set out in my

response letter to you, I think part of the confusion here is caused by the fact that obviously judges operate wearing various different hats, performing different functions. As well as their role hearing individual cases you will appreciate that they do have responsibilities for the way the criminal justice system operates including issuing practice directions of that sort. So, they do have essentially an administrative legislative role in relation to matters of practice in the criminal courts including the disclosure of the identity of, and content of, references provided by members of the public. So, I want to provide, to reiterate, what I said in my response letter was that, that was what we were trying to do. We were, yes I acknowledge, illustrating it and setting out the context by reference to the media hearing in the Elphicke case but what we actually asked the judges to do was look at those general principles.

Kathryn Stone (KS): Okay, thank you. And turning now to the letters themselves to the judiciary could you please tell us what role you took in drafting and approving the three letters that were sent. I'm trying to establish who wrote the letters and who approved the letters as it were.

Theresa Villiers (TV): The way it went was Natalie circulated a first draft and she and I had a number of conversations about it, in which I made a number of drafting suggestions and those went into, having had various conversations we then came up with the final version. I don't, to be honest, I don't know about the input from my colleagues. Although obviously they all put their name to the final version of the letter.

Kathryn Stone (KS): Okay, thank you. And what was the outcome you were hoping to achieve by sending the letters?

Theresa Villiers (TV): I think we wanted to make sure that the judges did give thought to the approach to be taken in terms of publication of references. I mean we had a way, in terms of publishing our own references, we had a wider goal of trying to ensure that the public debate on this was an objective one based on the facts and didn't misrepresent the practice of providing references. But in terms of the correspondence the aim was that the judges were aware of it, they were also aware of the fact that it had been raised by Bob Stewart as a business question in Parliament. So, it was also partly a courtesy as well that we felt it was important to write to them.

Kathryn Stone (KS): Okay, thank you. Thinking specifically then about the letter of 19 November, you talk about oversight responsibility and I wanted to understand please what oversight responsibility did you think that these particular judges had and how did you expect that responsibility to be fulfilled?

Theresa Villiers (TV): Well, it was again, I come back to my initial point they have responsibility for some of the general principles in relation to how the criminal justice system operates. Obviously much of that is statutory but some of it is via practice directions and so I think wanting them, that's what we meant by oversight. I mean to be honest, you know, looking back with hindsight, I'm not sure that we would have had the degree of detailed scrutiny of the letter that one inevitably does with hindsight looking back as part of a process like this. But as I say the goal of the letter was to get them to look at the general principle based on the fact that absolutely they do have an oversight role in terms of managing the way the criminal justice process works including the rules which apply in relation to publication of references.

Kathryn Stone (KS): Okay. Thank you, that's very helpful, thank you. I wonder, remaining with the letter of 19 November, as you've set out this was about the principle, how would you explain that a large section of that first letter talks specifically about the Elphicke case?

Theresa Villiers (TV): It does provide the context. I mean I acknowledge that clearly this has caused concern amongst from the Lord Chief Justice as illustrated by his letter. I acknowledge that concern and we did, we did, try rapidly, as quickly as possible, to provide some clarification in response to [name redacted]'s letter. But, again as I set out in my response to your initial correspondence, it is very much a routine part of MPs correspondence to raise matters of general principle and policy with decision makers and public authorities by way of, because there is a concern in a particular case. The case is there to provide context and explain why it's a serious issue but in many, or even most, instances, you know, the expectation isn't the decision maker would interfere, would be able to make any difference in the specific case but the MP feels that it's important, in terms of future policy and principle, that the minister knows that it's causing a significant impact in that particular case. What singles, what marks this instance out as unusual is instead of a regular public authority it was judges acting in their legislative capacity with responsibility for the criminal justice system, but the principle is the same. Without explaining the reason why we are aware of this, it would be quite hard to explain why we thought the judges should look at it.

Kathryn Stone (KS): Okay, and what action were you hoping the judges would take? What were you anticipating they would do as a consequence of receiving the letter?

Theresa Villiers (TV): I'm not sure how much we thought that through but the main thing was really that the general principle that they took steps to weigh up properly the merits of whether it should be a routine part of the criminal justice

system that the identity of character references was revealed and the content of their references including personal details was revealed. We thought genuinely that that was going to make it more difficult for the courts to persuade people to take part in filling in what is a sort of civic duty and so we felt that those issues were important and should be taken into account in their future decisions on practice directions and the general principles that should apply on the disclosure of character references.

Kathryn Stone (KS): Thank you, thank you, that's very helpful. Moving onto the statement to the media, and I'd like to talk about your accompanying statement to the media that went along with publication of your references. What was your role in drafting the media statement?

Theresa Villiers (TV): I'm struggling to remember this, I certainly provided some drafting suggestions on that. I think I might have provided them before Natalie had sent a draft. Yes, so I think I, yes, certainly provided some drafting suggestions some of which were incorporated into the final version.

Kathryn Stone (KS): Okay, thank you. I want to share with you now a draft letter that was not sent to the judiciary and this involves quite a bit of technological wizardry so if you could just bear with us while [name redacted] desperately tries to share this onto the screen Theresa. It's one of those heart sink moments when we hope and pray that it works. If you just hold on for a second.

[name redacted]: Bear with me for a moment. Can you both see that? Is it legible?

Kathryn Stone (KS): Oh yes, well done [name redacted]

[name redacted]: Or does it need to be a bit, I've gone in too far now. How's that?

Theresa Villiers (TV): Yes, I can see that.

[name redacted]: Excellent, good.

Kathryn Stone (KS): So, I'm happy to send this onto you Theresa. We can send it onto you immediately after the meeting but I just wondered if you, [name redacted], if you could scroll down to the next bit, and just keep scrolling down so that we get the opportunity to read it. So this is a draft letter that wasn't sent and I just wondered if you'd seen this letter before Theresa and in what context?

Theresa Villiers (TV): It looks very much, I think, like the initial draft that Natalie circulated, and I provided some comments. In particular to remove references to the specific

case and criticisms of the judge because obviously those matters would be for the court of appeal not for the sort of exercise that we were undertaking.

Kathryn Stone (KS): Okay, thank you. Could you just scroll down a little bit further [name redacted] because this letter is classified as a formal complaint and it reads as at the bottom of the letter as a formal complaint about Justice Whipple and it also calls for the removal of Justice Whipple from the proceedings. Can you see how that might be interpreted as an attempt to interfere with a live judicial proceeding?

Theresa Villiers (TV): That's why, that's one of the reasons why we would have taken it out. I didn't feel that was an appropriate way forward and of course you will see that there is a distinct contrast with the final version of the letter, which asks the senior judges to look at the general principles rather than any reference to a view about the approach taken by Mrs Justice Whipple. I'd say that the removal of those elements of the letter confirms that what we were seeking to do was to raise these general principles. I mean you'll appreciate, I don't know the circumstances in which Natalie came up with the original draft but you know different ideas do get considered and thrown around. What is important is what goes into the final agreed version.

Kathryn Stone (KS): Yes, yes, I understand that. Thank you that's very helpful. I've actually got to the end of my questions now and just wanted before I go through next steps just to give you the opportunity if you have any questions or comments at this stage. It's not a test Theresa, you don't have to, if you want to take time to think about it and contact [name redacted] later then that's absolutely fine, I just wanted to give you the opportunity if you do at this point to have any questions or comments.

Theresa Villiers (TV): That's kind of you, I may well have some follow-up questions but none that spring immediately to mind. In terms of comments, I just to say I was very grateful to have the extra time to compile the initial response because the coincidence with the final stages of the Brexit process and the managing pre-Christmas Covid dramas meant that I was under considerable pressure in the run-up to Christmas, so I just wanted to say I'm grateful you allowed some extra time for that response.

Kathryn Stone (KS): Well that's good for you and of course we try at all times to be reasonable and acknowledge and understand the pressure that Members of Parliament are under particularly in the current circumstances. Before I close, I just wanted to raise the fact that Lord Freud, one of the signatories to the letter, has acknowledged that the letter was an error of judgement and has apologised to the House of Lords and to judiciary, I wonder what your thoughts are about that?

Theresa Villiers (TV): I think clearly given the complaint process is underway it's a matter for you and potentially in due course for the Standards Committee to decide whether it was appropriate to send that letter. For the reasons I've set out today, and in my response, I feel that it was appropriate to send the letter in the circumstances given the important principle at stake but clearly there are matters that you will be considering carefully in relation to, for example, the Speaker's Counsel's advice and, of course, I will comply with whatever the outcome of this process is.

Kathryn Stone (KS): Okay, thank you, that's very helpful. So let me just say thank you for meeting with me and thank you for your very helpful answers to my questions. As I said at the start of the meeting, I'll provide you with a transcript of the meeting for your records and a copy of the recording and I'll also outline in writing to you the next steps that my inquiry will take. We do try to be as expedient as possible but that doesn't come at the expense of thoroughness or fairness so you know we're not going to do quick for the sake of thorough and fair and I'm sure you wouldn't expect us to do that. If you do have any questions having reflected on our conversation, [name redacted] will be only too happy to help and he's usually very easily accessible, aren't you [name redacted], wouldn't you say?

[name redacted]: I try to be.

Kathryn Stone (KS): There we are, very good, okay, well Theresa thank you, it's very good to see you. I'm sorry that it's under such circumstances but thank you again for the time that you've taken today, I'm very grateful.

Theresa Villiers (TV): Thank you, bye-bye.

Thank you for your letter of 22nd March attaching a transcript of the interview which took place on 4th March. It is difficult to do a precise check because I do not have a recording of the interview, but the transcript seems broadly to reflect our conversation. I am attaching a version which highlights in yellow one or two words which I believe need to be removed.

Since our Zoom call, further points occurred to me which I felt it might have been helpful to raise. I am therefore taking you up on your invitation to provide additional representations on why I believe the complaint should not be upheld.

Note from Speaker's counsel, [name redacted], 9th February 2021

As I said in my interview, my main response to [Speaker's Counsel]'s note is that the 19th November letter to senior judges asked them to look at the general principles relating to disclosure of references provided to the courts by members of the public. For the reasons I set out in my earlier response to you, that request was not improper since judges do have an administrative/legislative function in relation to the general rules applying in the criminal justice system.

However, [Speaker's Counsel] may also be concerned about the fact that the letters to senior judges were copied to Mrs Whipple with, in relation to the 22nd November correspondence with the Lord Chief Justice, a covering letter. I would emphasise that this was done as a courtesy to Mrs Justice Whipple and to prevent there being any suggestion that we were concealing our correspondence from her.

[Speaker's Counsel] indicates that we should have taken legal advice before sending the correspondence. I was not aware that Speaker's counsel was prepared to discuss legal matters with Members of the House, but I would be happy to take her up on that offer should I need to do so in the future. That said, I would point out that taking legal advice on correspondence is hard to reconcile with the day-to-day pressures of dealing with hundreds of emails every week from constituents urging us to take action on their behalf.

I also understand that Natalie Elphicke was in contact with lawyers prior to the letter of 19th November being sent, and that they provided some input.

I would add that MPs do sometimes get involved in live legal cases. For example, it is a regular feature of an MP's postbag to receive requests for letters of support in tribunal hearings on matters such as benefits or immigration. This even extends to full proceedings before a judge. Only recently, I provided a letter of support in a constituent's immigration appeal court case, after contact with her solicitor. I appreciate that that situation does not align with the complexity of the matters you are considering in this complaint process, but it does show that the hard and fast line of separation the Speaker's counsel draws between legal and Parliamentary matters is not reflected in the way MPs have to work in practice if they are to respond effectively and promptly to their constituents' concerns.

MPs send out thousands of items of correspondence every year. Of course we try to ensure that every word of every letter and email is precisely drafted and not susceptible to any ambiguity which could cause misunderstanding. Our letter to senior judges has caused misunderstanding, and I regret that. But it would be harsh if a lack of clarity was the basis for a conclusion that stationary had been misused, still less that Parliament had been brought into disrepute, especially as we took action to try to correct misunderstanding in our follow up correspondence of 22nd November.

I would also point out that the steps taken prior to sending the correspondence, outlined in my first letter, demonstrate an attempt to approach this matter in a responsible way. That of course included publishing the references we ourselves had provided, as well as raising our general concerns in the Chamber via Bob Stewart's Business Question. The extensive changes made to the initial draft of the letter to judges provides a further example of the action we took to try to ensure our conduct was appropriate (as to which, see further below).

Lastly, I note that [Speaker's Counsel] refers to a 1999 report from the Joint Committee on Parliamentary Privilege. For balance, I would point out that the committee's 2013–14 concluded at paragraph 238 that:

“The Clerk of the House's view was that, in general, whether a Member's letter is a proceeding in Parliament will depend, in the circumstances of the case, on how closely the letter is connected to an occurrence, actual or clearly foreseen, in the House or one of its committees”.

That indicates that there is a relationship between raising a matter in the House and in subsequent correspondence. The letter to senior judges asking them to look at the principles at stake followed on from the Business Question raised in the House.

Alternative version of letter to senior judges

I would make the following comment on the version of the 19th November letter which you showed me during the interview. As I said, it looked to me like an early draft circulated to colleagues by Natalie Elphicke as we considered the best way forward in relation to the concerns felt about publishing confidential references provided by members of the public to assist judges in sentencing decisions.

After a number of discussions, this draft was rejected and agreement was reached on the letter that was sent and which is the subject of this complaint. You will have noted that there are multiple differences between this initial draft and the letter which was ultimately sent. Many of the changes were to remove or amend references to the Elphicke case and the presiding judge.

I do not believe it would be reasonable or fair for you to uphold a complaint on the basis of a letter which was not sent. Moreover, not only was that draft of the letter not agreed or sent, there was a deliberate decision to remove complaints about the judge from the letter that was sent. If it has

any relevance to your investigation, the initial draft should support our assertion that we were asking the senior judges to look at the general principles at stake not asking them to override the judge's decision on disclosure in the Guardian application.

The complaint against Lord Freud

One of your questions in the 4th March interview concerned Lord Freud and his response to the complaint made against him as a signatory to the letter to judges. I very much hope that you will look at the complaint made against me and my MP colleagues with an open mind and separately from the complaint made against Lord Freud.

Neither I, nor my MP colleagues, were given any opportunity to make representations in the process conducted in relation to Lord Freud. We were not even informed that it was happening until after it concluded. In these circumstances, if the views of the Commissioner for Standards in the Lords were to pre-determine your approach to my case, or that of my MP colleagues, there would clearly be procedural unfairness.

I would also highlight that the criteria against which Lord Freud's case was adjudicated (paragraph 8(b) of the House of Lords Code of Conduct) are not the same as those applying in determination of whether the threshold for engaging paragraph 17 is reached. The meaning given to the "failure to act on his or her personal honour" set out in paragraphs (7) and (8) of the Guide to the [House of Lords] Code of Conduct is broad. It would certainly cover behaviour which would not be serious enough to pass the paragraph 17 threshold of having caused significant damage to the reputation and integrity of the House of Commons.

Finally, I want to reiterate how seriously I take this process. I have always placed the highest importance in complying with Parliament's rules. I am anxious to do anything I can to assist you in resolving this matter.

Enclosure: Suggested corrections to interview transcript (accepted and incorporated above)

Following receipt of a copy of correspondence sent from the office of the Lord Chief Justice, I have decided to open a formal inquiry on my own initiative using the authority given to me by Standing Order No. 150. I have enclosed a copy of the correspondence with this letter.

The scope of my inquiry

My inquiry will primarily focus on whether you have breached paragraph 16 of the House of Commons' Code of Conduct for Members by misusing a public resource (i.e. House-provided stationery) or by breaching any of the specific rules laid out in the "Rules for the use of stationery and postage-paid envelopes provided by the House of Commons, and for the use of the Crowned Portcullis".

I will also consider whether your actions have amounted to a breach of paragraph 17 of the House of Commons' Code of Conduct for Members. If the scope of my inquiry changes, I will update you in writing.

The relevant rules of the House

The overarching rules are found in the House of Commons' Code of Conduct for Members. Paragraphs 16 and 17 of the Code state:

16. Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation.

17. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.

The over-arching principles for the use of House-provided stationery are found in paragraph 2 of those rules, which states:

The rules cannot be expected to cover every eventuality; Members should therefore always behave with probity and integrity when using House-provided stationery and postage. Members should regard themselves as personally responsible and accountable for the use of House-provided stationery and postage...

Paragraph 3 of the rules lists examples of uses for which House-provided stationery should not be used. That list is not exhaustive. Paragraph 9 of the rules relates specifically to the use of the crowned portcullis. It includes the following statement:

The principal emblem of the House is the crowned portcullis. It is a royal badge and its use by the House has been formally authorised by licence granted by Her Majesty the

Queen. It should not be used where its authentication of a connection with the House is inappropriate, or where there is a risk that its use might wrongly be regarded or represented as having the authority of the House....

Next steps

I would welcome your comments on the allegation that your actions have amounted to a breach of paragraphs 16 and 17 of the Code of Conduct for Members, and may have also breached the specific rules concerning the use of House-provided stationery and the crowned portcullis. I would welcome understanding the background to the correspondence in question, whether you want me to take any other related correspondence into consideration as part of my inquiry, and to receive any other comments that you wish to make about my inquiry.

I would also be grateful for your answers to the following specific questions. It would be helpful to receive any evidence to support your responses when you reply to this letter.

1. Are you aware of the rules regarding the use of House-provided stationery and pre-paid postage?
2. Are you aware of the rule regarding use of the crowned portcullis?
3. Did you take advice from the House authorities before sending your letter of 19 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.
4. Did you take advice from the House authorities before sending your letter of 22 November 2020? If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on the matter.
5. When sending your letters of 19 and 22 November 2020, did you consider using other stationery, such as party headed paper or your own personal notepaper? If you did, please explain why you decided against doing so.
6. Why did you decide to send your letters of 19 and 22 November 2020? Did anyone ask you to write those letters and, if so, who?
7. Can you confirm if any of the personal referees referred to in your letters of 19 and 22 November 2020 are your constituents?
8. Did you also submit to the Court a pre-sentencing character reference on behalf of Mr Charlie Elphicke? If so, please share with me a copy of that character reference and any other correspondence that you submitted to the Court.

9. If you did submit a pre-sentencing character reference, or any other correspondence to the Court, please can you confirm whether House-provided stationery or/and pre-paid postage was used?

Important information

My inquiries are conducted in private. Following the decision taken by the House on 19 July 2018, I will not publish the fact that I am conducting an inquiry into an alleged breach of the Code of Conduct. This practice differs from that adopted by the House of Lords Commissioner. My office will not comment on any aspect of the inquiry to third parties. They will answer direct factual questions about the processes I follow, and the standards system more generally, but will neither confirm nor deny that I have begun an 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.

Procedure

I enclose a copy of the Commissioner's Information Note, which sets out the procedure for inquiries. Please note that this has not yet been updated to reflect the changes flowing from the decision of 19 July 2018.

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.

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. If the evidence does not substantiate the allegation, it will not be upheld. If the evidence demonstrates a breach of the rules, I may, in circumstances defined by Standing Order No. 150, uphold the allegation and conclude the inquiry using the rectification procedure, without making a referral to the Committee on Standards. Where an allegation is not upheld or is rectified, the investigation material, including your correspondence, will be published on the Parliament website.

If I uphold the allegation, and it is either unsuitable for the rectification procedure, or you do not accept my decision, I must make a referral to the Committee on Standards. 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). 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 22 December 2020.

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.

Thank you for your cooperation with this matter.

Enclosures:

- Letter of 19 November 2020 from Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP to Dame Kathryn Thirlwall, Senior Presiding Judge (England and Wales), and Dame Victoria Sharp, President of the Queen's Bench Division

As per WE1 above

- Letter of 20 November 2020 from [name redacted], Private Secretary to the Lord Chief Justice of England & Wales, to Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP

As per WE2 above

- Letter of 22 November 2020 from Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP to the Lord Chief Justice, Lord Burnett of Maldon

As per WE3 above

- Letter of 22 November 2020 from Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP to Mrs Justice Whipple

As per WE4 above

- Letter of 23 November 2020 from [name redacted], Private Secretary to the Lord Chief Justice of England & Wales, to Rt Hon. Sir Roger Gale MP, Mr Adam Holloway MP, Colonel Bob Stewart MP, Rt Hon. Theresa Villiers MP, Rt Hon. The Lord Freud, and Mrs Natalie Elphicke DBE MP

As per WE5 above

I would like to ask for your advice on inquiries I have opened regarding:

- a) Adam Holloway MP;
- b) Sir Roger Gale MP; and
- c) Colonel Bob Stewart MP.

All three Members have used House of Commons headed paper to send out a personal reference for another former Member, who was a defendant in a criminal matter. The personal references were sent to the court to be considered for sentencing purposes.

I enclose copies of the relevant correspondence. I would be grateful if you would assist me with the following:

1. How you would have advised these Members at the time, had they sought your advice about using House-provided stationery for this purpose.
2. Do you feel Rule 5 in the Stationery Rules, "Modest use of stationery (but not pre-paid envelopes) for personal correspondence is permitted", is applicable?
3. Any other comments you feel may be useful.

I appreciate that the published guidance regarding the use of stationery cannot cover every eventuality, and it would be useful to have your observations on the factors you have taken into account in reaching a view in this instance.

It would be very helpful to have your response to this letter as soon as possible please and ideally no later than 9 February 2020 please.

Thank you for your continued assistance with these matters.

I would like to ask your advice concerning inquiries that I have opened into Sir Roger Gale MP, Rt Hon. Theresa Villiers MP, Adam Holloway MP, Colonel Bob Stewart MP, and Natalie Elphicke MP. In summary, I am considering whether by sending the letters listed below the Members may have breached paragraph 17 of the Code of Conduct for Members.

- a) Letter of 19 November 2020 that was sent to Dame Kathryn Thirlwall and Dame Victoria Sharp ahead of a hearing to determine the public release of pre-sentencing character references;
- b) Letter of 22 November 2020 to the Lord Chief Justice in response to the letter from his Private Secretary of 20 November 2020;
- c) Letter of 22 November 2020 to Justice Whipple, the presiding judge, ahead of the hearing referred to above.

I enclose a copy of one of my initial letters to the Members (they were all sent the same initial letter) and their individual replies. I have also enclosed the background material that led to me initiating this inquiry, including copies of the letters listed above, and a copy of the eventual judgement that was issued on this matter.

Please can you outline the advice you would have provided to these Members had they sought your opinion on their planned course of action and had they shared their draft letters with you in advance. In particular, it would be helpful if your advice could consider whether these letters raise any issues regarding parliamentary privilege and the constitutional separation of powers between Parliament and the judiciary. It would also be helpful to understand the factors you would have considered when giving that advice. If there are any wider points that you would like to make about this matter, I would also be happy to receive those comments.

It would be very helpful to have your reply by 9 February 2021 please.

Thank you for your assistance.

Thank you for your letter of [date], and for the information you provided.

In my initial letter to you of 8 December 2020, I said that I may seek advice from House authorities as part of my investigation. Today I have written to the Director of Customer Service and Delivery and the Speaker's Counsel to seek their advice. I have enclosed copies of my letters for your information. Once I have received a reply from both parties, I will write to you again regarding the next steps in my inquiry. In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

Thank you for your letter of [date], and for the information you provided.

In my initial letter to you of 8 December 2020, I said that I may seek advice from House authorities as part of my investigation. Today I have written to Speaker's Counsel to seek her advice. I have enclosed a copy of my letter for your information. Once I have received a reply from both parties, I will write to you again regarding the next steps in my inquiry. In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

In my letter of 26 January 2021, I explained that I would be seeking the advice of the Director of Customer Service and Delivery and the Speaker's Counsel. I have now received their advice, and I enclose a copy of their responses for your review.

I am sending this advice to you for your review only and I do not require a written response at this stage. Instead of a written response to assist my inquiry, I would like to hold an interview with you in the week beginning 1 March 2021. This will enable us to discuss the content of the advice, address any outstanding questions that I have, and provide you with an opportunity to make any further submissions. This will be a formal interview, which will be conducted virtually and will be recorded. I will send you a draft transcript afterwards for you to check for factual accuracy.

If you would like to be accompanied to this interview by a supporter, please let me know in advance. If you are accompanied, please ensure that your supporter understands the confidentiality requirements that govern my work and that they are attending in a support capacity and not as your representative.

Please can you call my personal assistant, [name redacted], on 020 7219 3738, as soon as possible to arrange a mutually convenient time for us to meet virtually and to confirm if anyone will be accompanying you.

In my letter of 26 January 2021, I explained that I would be seeking the advice of Speaker's Counsel. I have now received her advice, and I enclose a copy of her response for your review. I am sending this advice to you for your review only and I do not require a written response at this stage. Instead of a written response to assist my inquiry, I would like to hold an interview with you in the week beginning 1 March 2021. This will enable us to discuss the content of the advice, address any outstanding questions that I have, and provide you with an opportunity to make any further submissions. This will be a formal interview, which will be conducted virtually and will be recorded. I will send you a draft transcript afterwards for you to check for factual accuracy.

If you would like to be accompanied to this interview by a supporter, please let me know in advance. If you are accompanied, please ensure that your supporter understands the confidentiality requirements that govern my work and that they are attending in a support capacity and not as your representative.

Please can you call my personal assistant, [name redacted], on 020 7219 3738, as soon as possible to arrange a mutually convenient time for us to meet virtually and to confirm if anyone will be accompanying you.

I would like to ask for your advice on inquiries I have opened regarding:

- a) Adam Holloway MP;
- b) Sir Roger Gale MP; and
- c) Colonel Bob Stewart MP.

All three Members have used House of Commons headed paper to send out a personal reference for another former Member, who was a defendant in a criminal matter. The personal references were sent to the court to be considered for sentencing purposes.

I enclose copies of the relevant correspondence. I would be grateful if you would assist me with the following:

1. Please advise whether in your view writing a personal reference for a former Member constitutes performance of a member's parliamentary functions (Guide to the Rules, Chapter 6.ii, paragraph 3).
2. Any other comments you feel may be useful.

I appreciate that the published guidance regarding the use of stationery cannot cover every eventuality, and it would be useful to have your observations on the factors you have taken into account in reaching a view in this instance.

It would be very helpful to have your response to this letter as soon as possible please and ideally no later than 11 March 2021 please.

Thank you for your continued assistance with these matters.

The responsibility for House-provided stationery use has now been passed to the Clerk of the Journals. In view of this and your comments during our meeting yesterday, I have today written to the Clerk of the Journals to seek advice on the use of House-provided stationery for a personal reference. I have enclosed a copy of my letter for your information. Once I have received a reply, I will write to you again regarding the next steps in my inquiry.

In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

Please find attached a copy of the transcript for the interview on 3 March 2021. A recording is also available and if you would like a copy please contact my office who will arrange that for you.

In addition, I thought it would be useful to provide you with a copy of the draft letter to the judiciary, which we discussed during the interview. This will give you a further opportunity if needed to consider and provide any additional comments about the contents of this draft.

I have now received a response from [name redacted], the Clerk of the Journals, which I attach. I have considered all the evidence including your submissions, in relation to whether you have breached paragraph 16 of the House of Commons' Code of Conduct for Members, by using House-provided stationery to submit a character reference for Mr Elphicke. My decision is that this is not a breach of paragraph 16 and I will provide detailed reasoning for this finding as part of my overall decision.

I am still considering whether your actions, in writing to the judiciary, have amounted to a breach of paragraph 17 of the House of Commons' Code of Conduct for Members. I would like to give you a final opportunity to submit any evidence or information you feel I should consider prior to making a final determination. Please provide this no later than close of business on 29 March 2021. I will not consider any information submitted once my decision has been made, unless there are exceptional circumstances.

In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

Please find attached a copy of the transcript for the interview on 4 March 2021. A recording is also available and if you would like a copy please contact my office who will arrange that for you.

In addition, I thought it would be useful to provide you with a copy of the draft letter to the judiciary, which we discussed during the interview. This will give you a further opportunity if needed to consider and provide any additional comments about the contents of this draft.

I am still considering whether your actions, in writing to the judiciary, have amounted to a breach of paragraph 17 of the House of Commons' Code of Conduct for Members. I would like to give you a final opportunity to submit any evidence or information you feel I should consider prior to making a final determination. Please provide this no later than close of business on 29 March 2021. I will not consider any information submitted once my decision has been made, unless there are exceptional circumstances.

In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

Please find attached a copy of the transcript for the interview on 16 March 2021. A recording is also available and if you would like a copy please contact my office who will arrange that for you. [content not relevant to the inquiry removed].

I thought it would be useful to also provide you with a copy of the draft letter to the judiciary, which we discussed during the interview. This will give you a further opportunity if needed to consider and provide any additional comments about the contents of this draft.

During the interview you mentioned the following information you were hoping to send to me for consideration:

1. 2013-14 Report – please provide a copy or alternatively a reference which will assist me to locate the report.
2. A comparator letter – you advised that you would send me a comparator of the original and final draft of the letter to the judiciary.
3. A copy of the email you sent to the Justice Secretary and Attorney General.

I would be grateful if you would clarify the following for me:

1. Would you please confirm whether the Speaker, Leader, or any other senior officials of the House approved your actions of sending a letter to the judiciary in relation to this matter. This was not clear from the interview. Please note that this is distinct from approving the asking of a business question on this issue.
2. You stated in your interview that you had asked for a meeting with the Justice Secretary and Attorney General by email, following the business question. Please confirm if you received a response from either the Justice Secretary or the Attorney General to this email and whether the meeting you requested took place.

I am still considering whether your actions, in writing to the judiciary, have amounted to a breach of paragraph 17 of the House of Commons' Code of Conduct for Members. I would like to give you a final opportunity to submit any evidence or information you feel I should consider prior to making a final determination. Please provide this no later than close of business on 30 March 2021. I will not consider any information submitted once my decision has been made, unless there are exceptional circumstances.

In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

Thank you. I accept the draft report.

I acknowledge receipt of your draft report and do not propose to comment further at this stage.

[content not relevant to the inquiry removed]

Thanks very much [name redacted] – no (comments).

I am very grateful for the further time you have allowed me to respond to your draft memorandum and findings.

I wish you to know that I do not intend to challenge your findings and, if they are upheld by the Committee, I will offer an apology to the Committee and, if required, to the House.

Having had further time to think about these matters carefully and to read and reflect upon your draft report, I accept that the correspondence that was sent to senior judges, and which you have found to be a breach of paragraphs 16 and 17 of the Code of Conduct for Members, was not appropriately drafted and it was wrong of us to send it. When concerns were raised by the Lord Chief Justice, we should have paused and retracted.

I take my share of responsibility for that and for the fact that we did not think through carefully enough what we wanted the letters to achieve.

Looking back, what we were trying to do in our approach to these matters was to achieve two outcomes which should have been kept rigorously separate:

- Firstly, to protect ordinary members of the public, who had agreed to provide character references for Mr Elphicke, from criticism and abuse in the media and on social media online, if it was revealed that they had done so. Many of these people were private individuals who did not have the benefit of their own legal representation, some of whom we were told were vulnerable and distressed. I and my colleagues are only too aware of the abuse that is regularly meted out to people in the public eye and we did not wish others who are not public figures, or even parties to litigation, to have to experience the same. Disclosing our own references was one way in which we were hoping to shield them from the abuse that elected representatives regularly receive; and
- to raise more general concerns of policy because case law creates precedents and, if character references could be obtained by the media in this case, they could, in principle, be obtained in every other case. If that is so, I believe that people will be less willing to provide them and judges will be deprived of an important source of information to assist them in sentencing decisions. I cannot put this more eloquently than Lord MacDonald did in an article in *The Times* on 23rd November 2020⁵, published just two days before the hearing in front of Mrs Justice Whipple (Whipple J). This is a matter for Parliament but also for the courts, including senior judges, who have a role in providing practice guidance and sit on procedural rule committees. I am grateful that you understand and acknowledge in your memorandum that this is an important point of principle.

⁵ Link to the article

Regrettably, we allowed the point we wished to make on general principles and their impact upon the criminal justice process to become entangled with the hearing of the Guardian's application. I accept your conclusion that elements of the 19th November 2020 letter went beyond mere illustration of the potential impact of the general principle. I accept that it created the impression that we were asking the judges to intervene in the case before Whipple J. Although our intention was to correct that misunderstanding in our letters of 22nd November, they did not achieve that aim and I accept your finding on that as well.

Having thought carefully about why this happened, I have to acknowledge that I did not think things through sufficiently in the time available. As I explained in my 26 March letter to you, I respond to hundreds of emails every week from constituents and requests for support from colleagues. Each of us will no doubt say the same. Inevitably, not all of an MP's correspondence is perfectly drafted. In this instance, we made a serious mistake on the content of the letter and I deeply regret that.

Moreover, as I now appreciate, whilst working as part of a group can be beneficial, it can also mean that the need to find an agreed line and to compromise and reflect a range of views can serve to confuse. It did so here.

In your covering letter you were kind enough to ask for comments on the draft memorandum.

I have tried to keep these to a minimum, but I hope you might be willing to consider the following points regarding the context of the correspondence in concluding your final draft for the Committee.

Approach to the evidence: Whilst our approach to the issues I have outlined above was flawed and wrong, I feel it is important that it is noted that the correspondence was not pursued in isolation.

We thought at the time that we were engaging in parliamentary business by first raising the matter in the House through Colonel Bob Stewart MP's question and then expressing the general concern to senior judges. The letter to judges was only one part of a three stranded approach: firstly to encourage the members of the public affected to engage with the court process; secondly to highlight the policy concerns in Parliament; and thirdly to raise those policy questions with senior judges.

Whilst the letter was marked private and confidential, and therefore it could be said that we were writing privately, we did explain in our press release that we were raising this with senior judges. We were not hiding what we were doing. I hope this is a further indication that we thought, wrongly as I have now accepted, that we were not doing anything inappropriate. We were well-intentioned.

Whilst it is the letters to judges that are the subject of your investigation, I hope you might consider explaining in your report that they were only one part of a wider strategy, the rest of which is not criticised or subject to complaint.

The finding on the application You make a finding at paragraph 34 that the release of character references provided to assist the court was 'not a departure from the usual practice of the courts and therefore not a reasonable basis for Members to write to the senior judges in the way they did on 19 November 2020.

I do not think the law is as clear as this suggests and I hope you might consider expanding your reference to Mrs Justice Whipple's judgment to include some of the matters of principle which she acknowledged were at stake and the balancing exercise which she carried out.

It seems that prior to Mrs Justice Whipple's decision, there was no authority directly on the question of whether character references provided in criminal proceedings are disclosable. No such authority was referred to in her judgment. The only case mentioned that directly involved the disclosure of character references was said to have been an application in relation to the son of an MP⁶ but there is seemingly no published judgment for that decision.

What Whipple J did was to reason, perfectly properly, from general principles. The approach to take, including the need to be satisfied that there was a proper journalistic purpose for disclosure of documents mentioned in open court before carrying out a balancing exercise, arose from the Dring case⁷ which was decided in 2019. Dring went to the Supreme Court (demonstrating the general public importance of the issues considered) with that court reversing the Court of Appeal, in part, and the first instance judge.

Whipple J also refers to *Khuja v Times Newspapers Ltd*⁸ which is another Supreme Court case. The Court divided 3-2 on the need to protect non-parties mentioned in open court. It is the dissenting judgments that have had most impact in later cases, conferring protection on individuals who are the subject of police investigations pre-charge. The Court of Appeal in *Guardian News & Media*⁹, the other case relied upon, overturned the decision made at first instance.

I hope this brief survey of some of the relevant rulings illustrates that these disclosure questions are not straightforward matters. Judges at all levels and others disagree on approaches and outcomes and the particular decisions that will be reached in each case are not easy to predict.

The finding that we bypassed the court: I have accepted that I should not have been involved in the writing of the letters to senior judges. But I do not believe we were bypassing the trial judge.

⁶ The Kate Osamor case referred to in paragraph 23 of the judgment of Mrs Justice Whipple

⁷ *Dring v Cape Intermediate Holdings Ltd (Media Lawyers Association intervening)* [2019] UKSC 38

⁸ [2017] UKSC 49

⁹ *R (Guardian News and Media Ltd) v City of Westminster Magistrates Court* [2012] EWCA Civ 420

As I understood the position and seek to explain above, the letters should not be viewed in isolation. Mrs Elphicke was engaging with her constituents who had provided references, and with BCL solicitors, to ensure that their voices were heard before Whipple J. I gather that our correspondence with the judges was also submitted formally to the court process (following the judge's invitation that we make representations as people who had provided references).

Interview transcript: I am grateful to you for having made some amendments to the interview transcript following my earlier comments. Having taken more time to go through the evidence bundle, I have identified some further small corrections which I hope you might consider. I am including them as an annex at the end of this letter.

In conclusion, I deeply regret the serious mistakes I have made. As I have said, the correspondence was well-intentioned but wrong. I will address further matters to the Committee but wanted to explain my position now.

Annex to letter to Standards Commissioner

Suggested corrections to evidence bundle transcript of interview with Theresa Villiers MP

Accepted and incorporated above into WE23.

I am very grateful for the further time you have allowed me to respond to your draft memorandum and findings.

I have seen a draft of Theresa Villiers' response to you and I echo and concur with the sentiments within it. I too wish you to know that I do not intend to challenge your findings and, if they are upheld by the Committee, I will offer an apology to the Committee and, if required, to the House.

I will not repeat the general points Theresa has made. I feel it is necessary for me to address a few particular points made in your draft memorandum.

Before I do, I should say that I feel a level of responsibility for what has happened because the others were trying to support me and my constituents. A number of issues conflated and led to the problems that have arisen, but it was never my intention to do anything other than support my constituents.

Evidence from constituents: It is said, at paragraphs 18 and 19 of the draft, that I did not provide to you any correspondence from my constituents requesting my specific involvement and therefore the correspondence could not be said to be constituency casework.

I was not asked to provide any evidence from constituents. I accept that I could have offered it but I was not aware that this was in issue until I received your draft report. My approach to set out the anonymised examples as I have is intended to ensure that my constituents concerns did not become public. I was concerned that that would happen through the court process and remain concerned that it could happen through this process.

I have approached some of the affected constituents to ask them if they would be willing for a letter or email about these matters to be shared for the purposes of this matter. I would welcome providing you with some communications from them if you wish to see it provided there is a means to do so where the content will not become publicly disclosable. I would be grateful if you could confirm whether or not this assurance can be given by you or whether this is something I will need to ask the Committee. If this is something which is a matter for the Committee, then I would be grateful if this could be noted in the Report accordingly.

Media coverage: Another factor that was at the forefront of my mind at the time was what the press reaction would be. As I explained in interview, one aspect of the preceding events that does inform my approach and my concern for constituents is press intrusion. I consider abuse in the media and on social media to be one of the most pressing issues of our time and disturbing aspects of modern life.

I accept the fundamental principle of separation of powers and the independence of the judiciary but I remain concerned about the power of the press and social media to cause damage to ordinary people's lives and lack of protections for non-parties mentioned in court proceedings and that is what I was trying to avoid for individuals who I knew to be vulnerable and believed I needed

to represent and defend. I recognise, as Theresa put it, that the way we went about it was wrong. I accept that now and will learn from it.

The initial draft: I should also address the initial draft letter and its inclusion in the report. I do not think that I saw, at the time, the Guardian application to be on the same level as the criminal proceedings and sentencing that had taken place. The jury had come to its decision and Mr Elphicke had been sentenced. Whilst it is true that the hearing on the disclosure of documents was live, as it was when Lord MacDonald wrote his letter to The Times, I don't think I saw it in the same way as the criminal proceedings and therefore having a different judge dealing with it did not seem to be an issue and had been specifically raised with me by constituents, who felt that a 'fresh pair of eyes' would be beneficial for this matter which they, and I, saw as distinct from the underlying and concluded criminal case. I now recognise that it is not for me to make these sorts of judgments or seek to be involved in them in any way, and I would take care not to do so if a similar situation occurred in the future

I would also echo Theresa's comments on the approach to the evidence and on by-passing the Judge. I was assisting my constituents before the Judge, as well as taking the actions now criticised. If you would like me to provide additional evidence in relation to this, please let me know and I would be happy to see what can be provided.

In conclusion, I deeply regret that errors were made. As I have acknowledged, the correspondence was well-intentioned but wrong.

I will address further matters to the Committee but wanted to explain my position now.

Enclosures:

Corrections to the interview transcript of 16 March 2021, accepted and incorporated into WE11 above.