House of Commons

Committee on Standards

Review of the Code of Conduct: proposals for consultation

Fourth Report of Session 2021–22

Report, together with formal minutes relating to the report

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Committee on Standards

The Committee on Standards is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards, except in relation to the conduct of individual cases under the Independent Complaints and Grievance Scheme; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

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Publications

Committee reports are published on the Committee's website at www.parliament.uk/standards and in print by Order of the House.

Committee staff

The current staff of the Committee are Paul Connolly (Media Relations Manager), Arvind Gunnoo (Committee Operations Officer), Dr Robin James (Clerk), and Stuart Ramsay (Second Clerk).

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1 Introduction

1. Members of Parliament know that it is a privilege to sit in the House of Commons– and that with that privilege comes a set of duties and responsibilities. The public expect MPs to exercise these duties conscientiously; and look to the House of Commons to encourage best practice, uphold standards and sanction misbehaviour.

2. The House of Commons has always claimed the right to regulate the conduct of its Members, often doing so by Resolution. For instance, in relation to bribery and paid advocacy, in 1695 the House resolved that "the offer of money, or other advantage, to any Member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanour and tends to the subversion of the English constitution". This Resolution was updated in 1858 and 1947, and a paid advocacy resolution is still in force (as amended in 2002):

> It is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof and that in particular no Member of the House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received, is receiving, or expects to receive—
>
> (i) advocate or initiate any cause or matter on behalf or any outside body or individual, or Guide to the Rules relating to the Conduct of Members 49
>
> (ii) urge any other Member of either House of Parliament, including Ministers, to do so,
>
> (iii) by means of any speech, Question, Motion, introduction of a Bill or amendment to a Motion or Bill, or any approach, whether oral or in writing, to Ministers or servants of the Crown.[1]

3. When the House established the Register of Members' Financial Interests in 1974, it also codified the long-standing convention that Members should openly declare any interests in the following Resolution: "In any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have, or may be expecting to have".[2]

4. Before 1995, however, there was no comprehensive process for investigation into and adjudication of misconduct by Members. Misconduct was treated as a matter of

1 CJ Vol. 258, 14th May 2002, item 17 is the most recent amendment. The previous was CJ Vol 251, 6 November 1995, item 33 and the original resolution was CJ Geo. VI, 310, 15 July 1947.

2 CJ Vol 230, 22 May 1974

privilege and investigated, if at all, by the Committee of Privileges, which consisted solely of Members. For instance, the so-called "cash for questions" affair in the early 1990s was investigated by the Committee of Privileges. It recommended disciplinary sanctions against the Members concerned, on the basis that their behaviour "fell short of the standards the House is entitled to expect of its Members".[3] The cash for questions scandal also prompted the Government to set up the extra-parliamentary independent Committee on Standards in Public Life (CSPL), which in 1994, in its first report, recommended the creation of a consolidated Code of Conduct for Members, alongside the creation of the post of Parliamentary Commissioner for Standards, to oversee the Register, advise on the Code, and have responsibility for investigating alleged breaches.[4]

5. The House appointed a Select Committee on Standards in Public Life to consider the CSPL's first report. The committee agreed with the recommendation to introduce a Code of Conduct. Its report argued that "the Code will be more acceptable to the House, and more easily enforceable, if it consists of a series of broad and readily understood principles defining acceptable standards of conduct, rather than a detailed set of rules designed to cater for every possible eventuality. The Code would then of course need to be supported by more detailed rules on particular aspects of conduct, for example along the lines of those already familiar to Members in relation to the registration of interests",[5] thereby giving rise to the present structure of a short Code accompanied by a longer and more detailed Guide to the Rules.

6. In 2002, the CSPL published its Eighth Report, on standards in the House of Commons. It recommended, among other measures, that the "Code and the Guide be reviewed during each Parliament, with any necessary amendments debated and implemented as soon after they are identified as possible."[6] The CSPL envisaged that the Commissioner would initiate a review and make recommendations to the Committee, who would then consult with external bodies before making recommendations to the House.

7. Our report is intended to fulfil the purpose of a review of the Code in this Parliament. We have benefited from the Commissioner's own review of the Code, along with work done in the previous Parliament. The Commissioner's review is published with this report as Annex 7. Notwithstanding the decision of the House of 17 November 2021, we believe it is important to consider the whole of the Code and its operation—and any proposals for change—as a whole, rather than piecemeal. This report is based on more than a year of evidence-taking and research, and contains draft recommendations for changes, but we intend to consult on these before making a final set of proposals, which would need to be put to the House for a debate and vote. Our further report will also contain recommendations for changes to the content of the "Guide to the Rules" which accompanies the Code. We anticipate completing that process by Easter 2021.

8. In Chapter 7 of this report, we discuss wider aspects of how the House's standards system operates. We consider that the present system is fair, that it guarantees a Member a fair hearing, that it observes the norms of due process and is compatible with Article 6 ECHR, and that it protects the interests of the House at large and the wider public in

3 Committee of Privileges, First Report of Session 1994–95, Complaint concerning an article in the Sunday Times of 10 July 1994 relating to the conduct of Members (HC 351-I)

4 Committee on Standards in Public Life, First Report: Standards in Public Life, May 1995 (Cm 2850-I)

5 Select Committee on Standards in Public Life, First Report of Session 1994–95 (HC637-Standards in Public Life)

6 Committee on Standards in Public Life, Eighth Report: Standards of Conduct in the House of Commons, November 2002 (Cm 5663)

upholding the House's rules. However, we have also considered whether there is more we can do to clarify the process, eliminate confusion, and ensure best practice in guaranteeing natural justice. We suggest ways in which the process for determining cases might be improved and are open to further suggestions as part of our consultation, including on the matter of appeals. We will invite a senior judicial figure to review some of these options for change. We will publish their conclusions and take them into account in making our final proposals to the House. We will announce further details of this review in the near future.

9. A summary of the existing system of investigating and determining complaints about the conduct of Members is set out at Annex 4 to this report.

10. We are grateful to our two specialist advisers, Dr Alistair Clark, Newcastle University, and Professor Elizabeth David-Barrett, University of Sussex, for their valuable work in organising, respectively, quantitative and qualitative research into the attitudes of Members towards the Code and the standards system. That research has helped to inform our conclusions; we set out a summary of the research findings in Annexes 5 and 6. The results of the research indicate that, as might be expected, there is a wide diversity of opinions within the House on most aspects of the parliamentary standards system, but also that the present Code of Conduct attracted significant support among Members, with nearly 50% of respondents to our survey indicating that they were either satisfied or very satisfied that it was fit for purpose, as against 16% who expressed themselves dissatisfied or very dissatisfied.[7]

7 Annex 5, paras 11, 25

2 The context and purpose of the Code

Context

11. The Code of Conduct is one part of a broader landscape of regulation for Members of Parliament. It sits alongside the following:

- The oath or affirmation that Members of Parliament take on being elected to the House that they shall be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.
- The Speaker's responsibility for conduct in the Chamber and proceedings in Parliament.
- Members' conduct in relation to party matters which is a matter for internal regulation within the political parties.
- The Ministerial Code which is regulated by the Prime Minister.
- The Members' expenses scheme administered by the Independent Parliamentary Standards Authority (IPSA), which provides and regulates financial support for Members.
- Rules on political funding and donations regulated by the Electoral Commission.
- The Parliamentary Behaviour Code and the Independent Complaints and Grievance Scheme (ICGS) relating to bullying, harassment and sexual misconduct, which apply to all members of the parliamentary community (including Members) and which are regulated by the House of Commons Commission.
- The Stationery Rules and the Rules relating to All-Party Parliamentary Groups (APPGs), which are separately regulated by the Committee on Standards.

12. In addition, the Committee on Standards has the power under Standing Order No. 149 to consider any matter relating to the conduct of Members.[8]

13. We deal in Chapter 4 of this report with the scope of the Code and its relationship with other codes operative within Parliament.

Purpose of the Code

14. The existing Code describes its own purpose as follows:

> The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large by:
>
> a) establishing the standards and principles of conduct expected of all Members in undertaking their duties;

8 Standing Order No. 149(1)(b)

b) setting the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing

c) ensuring public confidence in the standards expected of all Members and in the commitment of the House to upholding these rules.[9]

15. Since its earliest days the Code has combined two elements: statements of general duties and principles that Members are expected to uphold; and specific rules which Members are required to observe on penalty of sanction. We deal in Chapter 3 of this report with the relationship between these two elements. Before we proceed to discuss the contents of the Code in detail, **we wish to emphasise that a key purpose of the Code is to assert a set of values and to promote best practice. We encourage Members of the House to incorporate these values as part of their daily working life and reflect upon them as they carry out their duties. The Code of Conduct should be read in conjunction with the Parliamentary Behaviour Code which it incorporates. Both Codes are intended to build a common understanding of what behaviour and attitudes the House wishes to promote and what should be called out as unacceptable**.

16. It is also the intention of the Code that that it should be discussed and understood by Members in a positive way. It is the ultimate objective of the Code not just to punish failures to comply with rules, but to encourage conversation and understanding about how Members apply the principles of high standards to their daily lives, which have to deal with conflicts of values, interests and loyalties, and in relationships all the time. This is not to question the integrity of Members, but to strengthen their capacity and confidence to deal with these daily dilemmas. Members work in a confusing landscape of a variety of codes and sets of rules, and are subject to institutional, cultural and public expectations, while always under intense media and public scrutiny. We are very conscious that Members have no access to any formal learning or professional development in this sphere to help them cope with this, a matter we address later in this report.

9 Code of Conduct 2019, section I

3 The Principles

Seven Principles of Public Life

17. The Code of Conduct for Members is based on the Seven Principles of Public Life. This is partly due to the historical circumstances in which the House first agreed a stand-alone Code of Conduct, as detailed above, when the Committee on Standards in Public Life, framed the Seven Principles of Public Life in its first report and recommended the creation of a Code of Conduct for Members.

Box 1: The Seven Principles of Public Life

Selflessness
Integrity
Objectivity
Accountability
Honesty
Openness
Leadership

18. The Code has, therefore, always included both principles and rules. There are a number of ways to draw the distinction between the two. The first, that has been put to us by a number of witnesses, is that principles are primarily aspirational, and that rules are enforceable. On this way of thinking, principles provide a way of thinking about and encouraging good behaviour. The second is to see them on a spectrum: that principles are 'high level' and there is more room for disagreement as to whether some case falls in the scope of a principle; whereas a rule is specific, and provides clarity as to the boundary between what is and is not acceptable. Underpinning all these principles and rules, lie a series of shared values.

Enforcing principles?

19. Currently, the Code only allows the Commissioner to investigate alleged breaches of the rules of conduct (paragraphs 11–18 of the Code). She cannot investigate breaches of the principles in the Code or the "general duties" of Members. However, Paragraph 8 of the Code states that the Principles of Public Life "will be taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct". In our July 2020 report on sanctions, we stated that an intention to uphold the general principles would be a mitigating factor in applying a sanction, while a breach of the rules which also demonstrates a disregard of the general principles would be an aggravating factor.[10] The Commissioner has also made clear in her own review of the Code that she would like to see a clearer distinction between enforceable rules and non-enforceable principles.[11]

10 Committee on Standards, Seventh Report of Session 2019–21, Sanctions in respect of the conduct of Members (HC 241), para 80 (Table 1)

11 Annex 7

20. The Chair of the Committee on Standards in Public Life, Lord Evans of Weardale, explained that the Seven Principles of Public Life are designed to be a high-level statement "of the overall direction in adhering to standards", and were not designed to be enforced:

> The general approach that the Committee has taken over the years, which I fully support, is that the principles of public life—the so-called Nolan principles—are high-level statements of the overall direction in adhering to standards in public life. The benefit is that they stand the test of time—it is 25 years since they were formally articulated in Lord Nolan's first report, and they are unchanged over that period: to a large extent, they are timeless principles.
>
> Our concern about trying to enforce principles is that they are very high level, and that to make them real in any environment it is important that they are interpreted for a code of conduct. […]
>
> We say that there should be a code of conduct and that as far as possible it should be specific. It should be in line with the principles of public life, which are quite difficult to enforce as rules. How do you enforce leadership or selflessness? It is quite difficult, so we feel that it is best given a hard edge through codes of conduct.[12]

21. Dr Claire Foster-Gilbert, Director of the Westminster Abbey Institute, observed:

> It is much harder to be clear about principles. I mean, a rule is something that you keep or break, whereas a principle is something you aspire to. If we take the Nolan principles, I can assure you that I have been selfish, I have not practised selflessness all the time, and I am sure that I have been dishonest in some way or other and not been open, and so forth, but I would hope that I would try to be those things. So you simply can't apply principles in the same way that you can apply rules.
>
> However, it ought to be the case in a well-written and well-drafted code that the rules come out of the principles, and I would hope that any reasonable, well-intended person, as every MP is, would hope to adhere to, or would aspire to adhering to, the principles, and in so doing would never fall foul of the rules.[13]

22. The current Code includes one 'high level', broadly specified rule, at paragraph 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.

23. The practical effect of this rule is to prohibit serious misconduct which is not specifically prohibited by other rules in the Code. Because of its breadth, breaches of the rule have been found both individually,[14] and where another breach has been sufficiently

12 Q34

13 Q187

14 Committee on Standards, First Report of Session 2019, *Keith Vaz* (HC 93); for a further recent example, see Committee on Standards, Second Report of Session 2021–22, *Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers (HC 582)*

serious that paragraph 17 has also been breached.[15] The bar for engaging paragraph 17 is rightly high. It is not sufficient for the individual Member's reputation to have been damaged; rather, the action must be sufficiently serious as to reflect on the House as a whole. Nor is it merely a test of consequences—the test is whether a Member's action is apt to cause such damage, regardless of whether that behaviour has been made public (for example). It is necessary for a Member's behaviour to be so serious that it "would" cause significant damage to the reputation and integrity of the House as a whole (or its Members generally). We consider that such a rule is still necessary, since it is impossible to create rules that will capture every circumstance.

24. The examples we came across of principles-based enforcement in other codes applied a separate test for investigation or enforcement action. Duncan Rudkin, Chief Executive of the General Pharmaceutical Council (GPhC), told us that the GPhC employed a principles-based set of standards, but that their enforcement activity was based on a question of whether an individual's fitness to practice was impaired, which the principles might inform, but would not determine:

> The exam question that our statute sets for us when we are looking at concerns is whether the fitness to practise of that individual is impaired by reason of, for example, misconduct. […] Again, it is not quite a focus on whether there has been a "breach" of a set of standards. The fact that there may have been a falling short against the standard can be evidence of unfitness, but as I hope I have explained, we therefore try to avoid focusing on a set of definitional questions about whether or not a rule has been breached, and focus on what is perhaps the more substantive question from a professional regulation point of view, which is whether that individual's practice should be either suspended or restricted in some way.[16]

25. Similarly, Juliet Oliver, General Counsel at the Solicitors' Regulation Authority, explained:

> [B]ecause we have more of a principles-based standards approach, we really are looking for whether the behaviours present a risk: whether they fundamentally make us feel that this is somebody, a firm or an individual, that is not trying to do the right thing and presents a risk in the way they are behaving.[17]

26. There is no direct equivalent of an objective "fitness to practice" in politics. Without an objective test of this sort, it would be extremely difficult to enforce the policing of principles. We therefore consider that enforcement—that is, investigations by the Commissioner and, where necessary, adjudications by this Committee—should take place only on the basis of rules in the Code, not on principles.

27. **Principles and rules serve different functions. Principles are primarily aspirational, and are therefore expressed in broad terms. Rules are more tightly drafted with a view to the practicalities of enforcement. We encourage Members to reflect on the principles and to base their conduct on them, and we intend to make clearer the distinction between rules and principles in the Code.**

15 For example, Committee on Standards, Fourth Report of Session 2019–21, *Conor Burns* (HC 212)
16 Q11
17 Q12

The Seven Principles and their descriptors

28. The Seven Principles of Public Life are set out by the Committee on Standards in Public Life, and apply to all public officeholders. The Seven Principles also incorporate "descriptors", a short explanation of what each principle means. Given the importance of principles in the Code, we consider that there would be an advantage in tailoring the descriptors more closely to Members' roles, in order to give a clearer picture of the standards envisaged by the Seven Principles.

29. The previous Parliamentary Commissioner for Standards, Kathryn Hudson, as part of her review of the Code in 2016/17, considered changing the descriptors but rejected the idea. She told the Committee in 2017, introducing her preliminary proposals:

> There was considerable discussion concerning the possibility of developing new descriptors for the General Principles of Public Life which may be more relevant to the role of an MP. There was no clear consensus from consultation on this matter and I have not changed them.[18]

30. In the last Parliament our predecessor Committee set up an informal sub-committee to consider this and other matters related to the Code. The sub-committee came to the conclusion that more tailored descriptors would be useful. By the time the November 2019 Dissolution brought the sub-committee's work to an end, it had formulated an alternative, customised set of descriptors. We have built on the sub-committee's work in drawing up our set of descriptors for consultation. In doing so we have taken account of other possible alternatives to the original CSPL descriptors, in particular the revised wording of the descriptors adopted by CSPL in 2013 and the recent adoption of customised descriptors by the Welsh Parliament/Senedd Cymru.[19] Our proposed descriptors are set out in Box 2 below alongside the original CSPL descriptors. In addition, we place these alongside the 2013 CSPL revised descriptors and the Welsh Senedd's descriptors in a table set out as Annex 2 to this report.

31. Following the deaths of Jo Cox and Sir David Amess, there was much discussion about how the House should raise the tone of political debate and the need for more restraint and courtesy in politics. We are saddened that these aspirations seem to have evaporated all too quickly. This is poor leadership. Personal attacks on opponents and on Officers of the House seem to have increased in recent years, and we ask all Members to evaluate how their language impacts on others and on the reputation of the House. A bit more kindness and magnanimity would be in order.

32. ***The Code should continue to be based on the Seven Principles of Public Life. We propose that the descriptors attached to each of the Seven Principles be revised to reflect more closely how they apply to a Member's role. We are grateful that the Committee on Standards in Public Life has indicated it agrees with our approach to this.***

18 Unpublished memorandum submitted by the Parliamentary Commissioner for Standards, "Notes on Code of Conduct for Committee on Standards" (February 2017), para 7

19 https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2; https://senedd.wales/how-we-work/code-of-conduct-and-associated-rules-and-guidance-for-members-of-the-senedd/

Box 2: Current and suggested new descriptors

Current descriptors	Proposed new descriptors
Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.	**Selflessness:** Members of Parliament should act solely in the public interest. They should ensure that no private, financial or other personal interest compromises their principal role as a Member of Parliament. They should never misuse their position to gain financial or other material benefits for themselves, their family, or their friends.
Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.	**Integrity:** Members should conduct themselves in a manner which will inspire public trust and confidence in them and in the integrity of Parliament. They should avoid being placed under any influence or obligation which could undermine trust in them as an individual or in their role as a Member of Parliament. They should declare and resolve any interests and relationships which might be construed as a conflict of interest. When such conflicts do arise, they should be resolved in a way that is beyond reproach, maintains the trust of colleagues and the public, and protects the public interest.
Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.	**Objectivity:** Members are responsible for the exercise of their judgement as fairly as they can according to their conscience. They should avoid discrimination or bias. They should be able to demonstrate that they make decisions on merit, taking account of relevant evidence, advice and of any wider responsibilities.
Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.	**Accountability:** Members must make themselves accountable to their constituents and to the wider public and to Parliament. They should submit themselves to the scrutiny necessary to ensure this.
Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.	**Openness:** Members should, as far as possible, act in an open and transparent manner with the public, with colleagues and with others with whom they work. They should not withhold any relevant information unless there are clear and lawful reasons for doing so.
Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.	**Honesty:** Members should be truthful in everything they say, write or do.
Leadership: Holders of public office should promote and support these principles by leadership and example.	**Leadership:** Members are elected as leaders, who can only be effective when they inspire trust by setting a good example. They should refrain from any action which would bring Parliament or its Members into disrepute. Members should promote best practice and challenge poor attitudes and behaviour whenever they occur.

An additional principle: 'Respect'

33. In addition to the Seven Principles of Public Life, we propose the inclusion in the Code of a further principle, 'Respect'. We note that the current Code already includes a statement that Members are also expected to observe the principles set out in the Parliamentary Behaviour Code, of respect, professionalism, understanding others' perspectives, courtesy, and acceptance of responsibility, as set out in the Resolution of the House of 19 July 2018. We consider that formalising this expectation as a separate principle will underline the House's commitment to the Behaviour Code and the Independent Complaints and Grievance Scheme.

34. We also consider that it is important that the Code makes explicit reference to anti-racism, inclusion and diversity. Our proposed additional principle set out below will mean that the Code does so for the first time.

Box 3: Proposed additional principle

> **Respect:** Members should abide by the Parliamentary Behaviour Code and should demonstrate anti-discriminatory attitudes and behaviours through the promotion of anti-racism, inclusion and diversity.

35. We recognise that the Seven Principles of Public Life are kept under review by the Committee on Standards in Public Life, and our inclusion of an additional principle does not purport to create an "eighth" Principle of Public Life. Our proposed draft Code makes explicit that the Code is based on the Seven Principles of Public Life, together with the separate principle of respect.

36. Currently paragraph 18 of the Rules has its own heading of "Respect". This is confusing as it may make it appear (wrongly) that the paragraph does not form part of the enforceable rules. We therefore propose to remove this heading.

37. ***We recommend that an additional principle of "Respect" as set out in Box 3 should be added to the Code, replacing the existing paragraph 9.***

4 Scope of the Code and what can be investigated

38. The scope of the Code is set out in paragraphs 2 and 3 of the Code:

> The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.
>
> The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.

39. Matters which the Commissioner cannot investigate (in addition to Members' "purely private and personal lives") are set out in Chapter 4, paras 21–22 of the Guide to the Rules. These are divided into two categories.

40. One category consists of matters outside the Commissioner's remit which fall within the remit of another body or individual. These are as follows:

"a) conduct in the Chamber, which is a matter for the Speaker;

b) complaints about the misuse of the scheme for parliamentary expenses since May 2010, which are matters for the Independent Parliamentary Standards Authority and its Compliance Officer;

c) allegations of criminal misconduct, which are normally a matter for the police;

d) the funding of political parties and the permissibility of donations, which are matters for the Electoral Commission; and

e) alleged breaches of the Ministerial Code, which governs the conduct of government Ministers in their capacity as Ministers and which are matters for the Cabinet Office."[20]

41. The second category consists of matters outside the Commissioner's remit which (by implication) cannot be complained about to another body or individual. These are as follows:

"a) policy matters;

b) a Member's views or opinions;

c) a Member's handling of or decision about a case (whether or not anyone involved is a constituent of the Member)."[21]

42. The Guide makes clear that these three exemptions are nonetheless "subject to paragraph 17 of the Code", i.e. the "catch-all" provision that "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". There is, however, a high threshold for making out a case that paragraph 17 has been breached.

20 Guide to the Rules, Chapter 4, para 22
21 Guide to the Rules, Chapter 4, para 21

43. Following a degree of public concern and confusion in this field, we consider below five areas that are presently excluded from investigation by the Commissioner.

A Member's views and opinions

44. The exclusion of "a Member's views and opinions" from the Code has meant that not only the tone and content of Members' speeches or other contributions in the House and its committees (which are "proceedings in Parliament" protected by the privilege of free speech), but the tone and contents of Members' contributions to social media and the internet, or those made in other settings outside Parliament, may not be the subject of an investigable complaint to the Commissioner.

45. The Commissioner has told the Committee that a high proportion of complaints she receives from members of the public relate to Members' tweets and other uses of social media or the internet, on the basis that they allegedly contain abusive or disrespectful language or errors of fact, exaggerations or downright lies. Complainants often argue that such alleged abuses are in breach of the Nolan principles of integrity, objectivity or honesty and that they should be treated as investigable breaches of the Code.

46. We acknowledge the legitimacy of these views. Conversely, the arguments for not bringing these kinds of alleged misconduct in non-proceedings within the scope of what the Commissioner can investigate are as follows:

a) this would represent a significant erosion of free speech within the parliamentary system and could have a chilling effect on political debate and discussion; freedom of expression is a fundamental (albeit qualified) right under the European Convention on Human Rights - it includes the right to say things which may offend;

b) these are matters which should be subject to arbitration by the electorate through the ballot box rather than be the subject of formal disciplinary proceedings;

c) removing this exemption would be likely to lead to a major increase in the number of complaints, many of which might be (i) vexatious, (ii) 'weaponised' by a Member's political opponents or (iii) require the Commissioner to make very difficult subjective decisions as to what is offensive and what falls within the bounds of reasonable debate.

47. As far as the accuracy of statements is concerned, accusations of direct, deliberate dishonesty can be pursued within the rules of Parliament. This must be done through the tabling of a substantive motion, either in the form of an Early Day Motion (EDM) or a motion intended for debate.[22] That gives the accused Member the opportunity to respond, either by tabling an amendment to the EDM or in the debate. (What is out of order is to make an accusation of lying without notice and without going through the proper procedures set out above.)

48. The Commissioner told us she did not consider it would be helpful to introduce a rule requiring Members to ensure that their tweets are true and accurate. Truth and accuracy are not matters she could easily or practicably investigate.

22 Erskine May's Parliamentary Practice, section 20.10.

49. **We agree with the Commissioner that it would be impracticable to set up a system for arbitrating on matters of truth and accuracy in political discourse. There is no shortage of opportunities for contentious statements by politicians to be controverted and challenged by their political opponents, by journalists, and by members of the public. This is normally done as part of the process of political debate inside and outside Parliament.**

50. Members have no immunity from the criminal law (save to the extent that an act that would otherwise be criminal is part of "proceedings in Parliament"), so a tweet which broke the law by inciting racial hatred or violence could lead to the Member being prosecuted. Members might also be subject to a civil suit alleging defamation.

51. The Commissioner tells us that she:

> has given careful consideration to the scope of a possible rule. She is aware that the criminal law already prohibits incitement to racial hatred and that there are legal remedies for defamation. At this stage she does not see a case for additional parliamentary rules on these matters. […] But she remains concerned about the effect on other individuals of what MPs may say about them.[23]

52. Some devolved bodies within the UK have adopted rules on personal attacks, including those conducted via social media. The Welsh Parliament/Senedd Cymru has recently adopted a rule which says:

> Members must not subject anyone to personal attack—in any communication (whether verbal, in writing or any form of electronic or other medium)—in a manner that would be considered excessive or abusive by a reasonable and impartial person, having regard to the context in which the remarks were made.[24]

Likewise a rule of the Northern Ireland Assembly states: "You shall not subject anyone to unreasonable and excessive personal attack".[25]

53. The Commissioner has told us that she "would like to see Parliament introduce such a rule in relation to the written and spoken word as well as to the use of social media".[26]

54. The arguments against making a change to the current exclusion must be taken very seriously. Freedom of expression is one of the rights set out in the European Convention of Human Rights (in article 10). It has been at the core of our democracy since long before the Convention's ratification and must be protected. It is for this reason that Article IX of the Bill of Rights 1689 protects "freedom of speech and debates" and prevents proceedings in Parliament from being "impeached or questioned" in the courts. This provision, which has been a fundamental part of the British constitution since the Revolution Settlement

23 Annex 7

24 Code of Conduct on the Standards of Conduct of Members of the Senedd, Rule 6 (https://senedd.wales/media/kxxndohb/cr-ld14238-e.pdf)

25 NIA Code of Conduct and Guide to the Rules, rule 16 (http://www.niassembly.gov.uk/your-mlas/code-of-conduct/the-code-of-conduct-and-the-guide-to-the-rules-as-amended-on-23-march-2021/)

26 Annex 7

of 1688/89, exists to protect the right of Members to raise issues of public concern within Parliament without fear or favour, free from the threat that the rich and powerful might threaten them with legal actions which would have a chilling effect on debate and scrutiny.

55. However, tweets and other social-media comments by Members are not "proceedings in Parliament" and are not protected by parliamentary privilege under Article IX. Nor is the House of Commons itself precluded by Article IX from taking disciplinary action against its own Members, including in respect of conduct in proceedings, if it thinks fit.

56. **Free speech within the law is a human right. Broadly speaking, Members should be free to exercise it in the same way and to the same extent as anyone else in the United Kingdom. Ultimately the electorate has the power to remove an MP if their opinions are offensive. We conclude that a Member's views and opinions should continue to be excluded from investigation under the Code.**

57. **However, we, like the Commissioner, are concerned that the new world of communications created by social media has created a situation in which personal attacks and abusive content directed at individuals can be widely disseminated in a way which may not break the law but which, in extreme cases, can be regarded as disreputable.**

58. ***We therefore support the addition to the Code of a rule similar to those adopted by the Welsh Senedd and the Northern Ireland Assembly, making it an investigable breach of the Code for a Member to subject anyone to unreasonable and excessive personal attack in any medium. This would bring the House into line with the devolved bodies and be a proportionate means of addressing unacceptable behaviour, whilst preventing any risk of the expression of a Member's views or opinions from becoming subject to an investigation.***

A Member's handling of or decision about a case

59. "[A] Member's handling of or decision about a case (whether or not anyone involved is a constituent of the Member)" is currently excluded from the Commissioner's remit.[27] This is notwithstanding the Code's reference to Members having "a special duty to their constituents" (as well as "a general duty to act in the interests of the nation as a whole").[28]

60. This exclusion means that the Commissioner is unable to investigate a great many of the complaints she receives, which are based on dissatisfaction either that a Member has declined to take up a case presented to them by a constituent, or with the Member's handling of a constituency matter.

61. Such complainants might argue that it is widely accepted that Members have obligations to their constituents and that therefore there should be a mechanism for holding them accountable for a poor level of service in discharging those obligations.

62. However, an MP has several duties—to their constituents, to the nation, to their conscience and in some regards to their political party. These duties—and the balance between them—have been contested for many centuries. It is difficult to see how they could be laid down in statute or in a set of rules without significantly reducing a Member's

27 Guide to the Rules, ch 4, para 21

28 Code of Conduct, para 6

freedom to respond to their own constituency, set their own priorities and act according to their conscience. That is not to minimise the importance of a Member's responsibilities towards their constituents. The right of a constituent to approach their Member of Parliament, whether in the constituency or in Parliament, and to seek redress of their grievances is one of the oldest rights guaranteed by Parliament. The word 'lobby' comes from the lobby outside the old Commons Chamber in the Chapel of St Stephens, where the public could find their MP. In recent years, and especially since the Second World War, this relationship between a Member and their individual constituents has become an increasingly important aspect of a Member's job. The advice surgery has become a staple part of the democratic process and requests for individual assistance arrive by phone, email, and through social media daily and at all times of the day and night. Members report that since the Covid pandemic began, the number of people approaching them directly for advice and assistance has increased dramatically and shows no sign of abating. Some of these approaches relate to the decisions or policy of government departments, such as on immigration, farming subsidies or welfare payments. Sometimes they relate to local government departments, such as housing or social services. Since each constituency is different geographically and sociologically, each constituency Member will have a completely different pattern of casework and a different approach to dealing with requests for assistance. It is also not unusual for members of the public to approach a Member for assistance in a matter where the Member has no power, authority or legal standing, for instance in local authority planning decisions or the functions of a court of law or a consumer issue. Each Member will therefore make daily judgements about the best way to assist their constituents and what to prioritise.

63. In its 2015 report on *The standards system in the House of Commons*, our predecessor committee commented on a Member's relationship with their constituency:

> One of the elements of the work of an MP which is frequently misunderstood is constituency casework. The evidence from the Commissioner indicates that many of the out of remit complaints relate to this. It would appear to be a common misunderstanding that an MP is obliged to take up any constituency case or support any view put forward. Rather, he or she is someone who will have an interest in constituents' views on matters of local and national policy, whether or not he or she agrees with the point raised, and someone who might, as a last resort, help with an individual constituent's problems.[29]

64. Most Members work long hours, often seven days a week, but demand for an MP's help often outstrips supply, as there simply are not enough hours in the day to respond to every query. Members must therefore prioritise their tasks, and it is perfectly reasonable for a Member to decline to help until other avenues have been exhausted.

65. Members are also subject to the constraint that they are elected for a single Parliament, and must subject themselves to the decision of the electorate if they are to be re-elected. Thus the ultimate judgment on how well a Member serves their constituent is for constituents to make as a whole as part of the democratic process.

29 Committee on Standards, Sixth Report of Session 2014–15, The standards system in the House of Commons (HC 383), para 44

66. Finally, removing this exemption would be likely to lead to an increase in the number of complaints, some of which would undoubtedly be vexatious, 'weaponised' by a Member's political opponents, or would require the Commissioner to make difficult subjective decisions as to whether a Member had behaved reasonably in their handling of casework.

67. The Leader of the House argued in his oral evidence that it was right to leave these matters to the judgement of constituents as a whole: "I do think that this is fundamentally the electorate's prerogative, and […] I don't think we should try to take away the electorate's prerogative and give it to the Committee on Standards or the Commissioner".[30]

68. **We are in no doubt that the overwhelming majority of Members are assiduous in dealing with constituency casework: being able to make a real difference to the lives of individuals and contribute to solving their problems is one of the great satisfactions of being a Member of Parliament. Given the number and sometimes complexity of constituency cases, it is unsurprising that on occasion individual constituents will feel, rightly or wrongly, that their MP has let them down. It does not follow that a process of investigable complaints in such cases could or should be created. Members have the right to set their own priorities and use their own judgement in deciding which cases to take up and how to handle them .**

69. **Any attempt to include constituency casework within the ambit of the Code could lead to a large number of unfounded, vexatious or politicised complaints. It would also entail a shift in the role of the Commissioner from that of an investigator to an ombudsman. The ballot box, not the House's standards system, is the appropriate means of adjudicating on a Member's performance. For these reasons, we do not recommend a change to the existing exclusion of constituency casework from the matters that can be investigated by the Commissioner.**

A Member's private and personal life

70. There is sometimes a misunderstanding of the Code's provision that:

> The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives. (Code, para 2)

71. This does not mean that aspects of a Member's private and personal life may not be relevant to an investigation by the Commissioner. It is only a Member's *purely* private and personal life which is exempt from investigation.

72. In a case which came before our predecessor Committee in 2019, a Member argued that there could be no breach of the Code "where neither his public nor his parliamentary role is engaged and where the events are purely private and personal within paragraph 2 of the Code". The Committee concluded that because of the nature of the allegations against the Member, the exemption did not apply: "the exclusion in the Code does not cover disregard

30 Q247

for the law or failure to co-operate with an inquiry by the Parliamentary Commissioner for Standards". It added, however, "we emphasise that in reaching this conclusion, we are not seeking to judge [the Member's] private life or his personal morality".[31]

73. **Although there may occasionally be scope for argument over where the boundary lies between "public life" and "purely private and personal lives", we consider that the distinction is important, and we do not intend to change it.**

Conduct in the Chamber (and in committees)

74. The exclusion of conduct in the Chamber means that the Commissioner may not investigate complaints about matters which fall under the jurisdiction of the Speaker and his deputies in respect of orderliness and conduct during sittings of the House.

75. This exclusion recognises, first, the importance of free speech in Parliament, and the House of Commons' collective control over its own proceedings; and, second, that the Speaker and his deputies have responsibility for enforcing the orderliness of business in the Chamber. They are given powers to do so under the standing orders: for instance, the Speaker may rule a question out of order, or invite the House to suspend a Member who seriously disrupts proceedings. These powers are regularly exercised: for instance, on 16 December 2020 the Deputy Speaker "named" a Member under Standing Order No. 44 for "wilfully disregarding the authority of the Chair" and the House immediately voted to suspend that Member for five sitting days, with loss of salary during that period. Under the standing order, a repeat offence is punishable with suspension for 20 sitting days. Likewise, on 22 July 2021 a Member withdrew from the House after having been ordered by the Deputy Speaker to do so on grounds of "grossly disorderly" conduct under Standing Order No. 43.

76. The House of Lords has recently amended its procedures by allowing investigations under the Independent Complaints and Grievance Scheme (ICGS) into conduct during proceedings in the Chamber and in committees. The Lords Conduct Committee recommended amendments to the Code of Conduct which were agreed by the House. The Code now makes it clear that a peer can be investigated for bullying, harassment or sexual misconduct that took place in the course of a proceeding, but that that during any such investigation the Lords Commissioner for Standards would need to recognise freedom of speech as a primary consideration.[32]

77. It is important to make clear that there is no explicit prohibition on the Commissioner in the House of Commons investigating conduct during "proceedings in Parliament". Although Article IX of the Bill of Rights 1689 confers on proceedings in Parliament protection from being "impeached or questioned" in any "court or place out of Parliament", Article IX does not prevent the House from exercising its own disciplinary powers in relation to conduct during proceedings, including in the Chamber and committees. The rules on declaration or paid advocacy, for example, explicitly extend to Members' conduct during proceedings, and such breaches are unquestionably subject to investigation and sanction.

31 Committee on Standards, First Report of Session 2019–20, *Keith Vaz* (HC 93), paras 60–68

32 Code of Conduct for Members of the House of Lords, para 29(a)

78. **The Speaker's responsibility for upholding the rules at sittings of the House is deep-rooted in parliamentary history and practice, and we do not advocate any change to this. Events in the Chamber are fast-moving and discipline has to be instant; the Commissioner's investigation role is not appropriate. Conduct in the Chamber is properly a matter of order for the Chair, who has been given disciplinary powers by the House.**

79. ***However, there are instances where an instant judgment is not possible, necessary or desirable and further investigation may be necessary, for instance where the offending behaviour has occurred in a committee or a division lobby. In such cases, especially potential ICGS cases involving bullying, harassment or sexual misconduct, the Speaker could have the option to refer a matter of conduct in the Chamber, in Committee or elsewhere in a proceeding to the Commissioner for investigation. We invite comments on this suggestion.***

80. ***We also recommend that the application of the ICGS to witnesses, and how they are treated by Members in select committee proceedings, is clarified. This is a matter which may be looked at by the Committee of Privileges in its ongoing work on ways of ensuring fair treatment of witnesses (in the context of its inquiry into how the House can exercise its powers to enforce witnesses' attendance).***

Conduct of Ministers in their capacity as Ministers

81. The Guide to the Rules states that among the matters which fall outside the Commissioner's remit are "alleged breaches of the Ministerial Code, which governs the conduct of government Ministers in their capacity as Ministers and which are matters for the Cabinet Office".[33]

82. The Ministerial Code is essentially the code of conduct for Government Ministers. It was previously called "Questions of Procedure for Ministers". It was first published in 1992, and was restyled as the Ministerial Code in 2005. It is 'owned' by the Prime Minister and is published by the Cabinet Office by Order in Council. The Ministerial Code makes its own provisions on conflicts of interests, publication of interests, and publication of gifts and hospitality (received in a Ministerial capacity) for Ministers.

83. The Ministerial Code states that:

> It is not the role of the Cabinet Secretary or other officials to enforce the Code. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he may ask the Cabinet Office to investigate the facts of the case and/or refer the matter to the independent adviser on Ministers' interests. […]
>
> Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public. However, Ministers only remain in

33 Guide to the Rules, ch 4, para 22

> office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.[34]

84. The post of the Independent Adviser on Ministers' Interests was set up in 2003 following a recommendation by the Committee on Standards in Public Life.[35] The appointment is made by the Prime Minister. The Independent Adviser can only consider cases referred to them by the Prime Minister, and make their report directly to the PM. They do not have own initiative powers, nor do they have a duty or power to publish their report or findings by themselves.

85. When we launched our inquiry we asked for comments on "In what ways does the Ministerial Code complement or undermine the [House of Commons] Code of Conduct?"

86. A number of our witnesses in response noted significant overlap between the Ministerial Code and the Code for Members, and that this is confusing for the public.[36] Ministers are subject to both codes, but the Ministerial Code lacks independent investigators and a graduated suite of sanctions (in effect the alternatives if the Ministerial Code has been breached have hitherto been either the option of dismissal by the Prime Minister or no action at all).

87. Giving oral evidence to us in November 2020, Lord Evans, Chair of the Committee on Standards in Public Life (CSPL), said that "the independent elements that exist in the Commons system now, and which have more recently been introduced into the Lords system, do not apply in the Ministerial Code. There is a question to be asked as to whether there should be more independence and whether the investigative element should be triggered independently."[37] And: "If you are drafting a Ministerial Code and a Code of Conduct for MPs, they should both be on the table in front of you and, unless there is a very good reason, where there are similar issues you should come to the same judgment about what the codes should say."[38]

88. The House of Commons Trade Union Side stated that: "While the Ministerial Code was changed to include that Ministers shouldn't bully or harass their staff there is no independent process (the equivalent of the IGCS) to deal with complaints against Ministers. This is clearly a problem for civil servants but does create an unfairness when thinking about the two in tandem–an MP could bully their member of staff in Parliament and that member of staff would have a means for it to be investigated and sanctions determined but if the same MP is a Minister and bullied civil servants in Whitehall the civil servants would have no independent, transparent process to deal with it."[39]

89. Dr Hannah White, from the Institute for Government, told us that "[i]t is completely illogical that Ministers, for whom the risk of some kind of inappropriate influence is much higher because they are decision-makers, have to adhere to a lower standard because the Code is administered politically".[40] She argued in her written evidence that

34 The Ministerial Code (https://www.gov.uk/government/publications/ministerial-code), paras 1.4 and 1.6
35 Committee on Standards in Public Life, Defining the boundaries within the Executive, April 2003 (Cm 5775)
36 See, for instance, Q71 (Pippa Crerar).
37 Q60
38 Q61
39 COD0032 (House of Commons Trade Union Side)
40 Q99

it "would be desirable for reasons of consistency and clarity" for the Ministerial Code to be incorporated into a single parliamentary code of conduct, but acknowledged that this would be "challenging" to achieve.[41]

90. At our request, the Government submitted to us separate written evidence responding to specific questions about the relationship between the Ministerial Code and the Code of Conduct for Members.[42] In that evidence, the Government stated that the executive is distinct from the legislature, and that the Ministerial Code complements the Code of Conduct. In particular, the Government argued that the Prime Minister's role as principal adviser to the Sovereign, including on the appointment and dismissal of Ministers, means it is appropriate that only the Prime Minister can be the ultimate judge of standards of behaviour expected of a Minister, and that the PM is accountable for any decision to investigate alleged breaches or any action taken in response to breaches of the Code. The Government also stated that the current investigatory arrangements were comparable to HR oversight in a government department, and that they were adequately independent.[43]

91. The Government nevertheless acknowledged that the capacities of Ministers overlap, and that Ministers have a duty to be held to account by Parliament.[44] The Government's argument that "management of the Executive is wholly separate from the legislature"[45] is vulnerable to the counter-argument that Ministers are accountable to Parliament, and Parliament may set conditions in relation to the arrangements of the Executive. For example, Parliament has legislated to cap both the number of paid Ministerial positions and the number of Ministers who may sit as Members of the House of Commons.

92. Giving oral evidence in April 2021, the Leader of the House told us that "the standards in the House of Commons are different and are sometimes not as high a level as required for Ministers. If you look at ministerial resignations going back over many years, you will see that most Ministers resign over things that they would definitely not have been forced to resign from the House of Commons over". He also said, bluntly, that "the Ministerial Code is a matter for the Prime Minister, not for the Committee on Standards".[46]

93. Since the Leader gave oral evidence, there have been developments in respect of the Ministerial Code. In late April 2021 the Prime Minister agreed in principle to a proposal from the CSPL for the introduction of a range of sanctions graduated according to the seriousness of the offence. He announced other changes including that the independent adviser should be able to advise on the initiation of an investigation, though the decision on whether to initiate it would remain with the PM. In June 2021 the CSPL recommended that the independent adviser should themselves be able to initiate investigations and determine findings of breaches, and that a summary of their findings should be published in a timely manner. The CSPL returned to these matters in more detail in a report published in November 2021.[47] This found that "[t]he regulation of the Ministerial Code needs greater independence as it lags behind similar arrangements for MPs, peers, and

41 COD0025 (Dr Hannah White), para 3
42 COD 0029
43 COD0029 (HM Government), para 25
44 COD0029 (HM Government), paras 3–6
45 COD0029 (HM Government), para 5
46 Q254
47 CSPL, Standards Matter 2 - Committee Findings, published 14 June 2021; CSPL, Upholding Standards in Public Life: Final report of the Standards Matter 2 review, published 1 November 2021

civil servants".[48] Among other recommendations the report concluded that the role of independent adviser should be placed on a statutory basis, that they should be able to initiate investigations and to determine breaches of the Code, and that the Code should "detail a range of sanctions the Prime Minister may issue, including, but not limited to, apologies, fines, and asking for a minister's resignation".[49]

94. **It would not be realistic to subsume the whole of the Ministerial Code within the Code of Conduct for Members, given the separate constitutional roles of Ministers of the Crown and Members who do not hold ministerial office. We therefore do not propose any change to the exclusion of alleged breaches of the Ministerial Code from the Commissioner's remit.**

95. **However, Ministers are all members of one or other House of Parliament, they are accountable to Parliament, and their conduct inevitably affects the reputation of Parliament. There is public confusion between the two codes, and perceptions of lack of independence in the way the Ministerial Code is enforced are damaging for the House at large as well as for Ministers. Moreover, it is manifestly inappropriate for Ministers to be subject to fewer and less onerous standards of registration of financial interests than Members who are not Ministers. Yet, as things stand, two Members in receipt of identical benefits or hospitality operate under completely different arrangements according to whether they are in ministerial office or not. A Minister's registration would not normally be published for many months and would appear with few details, whereas a non-Minister's financial interest must be registered in full within 28 days.**

96. **We regard it as desirable that the two codes should be as closely aligned as is practically possible. For this reason we are considering recommending that ministerial interests, to include benefits and hospitality received in their capacity as a Minister, should form part of the Register of Members' Financial Interests, so that all Members' interests can easily be found in one place (see paras 137–39 below); and that the Government should improve the searchability and timeliness of Ministers' registrations. We will take further evidence on this, including from the Government, and will seek the views of the Independent Adviser on Ministers' Interests.**

48 CSPL, Upholding Standards in Public Life: Final report of the Standards Matter 2 review, Chair's Foreword, p 4

49 Ibid., Recommendations 2, 6, 8 and 9

5 Relationship between the Code and other codes

Relationship between the Code of Conduct and the Independent Complaints and Grievance Scheme/Parliamentary Behaviour Code

97. The Independent Complaints and Grievance Scheme (ICGS), under which complaints or allegations of bullying, harassment, or sexual misconduct can be considered, was introduced on 19 July 2018. The ICGS is incorporated into the current Code through paragraph 18 which is an enforceable rule:

> A Member must treat their staff and all those visiting or working for or with Parliament with dignity, courtesy and respect.

We propose to retain this wording in the Code of Conduct.

98. Complaints or allegations under the ICGS are investigated by the Parliamentary Commissioner for Standards, as with non-ICGS cases (i.e. other alleged breaches of the Code). However, in ICGS cases where a sanction which exceeds the Commissioner's own sanctioning power is contemplated, or an appeal is made against the Commissioner's findings or sanction, the Commissioner refers the case to the Independent Expert Panel (IEP), which was established on 23 June 2020.

99. As we noted in our Seventh Report of Session 2019–21, *Sanctions in respect of the conduct of Members*, the only locus this Committee now has in respect of ICGS cases is compliance with sanctions imposed in such cases. The House has amended the Code of Conduct to provide that non-compliance by a Member with a sanction imposed by the Panel "shall be treated as a breach of the Code";[50] such a breach would be referred by the Commissioner to this Committee, not the IEP.

100. In such circumstances, this Committee would not in any way reopen the case itself, but would consider whether the alleged non-compliance was in breach of the Code and if so whether a sanction should be imposed or recommended for that breach.[51]

101. Confidentiality is an essential aspect of the ICGS process, and one that we reaffirmed in our recent report *on Sanctions and confidentiality in the House's standards system: revised proposals*.[52] Currently, however, a breach of the confidentiality of an ICGS investigation is not explicitly a breach of the Code. A breach of the confidentiality of an ICGS investigation, as with a non-ICGS investigation, would be a prime facie contempt of the House,[53] and could in theory be pursued as such. We consider, however, that a breach of the confidentiality of ICGS cases should be treated similarly to non-compliance with an ICGS sanction. We would expect that this Committee would adjudicate on any such breach referred by the Commissioner.

50 Votes and Proceedings, 23 June 2020, item 8

51 Committee on Standards, Seventh Report of Session 2019–21, *Sanctions in respect of the conduct of Members* (HC 241), fn 87

52 Committee on Standards, Twelfth Report of Session 2019–21, *Sanctions and confidentiality in the House's standards system: revised proposals* (HC 1340), para 21

53 Committee on Standards, Twelfth Report of Session 2019–21, *Sanctions and confidentiality in the House's standards system: revised proposals* (HC 1340), paras 16–17

102. ***We recommend that there should be an explicit rule in the Code that Members must not breach the requirements of confidentiality in ICGS cases.***

103. The Behaviour Code is broader than the Code of Conduct, since it applies not just to Members, but to everyone in the Parliamentary community, including visitors to the Parliamentary estate, contractors, members of the Press Gallery and others. For this reason, it would not be possible to amalgamate the two Codes. The Code of Conduct, at paragraph 9, states that "Members are […] expected to observe the principles set out in the Parliamentary Behaviour Code". Our proposal for a new "Respect" principle in the Code would replace this with a requirement that "Members should abide by the Parliamentary Behaviour Code" (see paragraph 33 above). To the extent that the Behaviour Code is enforceable, it is enforceable only through the ICGS: bullying, harassment and sexual misconduct will all be breaches of the Behaviour Code, although not all breaches of the Behaviour Code will meet the threshold for an ICGS complaint.

Relationship between the Code of Conduct and the House's stationery rules

104. The House has long-standing arrangements whereby Members are provided with House stationery. Such provision is currently subject to an annual cash limit of £9,000 per year per Member - although many Members do not use their full allocation. This provision is in addition to any stationery and postage costs which Members may have reimbursed under IPSA's Expenses Scheme. Such stationery, being provided out of public resources, must be used in accordance with paragraph 16 of the Code:

> 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.

105. Since House stationery is provided out of the public purse, it is important that it is only used for a Member's parliamentary activities and not, for example, to confer an undue benefit on a political party or for commercial purposes. Nor should it be used to suggest an inappropriate connection with the House. The stationery rules need to be clear, but should always be interpreted with a sense of proportion.

106. Rules on the use of House of Commons stationery were introduced in 1984 through decisions taken by the Select Committee on House of Commons (Services), and issued under the authority of the Speaker. However, in practice, the rules have been overseen by a committee responsible for advising the Speaker or the House of Commons Commission.

107. Prior to July 2005, the enforcement of the stationery rules was the responsibility of the Serjeant at Arms. Misuse of facilities provided by Parliament was brought within the scope of the Code of Conduct for Members following the review of the Code by the then Committee on Standards and Privileges in Session 2004–05 and its approval by the House in July 2005. This gave the Commissioner, and the Committee, the central role in enforcing the stationery rules (and therefore, in cases of alleged breaches, interpreting

them in practice). An amendment to the rectification procedure, under Standing Order No. 150(4), was introduced at the same time to allow the Commissioner to rectify minor breaches relating to the misuse of resources.

108. The responsibility for the stationery rules (as opposed to their enforcement) passed to the Members' Estimate Committee in 2004 and to the Administration Committee in 2015. The current rules for the use of stationery and postage-paid envelopes provided by the House of Commons, and for the use of the Crowned Portcullis, were published in the first report of the Members' Estimate Committee in Session 2014–15.

109. Following joint representations by this Committee and the Administration Committee, the House of Commons Commission transferred the responsibility for the stationery rules to the Committee on Standards on 17 May 2021.

110. **We intend to produce an update of the stationery rules in light of recent experiences and cases. The main aim will be to provide greater clarity to Members and the Commissioner, so as to avoid inadvertent breaches.**

111. **Some have claimed that there is confusion about the use of other services provided by the House, including offices. The rules are both long-established and clear that all facilities provided out of the public purse must be used only in support of a Member's parliamentary duties.[54] The Committee has therefore always deprecated the use of parliamentary facilities to secure financial, partisan or commercial advantage for oneself or a commercial entity with which a Member has a financial relationship. Members must not use their parliamentary office to run a business or hold business meetings with companies by whom they are paid or from whom they have a financial reward. Nor should the facilities be used for party political fundraising events. We intend to provide further advice on this in the near future, including on the definition of "facilities". Given that Members often work long hours and are on the parliamentary estate long past normal working hours several days of the week, we accept, as our predecessors have, that this rule has to be exercised with a due sense of proportion.**

Relationship between the House of Commons Code and the House of Lords Code

112. Both Houses have their own Codes of Conduct, which differ in important respects. The regulation by each House of its own Members' conduct in respect of standards, and the imposition of disciplinary sanctions, is an aspect of exclusive cognisance, the exclusive right of each House to regulate its respective internal affairs.

113. Whilst the ICGS operates across both Houses (and the definitions of bullying, harassment and sexual misconduct apply equally in each House), it is implemented differently in each: in the House of Lords, the ICGS is implemented via the House of Lords Code of Conduct and its Conduct Committee. In the House of Commons, whilst the

54 Since April 2012, the Code of Conduct has provided that "Members shall ensure that their use of public resources is always in support of their parliamentary duties.". In a case in 2010 (Ninth Report of Session 2010–10, Sir John Butterfill et al), the then Commissioner acknowledged that the rules on use of facilities were not always clear prior to 2010; but noted that the Members' Handbook in 2010 made clear that facilities including offices "are provided in order to assist Members in their parliamentary work. They should be used appropriately, in such a way as to ensure that the reputation of the House is not put at risk. They should not be used for party political campaigning or private business activity."

Parliamentary Commissioner for Standards investigates both ICGS and non-ICGS cases, ICGS cases are adjudicated (where needed) by the Independent Expert Panel. In our report *ICGS investigations: Commons-Lords agreement*,[55] we set out a scheme agreed with the House of Lords Conduct Committee for the investigation and adjudication of complaints under the ICGS of former Members of either House who are currently Members of the other House (for example, a complaint against a former MP who is now a life peer in respect of alleged conduct when they were an MP). This was agreed by the House on 25 November 2020.[56] That scheme took account of the exclusive right of each House to discipline its own Members in providing that the process of determining and imposing sanctions would fall to the House in which the relevant Member currently sits, noting in particular that "the two Houses have distinct approaches to sanctions, particularly at the more serious end of the scale where there are separate legal provisions about what sanctions are available".[57]

114. We consider that it is appropriate that each House may set different standards for its own Members, reflecting their respective compositions and roles. In particular, Members of Parliament are elected and peers are not, and Members of the Commons represent constituents and peers do not. Both these aspects shape the approach of the Houses' respective codes and the sanctions that are applied in respect of misconduct. The standards system in the House of Lords also uses the concept of "personal honour", which requires that its members act in accordance with the standards expected by the House as a whole. As a result of the differences between the two Houses, precedents set in one House cannot be assumed to have any force when applied to the circumstances of the other House.[58]

115. **It would undoubtedly be in the best interests of the whole of Parliament if there could be greater alignment between the separate Codes of Conduct in the House of Commons and the Lords. This is not simple, however. Both Houses have always asserted their exclusive right to regulate their own business and the conduct of their members. We note that the provisions of the ICGS have applied from its inception across the parliamentary community, and we would welcome comments on possible means of ensuring greater alignment between the two Houses, while fully recognising their distinct functions and procedures.**

55 Committee on Standards, Eleventh Report of Session 2019–21, *ICGS investigations: Commons-Lords agreement* (HC 988)

56 Votes and Proceedings, 25 November 2020, item 7. This followed agreement by the House of Lords to an equivalent proposal on 3 November 2020.

57 Committee on Standards, Eleventh Report of Session 2019–21, *ICGS investigations: Commons-Lords agreement* (HC 988)

58 See, e.g., Committee on Standards, Fifth Report of Session 2019–21, *Mr Marcus Fysh* (HC 213), para 53. For an example of a case where a joint action by five Members and a Member of the House of Lords were adjudicated by the two Houses under different rules and received different sanctions, see Committee on Standards, Second Report of Session 2021–22, *Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers*, para 10, cf. para 45ff.

6 Registration, declaration and paid advocacy

Registration

116. The rules on registration and declaration are designed to provide information about any financial interest which might reasonably be thought by others to influence a Member's actions, speeches or votes in Parliament, or actions taken in their capacity as a Member of Parliament. By requiring Members to place information about relevant financial interests in the Register, it is made available to the public on a continuing basis.

117. As the Guide to the Rules states, the aim of the registration rules is openness. It is important to emphasise that neither registration nor declaration imply any wrongdoing.

118. We have reviewed the existing categories of interest required to be included in the Register, and propose changes as set out below.

Category 1: Employment and earnings

119. We are aware that registration of multiple small payments, particularly from surveys, is onerous on Members and their staff, and is inconsistent with the approach taken to gifts, benefits and hospitality in other categories of the Register. We therefore propose removing the requirement to register individual payments over £100, so that Members only need to register earnings over £300 from a single source in a calendar year. We also propose that earnings from opinion surveys, which tend to be very modest and unlikely to present any conflict of interest, need no longer be registered.

Category 3,4,5–Gifts, benefits and hospitality from UK sources; visits from outside the UK; and gifts and benefits from sources outside the UK

120. Currently, the rules on registering UK hospitality are more demanding than those in respect of hospitality on a visit outside the UK. In addition, there is no obvious value in distinguishing between UK and non-UK donors of gifts and benefits. We therefore propose amalgamating these categories. We are already conducting an enquiry into the operation of All-Party Parliamentary Groups and will consider the matter of whether and in what circumstances it is appropriate for Members to accept gifts, hospitality or payment from other governments via APPGs.

Category 6–Land and property

121. Currently, Members are required to register property if it is worth over £100,000 (or part of a portfolio exceeding that value) or giving rental income of over £10,000 per year. In practice, it is very unlikely that a property worth £100,000 or less could generate rental income of over £10,000 per year. We therefore propose removing the rental income threshold.

122. Currently Members do not have to register any homes which they and their close family use. We propose including siblings and friends within this category of non-registrable homes.

Category 8 - Miscellaneous

123. At the moment, Members make their own judgment as to whether they should include unpaid roles, such as charitable trusteeships, in category 8. They presently do so on the basis of the test of "relevance". We note that in their report on MPs' outside interests, published in July 2018, the Committee on Standards in Public Life recommended that the Code and Guide "should be revised to make clear when MPs do need to declare pecuniary and non-pecuniary interests […]".[59]

124. We propose that in order to give clearer guidance to Members and to improve transparency, Members be required to register all unpaid roles, such as unpaid directorships and unpaid trustee roles. This would have the added benefit of aligning the Members' Code with the Ministerial Code.

Category 10–Family members engaged in lobbying

125. This category is rarely used in the current register. We therefore propose that this category is abolished.

126. ***We have set out proposed changes to the rules on registration of interests in the table in Annex 3, to update and clarify the current provisions. We recommend that the requirements in the Guide to the Rules are amended accordingly.***

Ministerial interests

127. Currently, Ministers do not need to register gifts, benefits or hospitality received in their capacity as Ministers.[60]

128. The Government stated in their written evidence that "transparency declarations for gifts and hospitality received by Ministers are an important part of ensuring no conflicts arise in the performance of Government Ministers' roles".[61]

129. The normal practice is for the list of ministerial interests to be published once or twice a year and a list of gifts and hospitality received by Ministers to be published by departments on a quarterly basis, three months after the relevant period. This inevitably means that the record is rarely up to date and sometimes does not even contain an accurate list of Ministers, let alone their financial and other interests. During 2020–21 the publication of transparency data relating to meetings, gifts and hospitality was subject to significant delays. The Government's transparency returns for 2021 were first published on 15 July 2021—some seven months after some of the benefits might have been accepted.

59 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 49 (Recommendation 5)

60 Paragraph 16 of the Guide to the Rules provides that "Members are not required to register either Ministerial office or benefits received in their capacity as a Minister". Chapter 1, para 18(j) also states that: "Donations or other support received in a Member's capacity as a Minister, which should be recorded, if necessary, within the relevant Government Department in accordance with the Ministerial Code".

61 COD0029 (HM Government), para 20

The Government's transparency requirements are not readily amenable to independent enforcement, whereas the requirements of the Commons Register of Members' Financial Interests can be the subject of an investigation by the Commissioner, ensuring that transparency is maintained.

130. The Leader of the House noted in his written evidence that:

> The Government, in recognition of its Executive role, has a more in depth and context-specific process over and above the House of Commons registration requirements, to ensure no conflict arises between the duties of a Minister, accountable to Parliament and the public, and their private interests.[62]

And that:

> It is important that a set of complementary processes exist, which give confidence to the public and Parliament that Ministers are making the right declarations in relation to their Government work. Whilst there may be some duplication between the registers, it is vital that Ministers' interests are properly assessed and publicly declared, separately.[63]

131. We note that the Committee on Standards in Public Life has recently recommended that all Government department transparency returns should collated and published centrally by the Cabinet Office, who would also have responsibility for ensuring compliance with stricter guidance on descriptions in relevant entries. The CSPL also recommended that such returns should be published monthly, in line with the House's Register, rather than quarterly as at present.[64]

132. Transparency and timeliness in registration and publication of Ministers' interests is at least as important for Members who are Ministers as for other Members, as the public has a right to know the details of any matters that may have influenced a Minister's decisions.

133. We are also concerned that, under the current arrangements, anomalous outcomes are possible: for example, were a Minister and a select committee chair both invited to an event and offered hospitality, one of the two Members would have to register this in the House's Register within 28 days and the other would not. A member of the public would have to consult two different registers in order to find out the same relevant information for each Member.

134. It is not always clear in what capacity a Member has been offered hospitality. The rules do not currently state that benefits or hospitality must relate to a Minister's portfolio in order to be received in their "Ministerial capacity". If the hospitality is from an entity that has no relevance to the Minister's portfolio, it is, in our view, difficult to see in what sense it has been received 'in their ministerial capacity'.

135. The Government stated, in relation to gifts, that:

62 COD0029 (HM Government), para 32

63 COD0029 (HM Government)

64 Committee on Standards in Public Life, *Upholding Standards in Public Life: Final report of the Standards Matter 2 review* (November 2021)

> […] the Code sets out: Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests. Gifts are received on behalf of the Crown, not the individual, hence it is appropriate that there are different rules for dealing with these, and that they are declared and reported on separately.[65]

136. The Ministerial Code also provides that "Gifts of small value, currently this is set at £140, may be retained by the recipient". Even small gifts would not therefore meet the current thresholds for registration. Given this, we do not propose to require Ministers to register gifts received in their ministerial capacity.

137. **We accept that the Government may wish to impose its own, more onerous, requirements in respect of registration of interests on Ministers, and would not wish to prevent it from doing so. However, we cannot see why the House should require a lesser level of information on acceptance of benefits and hospitality by Ministers than for other Members. We note that the Commissioner in her own review of the Code recommended that benefits and hospitality received by Members in a ministerial capacity should be registered in the House's register.**[66]

138. We propose that hospitality or other benefits extended to a Minister's officials or special advisers would not count as a benefit given to the Minister; however, civil servants should be able to register benefits and hospitality received in a ministerial capacity on their behalf.

139. ***The distinction between ministerial interests and Members' interests is not always clear cut. The current regime also makes it difficult for members of the public to see the various interests of a Member in their different capacities. We are considering recommending that the provision that "Members are not required to register either ministerial office or benefits received in their capacity as a Minister" is amended to read "Members are not required to register ministerial office", so that Members register with the House benefits and hospitality received whether or not it is in their capacity as a Minister.***[67] ***We invite comments on this proposal.***

140. ***We further recommend that the Government should improve the timeliness and quality of Ministers' transparency registrations (which at present compares unfavourably with the speed with which Members are required by the rules of the House to update their interests in the Register) and the searchability of Ministers' registrations, in line with the recommendations made by the Committee on Standards in Public Life (in parallel, we hope, with improvements in the searchability of the Register - for which, see paragraphs 141–142 below).***

Accessibility of the Register

141. The purpose of the Register is to make fully transparent any interests that might reasonably be thought to influence a Member's words or actions. Making the Register

65 COD0029 (HM Government)

66 Annex 7, para 14

67 We note that whilst the lobbying rules count any registrable financial interest as "outside reward or consideration", there is nevertheless an exemption that "Members who are acting in the House as government Ministers are not subject to these rules when acting in that capacity".

readily accessible to the public is an essential aspect of its purpose. It has been a long-standing ambition, following recommendations made by the Committee on Standards in Public Life, and stakeholder organisations, to digitise the Register in order to make it fully searchable. Such functionality would also allow Members (and their staff) to update their own Register entries electronically in the correct form.

142. **The Committee is very clear that greater transparency in this area is essential to achieve effective transparency and accountability in public life. However, the Committee remains very concerned that this work does not appear to be a priority for the Parliamentary Digital Service and there does not seem to be any effective mechanism for establishing a firm timetable that can be monitored. We call upon the House of Commons Commission to make a firm commitment to this work and to set out a timetable for its achievement that can be published in our final report.**

Declaration

143. The rules on declaration are among the broadest in the Code, but they are clear in their requirements. As the Guide notes, the rule on declaration "applies from the time the House first sits after the Member is elected and to almost every aspect of a Member's parliamentary duties".[68]

144. The general rule is that Members should declare any relevant interest in any and every proceeding of the House and any and every communication with Ministers, Members, officials or public office holders.

145. The test for relevance is whether the interest "might reasonably be thought by others to influence his or her actions or words as a Member". Whether an interest is relevant is context-dependent; but Members should consider, when declaring an interest, if it would also fulfil the purpose of the Register and may therefore need to be registered in the "Miscellaneous" section.

146. There are very few exceptions to the declaration rule: it does not apply to benefits provided to all Members or benefits from their political party; nor when voting; nor when a declaration would impede House business (e.g. when asking a Topical or Supplementary Question, or asking a question during a ministerial statement).

147. We have not come to a conclusive decision on whether there should be any change to these exemptions. There is an argument that when a political party pays a Member a salary, for instance as a Chair or Vice-Chair, this should be registered and declared, just as a salary from a Trade Union or business would be (with the necessary amendments to the Guide to make clear that payments from a political party do not count as outside reward or consideration for the purposes of the lobbing rules). We also note that the Government has appointed 19 Members as trade envoys,[69] who have their flights, accommodation and hospitality covered. We invite evidence on whether any of this should be registered. It is also difficult to argue that, with a greater tendency for Members to ask longer questions and the imposition of shorter time limits on backbench speeches than was the case in the recent past, a topical or supplementary question is any less significant a contribution to a proceeding in parliament than a speech.

68 Guide to the Rules, Chapter 2, para 9

69 https://www.gov.uk/government/groups/trade-envoys

148. **Changes in the area of declaration would be a significant departure from our historic practice, which is why we are not yet making a firm recommendation. We would, however, welcome comments and evidence and will report further on this.**

Enhancing the accessibility of declarations

149. The aim of the declaration rules is to ensure other Members, Ministers, officials, and indeed the public, are aware in a timely way of interests which might reasonably be thought to influence a Member's words or actions. The requirement for timeliness means that the declaration itself must convey adequate information about the nature of the interest.

150. We are aware that it is common for Members, when making a declaration, to state only "I draw attention to my entry in the Register", or a similar form of words. Not all such declarations will have actually been required under the rules. But where they are required, such declarations would be inadequate and would not meet the requirements set out in the Guide.[70] As the Guide notes, "a Member who has already registered an interest may refer to his or her Register entry. But such a reference is unlikely to suffice on its own, as the declaration must provide sufficient information to convey the nature of the interest without the listener or the reader having to have recourse to the Register or other publication."[71]

151. We consider that, for the same reason of public accessibility and timeliness, the accessibility of declarations should be improved.

152. Currently, declarations relating to a written notice, such as amendments to a Bill, a motion on the Order Paper, a substantive oral question, and so on, appear simply as an [R] on the relevant paper (whether an amendment paper, the order paper, or early day motion). Somebody who wanted to know what the interest was, where it was not obvious from a Member's Register entry, must ask the Table Office or Public Bill Office. The Guide to the Rules states that "If it is not readily apparent which of the Member's interests is relevant, he or she should provide an explanatory note which will then be made available for inspection". Such notes are now provided, in the case of questions and EDMs, via the electronic system for submitting questions and EDMs, and, in the case of adjournment and Westminster Hall debates, on the retained application forms—all of which would be made available by request to the Table Office. We consider that such declarations should be publicly accessible, alongside a Member's register entry, as part of a digitised Register.

153. Given that business papers are predominantly accessed online, and already make use of hyperlinks (for example, to link to Bill proceedings, previous Orders or Resolutions of the House relevant to business, or 'tagged' select committee reports or evidence), we consider that declarations of interests appearing in business papers could also contain a link to the relevant ad hoc declaration or entry in the Register. It would be the responsibility of the Member to make clear which interest in the Register, if any, is relevant.

154. We propose that, in the long term, enhancements could also be made to online Hansard to provide a link to the relevant ad hoc declaration, or interest in a Members' Register entry, when a declaration is made, in line with the recommendation made by

70 See, for example, Committee on Standards, Eighth Report of Session 2019–21, *David Morris* (HC 771), paras 21–24.

71 Guide to the Rules, Chapter 2, para 3

CPSL in their 2018 report on MPs' outside interests that "The Parliamentary Digital Service should develop and implement a digital tool to identify where MPs have declared interests during Parliamentary proceedings.".[72]

155. ***We recommend that, in tandem with the digitisation of the Register, the House's procedural offices work with the Procedural Publishing Unit and the Parliamentary Digital Service to publish ad hoc declarations made when tabling questions or applying for debates, and to provide hyperlinks to such declarations, or the relevant interest in a Member's Register entry, where declarations of interest are indicated on House business papers. We also recommend that the Parliamentary Digital Service investigate whether enhancements could be made to online Hansard to link to these where a declaration has been made.***

Interests and voting

156. We have heard the argument that a Member who has a relevant declarable financial interest should also be barred from voting on any matter directly relating to it. This is, for example, currently the situation in local government: where a councillor has a "disclosable pecuniary interest" in a matter, they may not take part in decisions relating to it.

157. The CSPL considered this issue in their 2018 report on *MPs' outside interests.*[73] They concluded that "the idea of MPs recusing themselves from debates based on any outside interests poses a number of challenges", including that "their constituents would not be represented in the decision-making process" and that "logistically this would require extensive calculations as to who could and could not vote on a particular issue".[74] The CSPL noted that "the implications of these decisions could determine the outcome of a vote". Overall, CSPL concluded that it would "not be practical or proportionate for MPs to be required to recuse themselves from votes on which they have a pecuniary interest".[75]

158. *Erskine May* allows for a motion to be made to "object to the vote of a Member who has a direct, immediate and personal financial interest in a question",[76] which, if passed, would disallow that vote, a practice that dates at least to 1811 and the use of which has been raised in the Chamber as recently as the 1980s.[77] Any such motion can only be made as soon as the division is completed and cannot be heard at a later stage.[78]

159. The need for certainty in division results, particularly given the possibility of close votes on contentious business, has been a primary consideration in developing rules relating to voting, which is probably why any such motion must be made immediately. Currently, breaches of the rules of order relating to divisions—for example a Member voting in person when they had a live proxy vote—would result in a correction to the division result. While it would be a breach of the paid advocacy rule for a Member to accept payment in return for voting in a particular way, these rules do not prohibit a Member from voting, or call into question a division result. Any rules of conduct relating

72 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 49 (Recommendation 6)
73 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 60
74 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 60
75 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 60
76 Erskine May, 25th Edn, para 5.17
77 See, e.g., HC Deb (1983–84) 50, c 679.
78 Erskine May, 25th Edn, para 5.17

to whether a Member may vote when they had an interest in a matter would need to be clear as to whether this would affect the validity of a division. It would also be important for Members to have very clear guidance on what would count as a relevant interest.

160. **Any change to the rules of conduct relating to voting would represent a very significant change to the House's current practices. We do not propose any change at this initial stage, but would welcome any comments and evidence on this issue, before we make our final report to the House.**

Paid advocacy

161. The paid advocacy rule has a straightforward purpose, to prevent Members from using their position as a Member—whether by participating in proceedings or approaching Ministers or officials—to advocate a cause or interest in return for financial reward. The rule is set out in the Code in very simple terms, at paragraph 12, itself replicating a Resolution of the House: "No Member shall act as a paid advocate in any proceeding of the House". However, the interpretation of this statement set out in the Guide to the Rules is very complex: it distinguishes between participation and initiation of proceedings and approaches; explains what constitutes initiation; and sets out a number of exemptions in respect of approaches, as well as what constitutes outside reward or consideration.

162. This complex set of provisions is referred to in the Guide as the "lobbying rules". Chapter 3 of the Guide contains 26 paragraphs setting these out. The Commissioner and this Committee have consistently interpreted the rule on paid advocacy set out in paragraph 12 of the Code as encompassing all the lobbying rules as set out in the Guide, though acknowledging that the detail of the lobbying rules goes beyond the concept of paid advocacy strictly speaking.[79] We note that the Commissioner has recommended in her review of the Code that the paragraph on lobbying should make clear that the prohibition extends beyond proceedings.[80]

163. We have given careful consideration to whether these provisions can be significantly simplified. We are conscious, however, that the lobbying rules have developed over a long period, in the light of previous cases and potential perverse outcomes.

164. There are two significant exemptions to the paid advocacy rule. One is the serious wrong exemption, which provides that:

> Exceptionally, a Member may approach the responsible Minister or public official with evidence of a serious wrong or substantial injustice even if the resolution of any such wrong or injustice would have the incidental effect of conferring a financial or material benefit on an identifiable person from whom or an identifiable organisation from which the Member, or a member of his or her family, has received, is receiving or expects to receive, outside reward or consideration (or on a registrable client of that person or organisation).[81]

79 Guide to the Rules, Chapter 3, para 4: "The rules on lobbying are intended to avoid the perception that outside individuals or organisations may reward Members, through payment or in other ways, in the expectation that their actions in the House will benefit that outside individual or organisation, even if they do not fall within the strict definition of paid advocacy".

80 Annex 7

81 Guide to the Rules, Chapter 3, para 9

A second is the constituency interest exemption, which provides that:

> Members may pursue any constituency interest in any approach to a Minister or public official, subject to the registration and declaration rules.[82]

165. Both exemptions exist to strike a balance between the public interest in preventing Members initiating approaches to Ministers or officials in return for reward or consideration, and the public interest in permitting whistleblowing or the raising of constituency interests by Members. Neither apply to proceedings in Parliament, nor approaches to other Members: only to approaches to Ministers and public officials. We consider, however, that there is a significant risk that the serious wrong exemption in particular is apt to be interpreted too broadly by Members or to be relied upon retrospectively as a "loophole" in the rules, We propose therefore that it should be explicitly stated in the Guide to the Rules, for the avoidance of any doubt, that the serious wrong exemption is not a blanket exemption that can be invoked at will after the event, and that four criteria are required for it to apply. Firstly, it can only be relied upon in an exceptional instance. Secondly, the whole approach—rather than just aspects of it—must fit the criteria. Thirdly, the benefit that might accrue to the third party must be entirely incidental and not integral to the approach. And fourthly, there must be evidence of a serious wrong or substantial injustice. As we stated in a recent report on an individual case, "[t]he exemption is—and must be—a narrow exemption, not a wide loophole".[83]

166. At present, the restrictions under the lobbying rules apply for six months after the reward or consideration was received, and in respect of benefits expected to be received in the following six months (though a Member can free him or herself immediately of any restrictions due to a past benefit by repaying the full value of any benefit). We consider that this is too short a period. We propose restoring the time limit for outside reward or consideration to 12 months. We note that Members will still be able to release themselves immediately from the restrictions by repaying any sums received in the relevant period.

167. We recognise that Members need clarity in order to know whether their actions fall within the scope of the lobbying rules. Given the unavoidable complexity of the rules, we consider that the only way in which clarity for Members can be achieved is to ensure that all Members have the opportunity to take, and rely upon, advice as to whether their behaviour falls within their scope. The Commissioner and the Committee have always commended Members for taking and following advice from the Registrar or other relevant officer of the House, but we want to go further in giving Members unambiguous protection when they take advice. We therefore propose the introduction of a "safe harbour" provision, whereby the rules would expressly state that if a Member has sought and acted upon the advice of the Registrar or other relevant officer of the House in respect of the rules (having provided adequate information for that advice to be relevant), they will not have acted in breach of the Code. This provision already exists in the House of Lords in respect of determining what is a relevant interest for the purposes of registration or declaration.[84]

168. ***There is currently no requirement for Members taking up paid employment with an outside organisation to provide a copy of their contract to the Registrar, as there was previously. We do not propose to change this position. We do, however, propose***

82 Guide to the Rules, Chapter 3, para 19(c)

83 Committee on Standards, Third Report of Session 2021–22, Mr Owen Paterson (HC 797), para 23

84 See Guide to the Code of Conduct for Members of the House of Lords (September 2021), HL Paper 99 para 3

that it should be a requirement for Members taking on outside work to obtain a written contract detailing their duties, in particular, making explicit that these duties cannot include lobbying Ministers, Members or public officials on behalf of that employer and that the employer will give an undertaking not to ask them to do so. A contract should also include an exclusion on providing advice about how to lobby or influence Parliament (see paragraphs 172–79 below). Members would be expected to make such a contract available to the Commissioner on request if needed during an investigation. We will consider how and when this should be introduced.

169. The current lobbying rules distinguish between a Member "initiating" and "participating" in a Member "participating" in proceedings or approaches. "Participation" is subject to a weaker "exclusive" benefit test and a requirement that proceedings or approaches are not initiated by the person or organisation paying the Member. So, for example, a Member may, under the rules, make a speech in a debate, make an intervention in debate, participate in an approach to a Minister, or ask a question in a select committee hearing which might confer a benefit on a paying client, so long as it does not seek to confer a benefit exclusively on the person or organisation paying the Member (and the proceeding or approach is not initiated by the Member or the client). What is more strictly prohibited under the rules is initiation—of both proceedings and approaches, to avoid any perception that a paying client is able to set the parliamentary or policy agenda. Despite this distinction, there is an argument that any conflict of interest–or perceived conflict of interest–is undesirable and risks harming the reputation of the House. **The public expect MPs to act without fear or favour whether they are initiating proceedings or taking part in them. It may therefore be desirable for the House to tighten the lobbying rules so that a Member who has a live financial interest is prevented from both initiating or participating in proceedings or approaches to ministers or officials that would confer, or seek to confer a benefit (not just an exclusive benefit, which is currently the case in respect of participation). We would welcome comments on the potential consequences of such a change, and in particular if it would unduly restrict Members from participating in proceedings or approaches where this confers a benefit, but not an exclusive benefit, on a person or organisation.**

170. ***We propose replacing the paid advocacy rule in the Code with a reference to the lobbying rules, in order to underscore that Members need to act in accordance with the lobbying rules as set out in the Guide in full, not simply avoid 'paid advocacy'.***

171. ***We recommend that the 12-month limit on relevant reward or consideration is restored. We acknowledge that lobbying is one of the most complex areas of the rules, and that Members need confidence that their activities are within the rules. We therefore also recommend the introduction of a "safe harbour" provision within the Code, where a Member is not in breach of the rules for an action on which they have sought and followed the advice of the Registrar. We further recommend that invoking the serious wrong exemption should be explicitly subject to the criteria we set out in paragraph 164 above .***

Members' outside interests

Paid parliamentary advice or consultancy

172. In July 2018 the Committee on Standards in Public Life published a report on *MPs' outside interests*.[85] One of the principal recommendations, to which CSPL drew attention in their written evidence,[86] is that "MPs should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence Parliament and its members. MPs should never accept any payment or offers of employment to act as political or Parliamentary consultants or advisers."[87]

173. The House of Lords Code of Conduct currently states:

> The Code […] prohibits members from accepting payment in return for parliamentary advice or services.
>
> The prohibition from accepting payment in return for parliamentary advice means that members may not act as paid parliamentary consultants, advising outside organisations or persons on process, for example how they may lobby or otherwise influence the work of Parliament.[88]

174. The Lords Code clarifies that certain matters are not Parliamentary advice, namely: advice on public policy and current affairs; advice in general terms about how Parliament works; and media appearances, journalism, books, public lectures and speeches.

175. A similar rule is in place in the Scottish Parliament's Code of Conduct for MSPs, which provides that they:

> should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.)[89]

176. The lobbying rules in the current House of Commons Code and Guide, whilst covering a range of activities, do not prohibit Members advising on how to influence Parliament or its Members; they only prohibit Members from initiating (or, in certain circumstances, participating in) proceedings or approaches in return for reward or consideration. The Guide explains that the purpose of the lobbying rules is "to avoid the perception that

85 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018
86 COD0014 (Committee on Standards in Public Life)
87 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 59 (Recommendation 10)
88 Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct (July 2020) (HL Paper 99), Guide para 19
89 Code of Conduct for MSPs, section 5, para 7

outside individuals or organisations may reward Members, through payment or in other ways, in the expectation that their actions in the House will benefit that outside individual or organisation, even if they do not fall within the strict definition of paid advocacy".[90]

177. As the Committee on Standards in Public Life put it in written evidence to us:

> [w]hilst an MP cannot undertake paid advocacy on behalf of any specific cause, they can still be paid to advise private interests on how best to influence the House in relation to any specific cause.[91]

178. We agree that offering paid advice on how to influence Parliament or its Members (including Ministers) risks the perception that Members are using their membership of the House to secure benefits for others in return for payment, even if their actions in doing so are not parliamentary activities. We note that the Commissioner also recommends, in her own review of the Code, that rules should be introduced to prohibit the giving of paid parliamentary advice.[92]

179. **We therefore propose to introduce a ban on Members providing paid parliamentary advice, consultancy, or strategy services, as in the House of Lords. This can be best achieved by the incorporation of the same rules as the House of Lords into the Code together with our recommendation about contracts (see para 168 above), subject to the requirement that those Members who intend to enter into paid roles permissible by these provisions, produce to the Commissioner, in advance of any engagement, a written contract specifying the role and seeking the comfort of the Commissioner's guidance that the role is (or is not) permissible (a so-called 'safe harbour' provision).**

180. Some have argued that there is a loophole regarding 'personal services companies' (PSCs), that is to say, limited companies, the sole or main shareholder of which is also its director, who, instead of working directly for clients, or taking up employment with other businesses, operates through their own company. Typically, the client will pay the PSC for the individual's services without first deducting income tax or employee National Insurance contributions (NICs) as it would for any employee under PAYE. That is a matter for the HMRC. Clearly, we would not want PSCs to undermine the purpose of the Code. However, the Guide to the Rules already requires Members to register details of such clients, and of payments made to their companies in these circumstances. It specifies that Members are required to provide "The name and address of any client to whom the Member has personally provided services, if different from the payer, and a brief description of their business (if not self-evident)." If a Member were to fail to register payments for services they have provided personally, whether provided through a PSC or not, they would be in clear breach of the rules. We are therefore not recommending any change in the rules in this area, but would welcome any comments on this.

"Reasonable limits" on Members' outside activities

181. The CSPL also recommended in its 2018 report on MPs' outside interests that the Code should be amended to provide that "any outside activity undertaken by a MP,

90 Guide to the Rules, Chapter 3, para 4
91 COD0014 (Committee on Standards in Public Life)
92 Annex 7

whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties".[93] We note that the House agreed a motion relating to this recommendation on 17 November.

182. The public expect that MPs devote themselves wholeheartedly to their duties and responsibilities. Members frequently work very long and antisocial hours. The time pressures on Members are acute. Attendance in committee or in the Chamber may be the most visible aspect of a Member's work, but they also have meetings with constituents and with businesses and charities, they take part in interviews on television and radio, they support campaigns on a wide range of public interest topics, they attend and lead All-Party Parliamentary Groups, they prepare for meetings, they draft speeches and reports, they visit schools, hospitals and other public services, they hold advice surgeries, they respond to enquiries from constituents and others and they knock doors to listen to their constituents. Many hold unremunerated posts as directors, chairs or trustees of charities and campaigning organisations. Many also have lengthy journeys to and from their constituency. The pattern of work may be different when the House is not sitting, but the pressure rarely lets up and even family holidays can see Members responding to emails and enquiries. Most Members report that they work in excess of 60 hours a week every week and that the pressure has increased in recent years.

183. We agree that it would be wholly inappropriate for any Member to take on paid employment that prevented them 'from fully carrying out their range of duties'. It would be inconsistent with the principle of selflessness, which we describe as follows: "Members of Parliament should act solely in the public interest. They should ensure that no private, financial or other personal interest compromises their principal role as a Member of Parliament. They should never misuse their position to gain financial or other material benefits for themselves, their family, or their friends." Adherence to that principle is essential for maintaining public trust in Members and in Parliament as a whole. We believe that the public would not take kindly to a Member forsaking their duties in this way and expect that a Member's local or national party or association would take action if they thought their MP was shirking their responsibility.

184. We fully support this principle, but for the reasons we stated in Chapter 3, on principles and rules, principles are not, and are not designed to be, amenable to investigation and enforcement. We suggest that a rule in the terms proposed by the CSPL is not practicable or enforceable, for reasons we now outline.

185. The CSPL argued in its report that the Parliamentary Commissioner for Standards already makes judgments as to whether "the activities of MPs, for example the use of parliamentary resources, are for 'parliamentary activity'" and that this principle "can, therefore, be extended to how an MP's outside interests could impact on their parliamentary role".[94] It is true that when the Commissioner considers whether a Member has misused parliamentary facilities, she is testing whether something is or is not a 'parliamentary activity', but a Member's time, especially their time outside normal working hours, is not a parliamentary facility. If the House were to introduce a rule that remunerated or unremunerated outside activity must be within "reasonable limits" it would be asking the Commissioner, and, in cases referred to it, this Committee, to make a highly subjective

93 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 40 (Recommendation 1)

94 Committee on Standards in Public Life, 19th Report, *MPs' Outside Interests*, published 3 July 2018, p 40

judgment about how a Member spends their time. It is difficult to see how the Commissioner could investigate whether a Member's remunerated or unremunerated outside interest had impacted on their ability to perform their parliamentary duties without making judgements on whether the Member concerned was sufficiently diligent. The Commissioner already gets many vexatious complaints every year about which way their MP has voted, what they have said, how they have responded to emails and enquiries and what events they have or have not attended. As we discuss earlier, these are rightly beyond the scope of the Code, and therefore outside the remit of the Commissioner to investigate. We fear that a rule specifying that 'any outside activity undertaken by a Member, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties' would require the Commissioner to make highly subjective and potentially partisan political judgements about a Member's use of time, their priorities and their performance as an MP. In short, she would constantly be asked to decide whether a Member had fully carried out their range of duties. That is a matter for the voters to decide, not the Commissioner or the Code.

186. We also note that although the rules expressly forbid MPs from using parliamentary facilities such as stationery for partisan electoral campaigning, the political parties are facilitated by Parliament. The party whips are an integral part of the functioning of parliament and rooms are provided in parliament for party leaders and meetings. Moreover, voters expect Members to knock doors and campaign for support. It is difficult to see how the Commissioner could assess this aspect of an Member's work in determining whether remunerated or unremunerated outside interests had affected their ability to fulfil their duties.

187. We are conscious that some outside interests could be viewed as presenting no conflict of interest with a Member's primary duties–and might even be considered to be a legitimate extension of their public service role. Some for instance have suggested that they would have no issue with a Member who works as a nurse, a GP, a firefighter or a hospital doctor. Others have made similar arguments about other professions, including dentists, farmers, authors and lawyers, so long as there is no conflict of interest.

188. The CSPL recommendation applies to both remunerated and unremunerated outside interests. We have endorsed in this report another CSPL recommendation that all unremunerated interests be registered and declared, but we do not think it is necessary or proportionate to specify the amount of time a Member spends on unremunerated outside interests such as being a trustee of a charity.

189. Rather than introduce a subjective test of "fully carrying out their range of duties", it would in theory be possible to specify limits to the number of hours of paid external work that Members may undertake in a month or a year. Members are already required to register both the amount received and the hours worked when they receive outside earnings. Members could be forbidden from entering into any contract that required them to work more than a set number of hours.

190. It is difficult to see, however, how this would work in practice. The basis of the Register is that a Member's word is accepted and it is only if the Commissioner opens an investigation that they are asked to substantiate it. However, in any investigation the Commissioner would have to be able to ask Members for proof that they had not exceeded the registered number of hours in a given period. Members might be reluctant

to keep time sheets for their outside interests and their parliamentary duties, but without such information it is difficult to see how such a provision could be monitored, policed, investigated, enforced or adjudicated.

191. Some have made an alternative suggestion–that rather than limit the time a Member can devote to outside interests, the House should limit the amount they can earn in addition to their parliamentary salary. This is also complex, and could be seen as unfair. The rules already specify that a Member must register all earnings–that is to say, any earned income–along with the amount of time spent. There is no such requirement regarding unearned income, income from buying and selling shares or other property, nor the amount of income received from rental properties, which could far exceed sums received in earned income. By definition, a salary from an outside interest would bring a predictable additional income, which could in theory be regulated, but royalty payments, for instance, are less predictable.

192. **We acknowledge that there are some who believe that a measure limiting the time a Member can spend on outside interests–or the amount they can earn from outside interests–is necessary, but a significant change of this sort should only be implemented with broad cross-party support. We therefore encourage comments from Members across the House, as well as from external stakeholders and we will take into account the breadth of support for any proposal in making our final recommendations to the House.**

7 The functioning of the Code

193. It is vital that both the Code and the way in which it operates command the respect of the public and the House. Members should be able to expect that any complaints and allegations will be handled properly, without bias, and in accordance with natural justice. The Commissioner and the Committee have regularly asserted their commitment to ensure due process and clarity - and it is important that they are able to work independently without fear of intimidation or recrimination.

194. This report deals primarily with possible revisions to the Code, but our inquiry has been wide-ranging and has inevitably raised issues relating to other aspects of the House's standards system. There has also been much discussion in recent weeks about the fairness of the existing system, in the context of an individual case on which the Committee reported.[95]

195. The Committee has a responsibility for ensuring that the processes whereby breaches of the rules are investigated and adjudicated are fair and appropriate. The Committee believes, for reasons we shall summarise in this section of our report, that Members are presently guaranteed a fair hearing, but we are actively considering possible improvements to the processes we use in Code of Conduct cases (as opposed to cases of bullying, harassment and sexual misconduct which are heard by the Independent Expert Panel).

196. **We intend to request a senior judicial figure to carry out a review of whether the House's current system of investigating and deciding upon breaches of the Code of Conduct for Members of Parliament is compatible with fairness and natural justice, and with Article 6 ECHR, and if appropriate to make recommendations or set out options for improvements to the system. We will announce further details of the review shortly.**

197. In this section of the report, we consider a number of procedural matters relating to the way allegations that the Code has been breached are dealt with by the Committee, including the rights that Members have in this process. Our recommendations in this section are without prejudice to the outcome of the judge-led review where those recommendations fall within its terms of reference.

A hybrid system? Self-regulation v. independence

198. The current standards system in the House of Commons is sometimes described as a "hybrid" system, because it maintains the House's traditional assertion that it has the right to regulate its own affairs (the doctrine known as "exclusive cognisance") but it includes significant elements that are independent of MPs. These include:

- the independent Parliamentary Commissioner for Standards
- the Independent Parliamentary Standards Authority which considers matters relating to Members' salary and expenses
- the independent lay members of the Committee on Standards (who have an effective voting majority on the Committee)

95 Committee on Standards, Third Report of Session 2021–22, *Mr Owen Paterson* (HC 797), published 26 October 2021

- the external Independent Complaints and Grievance Scheme (ICGS) investigators overseen by the Commissioner
- the Independent Expert Panel (IEP) which hears appeals and recommends sanctions in ICGS cases.

In addition, the Recall of MPs Act 2015, read together with the relevant Standing Orders, means that any suspension for at least fourteen days or ten sitting days can lead to a by-election if ten per cent of the Member's constituents sign a recall petition.

199. The elements of independence in the system have been inserted piecemeal over the last 30 or so years, in each case in response to particular scandals that have damaged the reputation of the House. The post of Commissioner was introduced as a consequence of the "cash for questions" affair in 1995, IPSA was created in 2010 and lay members were added to the Committee on Standards in 2013 (and subsequently given a voting majority on the committee) following the Members' expenses scandal, and the ICGS and the IEP were created in 2018 and 2020 respectively following allegations of bullying, harassment and sexual misconduct within Parliament. These developments have followed a pattern in which the House has responded reactively to scandals by adding independent elements to its self-governing standards system. The current hybrid model which has resulted from these changes is one in which some complaints - those relating to Members' expenses and to allegations of bullying, harassment and sexual misconduct - are effectively devolved to external bodies for investigation and, to a degree, decision-making, while other complaints - notably those relating to registration and declaration of interests, paid advocacy and misuse of House facilities - remain within the province of the Committee on Standards and therefore are judged by a body comprising MPs and lay members. The House retains the ultimate decision on whether to suspend or expel a Member, in both ICGS and non-ICGS cases, although it has been extremely rare for there to be a division on a Standards Committee report and there can be no amendment or debate on an IEP report.

200. **For both constitutional and practical reasons we do not think it would be right for the House to delegate its powers to suspend and expel a Member, and we do not advocate this. However, we wish to consult on whether the current functions of the Committee on Standards in respect of individual cases should be transferred to an independent body similar to the Independent Expert Panel - or possibly to the IEP itself if its membership and remit were to be expanded. On the one hand, that would have the arguable benefit of removing MPs completely from adjudicating on individual conduct cases (except in relation to decisions on suspension or expulsion by the House). On the other hand, it might be argued to be a step too far, in that Members' knowledge and experience of parliamentary life are a valuable adjunct to the distinct external expertise of lay members in adjudicating upon cases which do not involved bullying, harassment or sexual misconduct. We would be interested to hear views on this issues as part of our consultation process.**

The need for procedural clarity

201. It is clear from the evidence we received, as well as from recent individual conduct cases, that the procedures adopted by the Commissioner and by the Committee in investigating and taking decisions on individual cases are not as well understood, either within the House or outside it, as we would wish them to be.

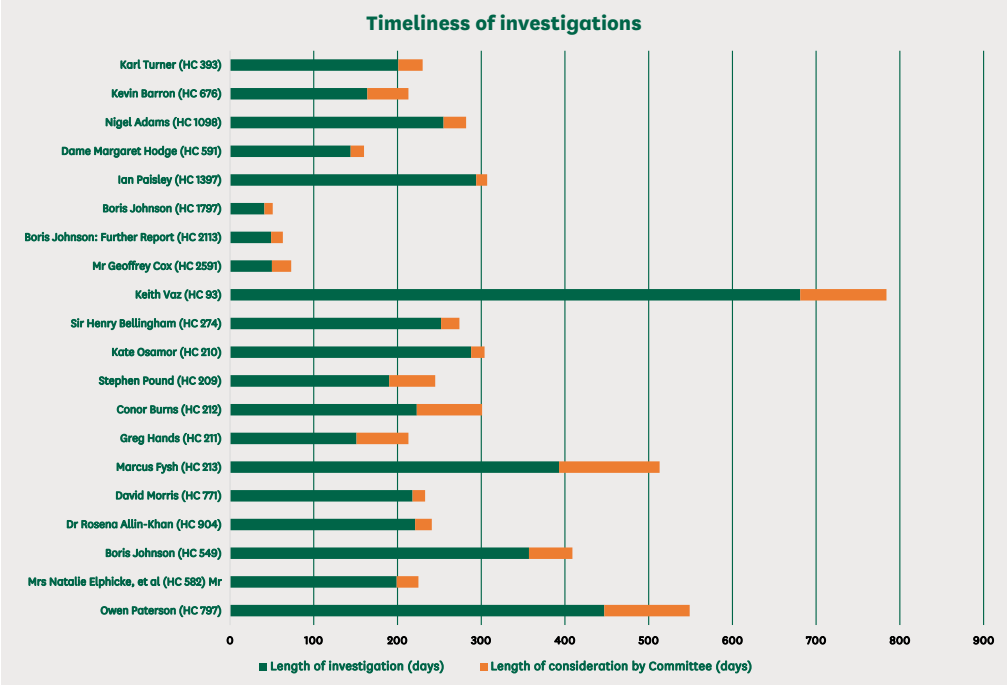
202. The Commissioner currently issues a "Commissioner's Information Note" to Members who are the subject of an investigation; this is sent to them with a covering letter at the start of the investigation. It sets out the Commissioner's *modus operandi* and the rights of Members, and it deals also with the role of the Committee later in the process if the Commissioner refers a case to the Committee. This Information Note is subject to approval by the Committee. The current note dates from 2015.

203. **The Commissioner is currently preparing a revised Information Note which we will consider in the near future. At the same time we will produce a similar Information Note relating to the Committee. This will reflect the fact that the Commissioner and the Committee are independent of each other and exercise separate roles in the process. The production of both documents, which we will publish in a report to the House, will afford an opportunity to clarify and explain the procedures involved in the standards system in the interests of transparency and to reassure Members and the wider public that the system is as fair and robust as we can make it.**

Timeliness of investigations

204. A recurrent complaint by Members under investigation is that the process is unnecessarily protracted and time-consuming.

205. We set out below a graph showing the duration of Commissioner's investigations in non-ICGS cases, and the Committee's consideration of each case, during the last five years, subtracting days where the Commissioner suspended her investigation, and days where the Committee was not in existence or did not have elected members appointed to it. A full table of this data is appended as Annex 8. The graph demonstrates that only three investigations in the last five years took more than a year (not taking into account suspensions)—all cases vigorously contested by the Member concerned. The average actual investigation length in days, not taking into account those three cases, is less than 200 days. The average consideration period by the Committee is 43 days, even when significantly contested cases are included.



206. As we have noted in a recent report,[96] we acknowledge that the process of investigation is stressful for Members, and the longer it goes on, the greater the toll that can be taken in terms of mental and possibly physical health. Nonetheless, it is important that investigations are conducted methodically and according to due process. The Commissioner is punctilious in attaching a timeline to her memoranda on individual cases, and in explaining the reasons for any delays or suspensions to the investigation process. We note that some delays are caused by factors beyond the Commissioner's control, such as Dissolutions of Parliament or the upheaval caused by lockdown in the coronavirus pandemic in 2020. We also note that in many cases delays are the responsibility of Members not the Commissioner, either because they are late in responding to requests for information, or because they request (often repeatedly) deadline extensions to enable them to collect more information or better prepare their case.

207. When the Committee receives a memorandum from the Commissioner, it regards it as a high priority to dispose of the case as soon as possible, subject to the need for due process and fair treatment of all involved. For that reason, when necessary we and our predecessors have set aside general inquiries and evidence sessions unrelated to individual cases in order to be able to report to the House as quickly as possible in referred cases.

208. **We shall explore with the Commissioner whether any steps can be taken, either administratively or through an increase in resources to her office, to enable investigations to be concluded more swiftly than at present.**

Members' rights in the process

209. It is well established that the House's standards processes have always been conducted on an inquisitorial rather than an adversarial model. In relation to the Commissioner's role, we repeat our conclusions on this subject set out in a recent report on an individual case:

> The Commissioner is an independent Officer of the House, appointed to advise this Committee, and Members generally, on the House's Code of Conduct, and to undertake investigations into alleged breaches of the Code, under Standing Order No. 150.
>
> The Commissioner's status is as an independent and impartial office holder. She follows an inquisitorial process in her investigations, in which she gathers evidence she considers to be relevant to her investigation, weighs it in order to come to a conclusion, and reports on her findings. As part of that process, Members are given an opportunity to see the evidence, to respond fully to the allegatioins and to provide any material to the Commissioner that they consider to be relevant. It is open to the Commissioner, having opened an investigation, to find that no breach has occurred, and she regularly does so.
>
> As an independent officer, the Commissioner has no personal interest in whether a breach is found or not. She is not akin to a 'prosecutor', making the best case for the finding of a breach. Rather, she acts as an adviser to this Committee, advising impartially on whether she considers there has

96 Third Report of Session 2021–22, *Mr Owen Paterson* (HC 797), para 165

> been a breach of the Code. We are grateful for the Commissioner's advice, but are not bound by it, and determine on the basis of the evidence before us, including any further written or oral evidence provided by the Member, whether we agree with her findings.[97]

210. When a memorandum has been presented to the Committee by the Commissioner, which by definition includes a finding that there has been a breach of the rules, Members are afforded every opportunity to set out their case, in person and in writing. They are routinely shown all written material sent to the Committee by the Commissioner and any other written or oral evidence gathered by the Committee. They are offered an opportunity to give oral evidence in private, accompanied if desired by legal representatives. All this is in addition to the opportunities given to the Member to set out their cases fully to the Commissioner. Finally, the Committee has the usual rights of a select committee "to call for persons, papers and records", and where it thinks it appropriate has exercised those rights in calling for further evidence above and beyond that presented to the Commissioner.[98]

211. **Because we have an inquisitorial system rather than an adversarial one, we do not have examination and cross-examination of witnesses or representation by Counsel, with the Commissioner regarded as a 'party', or other courtroom-style procedures. We do not believe they should become part of the process: they would undoubtedly lead to investigations becoming much more cumbersome and protracted, and would lead to an undesirable legalisation of what is, an internal disciplinary process not a criminal trial. Members' rights are however protected by our existing procedures, as we have set out in previous paragraphs. We note that the House has considered on a number of occasions in the past 30 years whether to switch from an inquisitorial to an adversarial system, and has consistently rejected this, for good reasons.[99] We therefore reject this option, and do not propose that it should be considered as part of the judge-led review. We wish to make clear that our rejection of this option does not imply that the fairness of existing procedures cannot be improved, particularly in relation to appeals. We deal with appeals later in this report, and the subject will form part of the judge-led review.**

212. **We have reviewed whether the Commissioner's and the Committee's processes are compliant with Article 6 of the European Convention on Human Rights (the right to a fair trial), which states that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". On the basis of legal advice we have received, we are confident that the processes are, overall, Article 6 compliant.** The Committee is not a court of law and does not purport to be a court of law. Its procedures are established either by Standing Order of the House of Commons or, where the Standing Order is silent, are determined by the Committee itself. In examining individual cases brought before it, it is considering an internal disciplinary matter of the House of Commons, which has exclusive cognisance

97 Third Report of Session 2021–22, *Mr Owen Paterson* (HC 797), paras 152–54. The Committee has on occasion disagreed with the findings of the Commissioner: see, most recently, First Report of Sesssion 2021–22, *Boris Johnson* (HC 549), paras 32–38.

98 See First Report of Sesssion 2021–22, *Boris Johnson* (HC 549), paras 32–34

99 Committee on Standards and Privileges, Twenty-first Report of Session 1997–98, especially paras 17–18; Committee on Standards and Privileges, Fifth Report of Session 2000–01, Appendix 1

over matters concerning the conduct of its Members. It is not determining a "civil right or obligation" (i.e. a right established in the domestic law of any jurisdiction in the UK), which is the precondition for Article 6 to be engaged.

213. This does not mean that the Committee should not be concerned to ensure that its proceedings are fair and transparent, in accordance with the Article 6 case law. One area of criticism might be that the members of the Committee are arguably not "impartial" as they are making decisions about the conduct of people known to them; but this is at least partly compensated for by the role of the lay members, who have no other connection with Parliament, and who have an effective voting majority.[100] The Committee is, however, established by law - the *lex parliamenti*, which is part of English common law. Other Article 6 requirements are clearly met by our existing procedures in that the Committee gives all those complained about opportunities to express their views orally and in writing before coming to a decision, and all the material from the Commissioner's investigation is made available to the individual being investigated. The Committee also explains its reasoning in its reports on individual cases.

214. **The Commissioner's forthcoming revised Information Note (see paragraph 203 above) will clarify who Members may inform or consult during an investigation, as well as their rights during an investigation more generally. Our own Information Note, to be issued at the same time, will contain equivalent information about Members' rights at the committee stage of the process. The two notes will confirm that the confidentiality requirements imposed on Members under investigation do not preclude their confiding in a close friend or partner or seeking legal or other advice—it is perfectly reasonable that Members should be able to discuss a case, in confidence, with a limited circle of people they are close to, and that they should be able to access professional advice if required. Our Information Note will confirm that a Member can be accompanied by a lawyer before the Committee, though, in accordance with the rules of the House, representation through Counsel is not permitted.[101] We emphasise that the standards system should neither encourage nor discourage Members from seeking legal advice but assert their freedom to do so. Notwithstanding this, in our view the processes of the Commissioner's investigation and the Committee's consideration of a case should be sufficiently straightforward and transparent that no Member will be disadvantaged by not taking formal legal representation.[102]**

Investigatory panels

215. Standing Order No. 150 empowers the Commissioner to appoint an "investigatory panel". Such a panel may be appointed by the Commissioner during an investigation at her discretion, and must be appointed by her if the Committee requests it. The panel would be made up of the Commissioner, a legal assessor and a Member assessor, and its aim would be to "assist" the Commissioner in "establishing the facts relevant to an investigation". The

100 The numbers of elected and lay members on the Committee are equal, at 7 each. However, under House of Commons rules the chair of a select committee - who in the case of Standards must be Standing Order be an elected member - has only a casting vote. If the two categories of member were to vote by bloc, therefore (something that has never happened), the lay members would win by 7 votes to 6,

101 See Erskine May, 25th ed., 38.38.

102 We note that in some circumstances Members may be entitled to have the costs of legal representation covered by the House, for instance if legal proceedings are brought against them for having taken disciplinary action against an employee at the request of the Commissioner in an ICGS case: see written evidence from the Clerk of the House (COD 0038).

panel may be assisted by counsel and the subject Member may call and examine witnesses. Following the conclusion of the panel's operations, the Commissioner will report to the Committee on the case in the normal way. In addition, the legal assessor must report their opinion on the extent to which the panel's proceedings "have been consistent with the principles of natural justice"; and the parliamentary assessor may report on the extent to which its proceedings "have had regard to the customs and practice of the House and its Members".

216. No investigatory panel under this Standing Order has ever been appointed. We have considered whether the provision is needed. The provision was added by the House following a recommendation by the Committee on Standards in Public Life in 2002.[103] However, the proposal agreed to by the House differed significantly from that envisaged by the CSPL. The CSPL proposed that the composition of the panel should be an independent chair (a retired judge or similar) and two MPs who were not members of the Committee on Standards and Privileges; and also that the Commissioner should set up an investigatory panel when certain criteria were met.

217. Our predecessor Committee considered instead that the appointment of a panel should be discretionary, with no criteria attached; and that it should be chaired by the Commissioner with a Parliamentary 'assessor' and legal 'assessor' who could both report back to the Committee on their respective remits, so that the Commissioner remained responsible for establishing the facts.[104]

218. The Committee's modified proposal was put to, and agreed by, the House on 26 June 2003, which amended SO No. 150.

219. The provision for investigatory panels has been 'sleeping' in the Commissioner's standing order for nearly 20 years without being activated - though there is no procedural bar to its being activated.

220. Three comments can be made on the historic context of this provision:

a) CSPL's original proposals were put forward before the change in the Committee's composition to include lay members, and represent an earlier attempt at introducing an independent element into the standards system;

b) The original proposals were significantly modified by the House, in ways which arguably rendered the provision less coherent - in particular, by leaving a lack of clarity as to whether an investigatory panel was primarily intended to assist the Commissioner during her investigation, or to be part of the Committee's subsequent consideration of the Commissioner's findings;

c) The Committee's practice as it has evolved has been to respect the Commissioner's operational independence by not itself conducting investigations or conducting 'hearings' in which a Member has called witnesses. Likewise, the Committee 'instructing' the Commissioner to set up an investigatory panel (as envisaged under the standing order) would nowadays be regarded as an interference with her operational independence.

103 Committee on Standards in Public Life (2002), *Standards in the House of Commons* (Cm 5663)

104 Second Report of 2002–03 (HC 403): https://publications.parliament.uk/pa/cm200203/cmselect/cmstnprv/403/403.pdf, paras 23–42

221. The factors set out in the previous paragraph may well account for the fact that the investigatory panel provision has never been activated.

222. **Our view is that the current provision for investigatory panels is incoherent and does not reflect the way in the which the House's standards system has evolved over the past 20 years. *We recommend that the provision should be removed from the standing order.* This does not mean, however, that elements from the investigatory panel model might not be adopted as part of a more formal system of appeals in conduct cases—for instance, the presence of an independent legally qualified person on an appeals panel—and such an option will fall within the scope of the forthcoming judge-led review of our procedures.**

Appeals

223. The ICGS, since its inception, has contained provision for formal appeals. Before the setting up of the Independent Expert Panel in late 2020, responsibility for conducting ICGS appeals lay with the Committee on Standards. In March 2019 the Committee published a report setting out its outline framework for appeals.[105] The IEP met for the first time in December 2020. In February 2021 it published guidance to parties on its processes, including those relating to appeals.[106] It has used the Committee's framework as a basis for its own process.

224. In its response to the Committee's report, Sanctions in respect of the conduct of Members, published in November 2020, the Government commented:

> […] we believe that the principle of separating investigatory and sanctioning powers is important to ensure independence in the process. The Commissioner has significant powers in both spheres in relation to non-ICGS cases. In this context we welcome the Committee's conclusion (paragraph 136) that "it would be equitable for the Member concerned in those cases to have a right of appeal against such a sanction to the Committee". The Committee's proposal that the House approve the principle of there being an appeals process for non-ICGS cases in line with that of ICGS will go some way to mitigating the risks of maintaining the Commissioner's dual role in less serious cases.[107]

225. In its report on revised proposals for confidentiality and sanctions, the Committee no longer proposed that the Commissioner should be given power to require training or to order the withdrawal of services or facilities. Therefore any need to institute a system of appeals to the Committee against the imposition of such sanctions has been removed.

226. We note, however, that there is a more general question about whether there should be a system of appeal for Members within the Committee's processes.

227. There are two possible types of appeal. The first is an appeal against the Commissioner's findings, and the second is against the Committee's decision on sanctions. We consider these in turn.

105 Committee on Standards, Sixth Report of Session 2017–19, The Committee's role in ICGS appeals (HC 1976), published 13 March 2019

106 Independent Expert Panel, Guidance on appeals, referrals and sanctions, issued 9 February 2021

107 Letter dated 6 November 2020 from the Leader of the House to the Chair of the Committee on Standards

Appeal against the Commissioner's findings

228. The formal status of the Commissioner's findings, when they are referred to the Committee, is as advice to the Committee. We are grateful for the Commissioner's advice, but are not bound by it, and determine on the basis of all the evidence before us, including any further written or oral evidence provided by a Member, whether we agree with her findings or not. Besides referral to this Committee, the other possible outcomes of the Commissioner's investigation are that a complaint is not upheld, which a Member would have no need to appeal; or rectification, which is only possible if the Member concerned acknowledges the breach, which would not be consistent with an appeal. Any Member subject to adverse findings, and who disagrees with the Commissioner's conclusions, will already, therefore, automatically have the matter determined by this Committee.

229. **It follows that there already exists what is effectively a right of appeal to the Committee against the Commissioner's findings. We have not hitherto used the language of 'appeal' but the reality is that Members who are dissatisfied with those findings have a right to seek to persuade the Committee that they are in the right. This process contains the key elements of an appeal: a fresh consideration of the case by a separate body which has not been involved in the original investigation, with power to seek further evidence, and with a right on the part of the Member to submit written and oral evidence. We believe it is correct, therefore, to say that Members currently have a right of appeal against the Commissioner's findings, even if that is not how it is described.**

230. **The terms of reference of the forthcoming judge-led review of our process will include consideration of whether the process by which Members make any representations to us should be more formalised in accord with, for instance, the appeal practice of the IEP, for example, by setting out which of the Commissioner's findings they are contesting, and on what grounds. In doing so, however, we are conscious of the imperative to ensure that any Member can go through the Committee's processes without the need for formal legal assistance, and to ensure that Members do not feel prevented from making any representations they consider may assist the Committee in the consideration of their case.**

231. **The lack of specified "grounds for appeal" in the current system enables the Member to provide us with any information they like, in defence or mitigation, and to challenge any aspect of the Commissioner's investigation. A formalisation of the right to appeal against findings, if it were to include specified grounds for appeal, might therefore reduce rather than expand a Member's rights by contrast with the existing system.**

232. **As things stand, we would argue that there is an effective appeal to the Committee against the Commissioner's findings on breach of the Code (whether or not that appeal is formalised). There is therefore no need for a further stage of appeal against the Committee's conclusions on breach of the Code. However, this matter will fall within the scope of the judge-led review (see paragraph 196 above).**

233. In the ICGS, an investigation is undertaken by an external investigator, with the Commissioner acting as the decision-maker at first instance. In Code of Conduct cases, the Commissioner is both the investigator and first-instance decision-maker. The scope

of the judge-led review will also include consideration of whether the roles of investigator and first instance decision-maker should also be separated in Code of Conduct cases, and if so, how this could be achieved (whether by a separation of roles in the Commissioner's office, or the Committee acting as the first instance decision-maker).

Appeal against the Committee's recommendation on sanctions

234. At present there is no meaningful right of appeal against the Committee's recommendation on sanctions. If that recommendation is for suspension or expulsion, the final decision lies with the House, but this decision is taken on the basis of a motion followed by a debate, and no provision is made for the hearing of evidence or for the checks, balances and due process required by a satisfactory appeals process. The Guide to the Code states 'While the House itself decides whether a Member should be suspended, its practice has been to accept the Committee's recommendations on such matters.'

235. One other difference is that a report from the IEP is taken without amendment or debate, whereas a report from the Committee on Standards is taken on an amendable and debateable motion.

236. The lack of a right of appeal against the Committee's decision on sanctions means that non-ICGS cases are treated significantly differently from ICGS cases, where the respondent has a formal right of appeal against a decision by a sub-panel of the IEP to a second sub-panel of the IEP.

237. We understand the desirability of creating an equivalent right of appeal against sanction in non-ICGS cases, the ones that come before the Committee on Standards.

238. We have considered four options for creating such a right of appeal. They are: (a) set up an internal system of appeal to a sub-committee of the Committee; (b) refer any such appeal to the IEP; (c) create a new appeal body; or (d) retain the status quo, i.e. accepting that there is effectively no appeal against a recommended sanction other than the House.

239. All four options have significant disadvantages. Option (a) would require some committee members to recuse themselves for the initial discussion of every case, to hold themselves ready to serve on an appeals sub-committee. The larger the size of the sub-committee, the smaller the group of members that would take part in the initial discussion of the case. It would be both desirable but also very difficult to secure a simultaneous balance of political parties and between lay and elected members on a small sub-committee - and achieving that balance might lead to an imbalance in these areas during the initial consideration of the case. The IEP, by contrast, because of its very different composition, has no equivalent need to secure balance between elected and lay members or between the political parties.

240. Option (b), transferring responsibility for appeals in non-ICGS cases from the Committee to the IEP, is superficially attractive, but would create difficulties because the IEP as presently constituted was not set up nor its members recruited with the expertise to deal with non-ICGS cases. This option might therefore be feasible but would probably require the wholesale reconstitution of the IEP - which might in turn damage its ability to carry out its core function of dealing with cases of bullying, harassment and sexual misconduct.

241. Option (c), creating a new independent body charged with considering appeals on sanctions is also superficially attractive, although if we were to pursue this option it would follow logically that the House should abandon its right to debate and amend a sanction, as it has done in ICGS cases.

242. Option (d), accepting the status quo in which there is no effective right of appeal against the Committee's recommendations on sanctions, is undesirable because it leaves a lacuna in terms of Members' rights.

243. **For the reasons set out in previous paragraphs the Committee does not have a preferred option in this matter. All the options we have set out above will be within the scope of the forthcoming judge-led review of our procedures. That review will also be able to consider other options, as well as matters which may have implications for any appeal process, such as whether the investigatory and decision-making roles within the Commissioner's office should be separated.**

244. **We would also be grateful to receive views from interested parties during the consultation process on what respondents regard as the 'least bad' of the four options, any suggestions as to how the disadvantages of each option might be ameliorated, and indeed any proposals for further options for us to consider.**

Responsibilities of Members

245. It is important that the rights of Members subject to investigation through the standards system should be protected; we have listed above the safeguards already contained in the process, and set out options for strengthening these. It is equally important that Members who engage with the standards process should recognise their responsibility to co-operate with investigations and respect the confidentiality of the process.

246. In a recent report on an individual case we commented as follows:

> The Commissioner's investigations are protected by parliamentary privilege and are conducted in confidence. Members are permitted to seek advice and support during an investigation. Some Members obtain formal legal assistance […]; some are supported by their whip or by a close colleague. We do not wish in any way to discourage or prevent Members from seeking and obtaining advice and support in this way during a process which, however sensitively conducted, can be difficult and stressful.
>
> We have gained the impression, however, that an unusually large number of Members were aware of the details of this investigation prior to the publication of our report. We are therefore concerned that those from whom advice or support may have been sought have not maintained the confidentiality of the process.
>
> We remind all Members that the Commissioner is an independent Officer of the House, and her investigations are undertaken by the authority of the House. We would treat deliberate breaches of the confidentiality of her investigations as a very serious matter. We also note the requirement set

> out in the Guide that "Members must […] not lobby the Committee or the Commissioner in a manner calculated to influence their consideration of [an inquiry into a Member's conduct]".[108]

247. We reiterate these points. We note that the Code itself states that:

> The Commissioner may investigate a specific matter relating to a Member's adherence to the rules of conduct under the Code. Members shall co-operate, at all stages, with any such investigation by or under the authority of the House. No Member shall lobby a member of the Committee in a manner calculated or intended to influence its consideration of an alleged breach of this Code.[109]

248. ***We propose that the following paragraph be substituted for the final sentence in the paragraph cited above, to emphasise the respect that Members should show for the standards process:***

> ***Members must not lobby a member of the Committee on Standards, the Independent Expert Panel or the Parliamentary Commissioner for Standards, or their staff, in a manner calculated or intended to influence their consideration of whether a breach of the Code of Conduct has occurred, or in relation to the imposition of a sanction.***

108 Committee on Standards, Third Report of Session 2021–22, *Mr Owen Paterson* (HC 797), paras 203–05
109 Code of Conduct, para 19

8 Training, advice and promotion

249. The purpose of the Code is not simply to set out minimum enforceable standards for Members, but in outlining principles of conduct, to encourage high standards of personal conduct and to foster behaviours and attitudes that promote the public interest.

250. The disciplinary process, by which breaches are investigated and adjudicated, similarly aims not simply to enforce standards but also to improve them. This Committee may recommend training or agree preventative action as an appropriate sanction,[110] and in our most recent reports on individual cases, we have explicitly offered advice to Members who might find themselves in a similar position in the future.[111]

Current provision of training

251. From the 2015 Election onwards, the Commissioner's office has sent all newly elected Members ringbinders containing the Code and Guide, and its supporting rules.

252. In addition, from the 2015 Election onwards, all newly elected Members were invited to attend, shortly following their election, a one-hour group seminar (involving IPSA, CSPL, the Electoral Commission and the Commissioner) which aimed to give an overview of the Code of Conduct, electoral law and the various sets of rules that apply to Members.

253. Every newly elected Member is also invited to a one-to-one session with a representative from the Commissioner's office, who explains the Code and the Guide to the Rules, particularly the rules on registration, and answers any questions the new Member might have. This interview follows a standard script and on average last around 45 minutes. The Commissioner's office follows up with newly elected Members with the aim of ensuring that all new Members are able to attend a session.

254. Following the 2019 Election, for the first time, all new Members were expected to attend a one-hour group session entitled "Valuing Everyone", focussed on the Behaviour Code and the Independent Complaints and Grievance Scheme. This took place on the Monday afternoon following the Election, which was for most Members, their first day on the estate.

255. The Commissioner, after the 2015 and 2017 Elections, also wrote again to newly elected Members after three to six months and offered refresher briefings.

Future provision of training

256. In considering how to enhance the provision of training, we took evidence from Dr Claire Foster-Gilbert, Director of the Westminster Abbey Institute, on how to create an ethical culture and animate the Code in practice.

110 See, for example, Committee on Standards, Seventh Report of Session 2017–19, *Boris Johnson: Further Report* (HC 2113), para 15; Committee on Standards, Ninth Report of Session 2019–21, *Rosana Allin-Khan* (HC 904), para 24.

111 Committee on Standards, First Report of Session 2021–22, *Boris Johnson* (HC 549), paras 47–52; Committee on Standards, Second Report of Session 2021–22, *Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers* (HC 582), paras 65–77

257. Dr Foster-Gilbert argued that:

> Codes are limited because they are only ever words, usually words on paper or on a screen, and ethical behaviour arises out of the way people feel and the way they perceive the world—self-understanding; self-awareness. […] Ways have to be found for it to be activated.[112]

258. Dr Foster-Gilbert proposed "face-to-face encounters, where at the very least the meaning of the Code is talked about, so that there is some generated sense in the other person of what the Code is trying to do".[113]

259. We acknowledge that training on standards faces a dilemma: in one sense, the ideal time to set expectations, and to inform Members about the primacy of their obligations under the Code, is at the time of their election; but this is a particularly disorienting time at which they are required to absorb a huge amount of new information and (usually) establish an office.

260. We suggest that a short session giving an overview of the main obligations of which Members should be aware should be continued to be offered immediately following a General Election. In addition, however, more in-depth, reflective discussion and training should also be offered to Members once they have had an opportunity to establish themselves in their role.

261. ***We recommend that the House service develop in-depth training on standards to be delivered to all Members within six months of a general election and for new Members within six months of their election.***

Advice and support

262. The Commissioner's office, and in particular the Registrar and their team, has the primary role in providing advice and support to Members on their obligations under the Code.

263. We are conscious that for Members elected in 2019, their experience of the House will have been heavily shaped by the pandemic, and consequently the lack of opportunities to seek informal advice in person from various offices and parts of the House service that more experienced Members will have been used to.

264. We recognise the primary role of the Commissioner's office in this area. We plan pursue further with the Commissioner her views on this aspect of her role and the resources required to deliver it.

Promotion of the Code

265. Our research interviews (the results of which are set out at Annex 6) elicited helpful suggestions as to how the Code and its values could be more effectively promoted to Members. They included:

112 Q185
113 Q186

> a 'Frequently Asked Questions' section on the Commissioner's website, a guidance booklet "like the one IPSA produces", a quick-reference checklist, posters with visual cues about the Nolan Principles displayed around parliament, a six-page 'Beginner's Guide', anonymised examples of cases where a Member "sailed too close to the wind". In addition, there were some concrete recommendations for making the online Register of Interests more accessible, e.g., by providing pop-up explanations when hovering over certain terms, making it more interactive, and increasing the font size.[114]

We will consider these suggestions, and any others put forward during the consultation process, and will make specific recommendations in this area in a separate report to the House.

114 Annex 6, para 14

Conclusions and recommendations

The context and purpose of the Code

1. We wish to emphasise that a key purpose of the Code is to assert a set of values and to promote best practice. We encourage Members of the House to incorporate these values as part of their daily working life and reflect upon them as they carry out their duties. The Code of Conduct should be read in conjunction with the Parliamentary Behaviour Code which it incorporates. Both Codes are intended to build a common understanding of what behaviour and attitudes the House wishes to promote and what should be called out as unacceptable. (Paragraph 15)

The Principles

2. Principles and rules serve different functions. Principles are primarily aspirational, and are therefore expressed in broad terms. Rules are more tightly drafted with a view to the practicalities of enforcement. We encourage Members to reflect on the principles and to base their conduct on them, and we intend to make clearer the distinction between rules and principles in the Code. (Paragraph 27)

3. *The Code should continue to be based on the Seven Principles of Public Life. We propose that the descriptors attached to each of the Seven Principles be revised to reflect more closely how they apply to a Member's role. We are grateful that the Committee on Standards in Public Life has indicated it agrees with our approach to this.* (Paragraph 32)

4. *We recommend that an additional principle of "Respect" as set out in Box 3 should be added to the Code, replacing the existing paragraph 9.* (Paragraph 37)

Scope of the Code and what can be investigated

5. We agree with the Commissioner that it would be impracticable to set up a system for arbitrating on matters of truth and accuracy in political discourse. There is no shortage of opportunities for contentious statements by politicians to be controverted and challenged by their political opponents, by journalists, and by members of the public. This is normally done as part of the process of political debate inside and outside Parliament. (Paragraph 49)

6. Free speech within the law is a human right. Broadly speaking, Members should be free to exercise it in the same way and to the same extent as anyone else in the United Kingdom. Ultimately the electorate has the power to remove an MP if their opinions are offensive. We conclude that a Member's views and opinions should continue to be excluded from investigation under the Code. (Paragraph 56)

7. However, we, like the Commissioner, are concerned that the new world of communications created by social media has created a situation in which personal attacks and abusive content directed at individuals can be widely disseminated in a way which may not break the law but which, in extreme cases, can be regarded as disreputable. (Paragraph 57)

8. *We therefore support the addition to the Code of a rule similar to those adopted by the Welsh Senedd and the Northern Ireland Assembly, making it an investigable breach of the Code for a Member to subject anyone to unreasonable and excessive personal attack in any medium. This would bring the House into line with the devolved bodies and be a proportionate means of addressing unacceptable behaviour, whilst preventing any risk of the expression of a Member's views or opinions from becoming subject to an investigation.* (Paragraph 58)

9. We are in no doubt that the overwhelming majority of Members are assiduous in dealing with constituency casework: being able to make a real difference to the lives of individuals and contribute to solving their problems is one of the great satisfactions of being a Member of Parliament. Given the number and sometimes complexity of constituency cases, it is unsurprising that on occasion individual constituents will feel, rightly or wrongly, that their MP has let them down. It does not follow that a process of investigable complaints in such cases could or should be created. Members have the right to set their own priorities and use their own judgement in deciding which cases to take up and how to handle them . (Paragraph 68)

10. Any attempt to include constituency casework within the ambit of the Code could lead to a large number of unfounded, vexatious or politicised complaints. It would also entail a shift in the role of the Commissioner from that of an investigator to an ombudsman. The ballot box, not the House's standards system, is the appropriate means of adjudicating on a Member's performance. For these reasons, we do not recommend a change to the existing exclusion of constituency casework from the matters that can be investigated by the Commissioner. (Paragraph 69)

11. Although there may occasionally be scope for argument over where the boundary lies between "public life" and "purely private and personal lives", we consider that the distinction is important, and we do not intend to change it. (Paragraph 73)

12. The Speaker's responsibility for upholding the rules at sittings of the House is deep-rooted in parliamentary history and practice, and we do not advocate any change to this. Events in the Chamber are fast-moving and discipline has to be instant; the Commissioner's investigation role is not appropriate. Conduct in the Chamber is properly a matter of order for the Chair, who has been given disciplinary powers by the House. (Paragraph 78)

13. *However, there are instances where an instant judgment is not possible, necessary or desirable and further investigation may be necessary, for instance where the offending behaviour has occurred in a committee or a division lobby. In such cases, especially potential ICGS cases involving bullying, harassment or sexual misconduct, the Speaker could have the option to refer a matter of conduct in the Chamber, in Committee or elsewhere in a proceeding to the Commissioner for investigation. We invite comments on this suggestion.* (Paragraph 79)

14. *We also recommend that the application of the ICGS to witnesses, and how they are treated by Members in select committee proceedings, is clarified. This is a matter which may be looked at by the Committee of Privileges in its ongoing work on ways of ensuring fair treatment of witnesses (in the context of its inquiry into how the House can exercise its powers to enforce witnesses' attendance).* (Paragraph 80)

15. It would not be realistic to subsume the whole of the Ministerial Code within the Code of Conduct for Members, given the separate constitutional roles of Ministers of the Crown and Members who do not hold ministerial office. We therefore do not propose any change to the exclusion of alleged breaches of the Ministerial Code from the Commissioner's remit. (Paragraph 94)

16. However, Ministers are all members of one or other House of Parliament, they are accountable to Parliament, and their conduct inevitably affects the reputation of Parliament. There is public confusion between the two codes, and perceptions of lack of independence in the way the Ministerial Code is enforced are damaging for the House at large as well as for Ministers. Moreover, it is manifestly inappropriate for Ministers to be subject to fewer and less onerous standards of registration of financial interests than Members who are not Ministers. Yet, as things stand, two Members in receipt of identical benefits or hospitality operate under completely different arrangements according to whether they are in ministerial office or not. A Minister's registration would not normally be published for many months and would appear with few details, whereas a non-Minister's financial interest must be registered in full within 28 days. (Paragraph 95)

17. We regard it as desirable that the two codes should be as closely aligned as is practically possible. For this reason we are considering recommending that ministerial interests, to include benefits and hospitality received in their capacity as a Minister, should form part of the Register of Members' Financial Interests, so that all Members' interests can easily be found in one place (see paras 137–39 below); and that the Government should improve the searchability and timeliness of Ministers' registrations. We will take further evidence on this, including from the Government, and will seek the views of the Independent Adviser on Ministers' Interests. (Paragraph 96)

Relationship between the Code and other codes

18. *We recommend that there should be an explicit rule in the Code that Members must not breach the requirements of confidentiality in ICGS cases.* (Paragraph 102)

19. We intend to produce an update of the stationery rules in light of recent experiences and cases. The main aim will be to provide greater clarity to Members and the Commissioner, so as to avoid inadvertent breaches. (Paragraph 110)

20. Some have claimed that there is confusion about the use of other services provided by the House, including offices. The rules are both long-established and clear that all facilities provided out of the public purse must be used only in support of a Member's parliamentary duties. The Committee has therefore always deprecated the use of parliamentary facilities to secure financial, partisan or commercial advantage for oneself or a commercial entity with which a Member has a financial relationship. Members must not use their parliamentary office to run a business or hold business meetings with companies by whom they are paid or from whom they have a financial reward. Nor should the facilities be used for party political fundraising events. We intend to provide further advice on this in the near future, including on the definition of "facilities". Given that Members often work long hours

and are on the parliamentary estate long past normal working hours several days of the week, we accept, as our predecessors have, that this rule has to be exercised with a due sense of proportion. (Paragraph 111)

21. It would undoubtedly be in the best interests of the whole of Parliament if there could be greater alignment between the separate Codes of Conduct in the House of Commons and the Lords. This is not simple, however. Both Houses have always asserted their exclusive right to regulate their own business and the conduct of their members. We note that the provisions of the ICGS have applied from its inception across the parliamentary community, and we would welcome comments on possible means of ensuring greater alignment between the two Houses, while fully recognising their distinct functions and procedures. (Paragraph 115)

Registration, declaration and paid advocacy

22. *We have set out proposed changes to the rules on registration of interests in the table in Annex 3, to update and clarify the current provisions. We recommend that the requirements in the Guide to the Rules are amended accordingly.* (Paragraph 126)

23. We accept that the Government may wish to impose its own, more onerous, requirements in respect of registration of interests on Ministers, and would not wish to prevent it from doing so. However, we cannot see why the House should require a lesser level of information on acceptance of benefits and hospitality by Ministers than for other Members. We note that the Commissioner in her own review of the Code recommended that benefits and hospitality received by Members in a ministerial capacity should be registered in the House's register. (Paragraph 137)

24. *The distinction between ministerial interests and Members' interests is not always clear cut. The current regime also makes it difficult for members of the public to see the various interests of a Member in their different capacities. We are considering recommending that the provision that "Members are not required to register either ministerial office or benefits received in their capacity as a Minister" is amended to read "Members are not required to register ministerial office", so that Members register with the House benefits and hospitality received whether or not it is in their capacity as a Minister. We invite comments on this proposal.* (Paragraph 139)

25. *We further recommend that the Government should improve the timeliness and quality of Ministers' transparency registrations (which at present compares unfavourably with the speed with which Members are required by the rules of the House to update their interests in the Register) and the searchability of Ministers' registrations, in line with the recommendations made by the Committee on Standards in Public Life (in parallel, we hope, with improvements in the searchability of the Register - for which, see paragraphs 141–142 below).* (Paragraph 140)

26. The Committee is very clear that greater transparency in this area is essential to achieve effective transparency and accountability in public life. However, the Committee remains very concerned that this work does not appear to be a priority for the Parliamentary Digital Service and there does not seem to be any effective mechanism for establishing a firm timetable that can be monitored. We call upon

the House of Commons Commission to make a firm commitment to this work and to set out a timetable for its achievement that can be published in our final report. (Paragraph 142)

27. Changes in the area of declaration would be a significant departure from our historic practice, which is why we are not yet making a firm recommendation. We would, however, welcome comments and evidence and will report further on this. (Paragraph 148)

28. *We recommend that, in tandem with the digitisation of the Register, the House's procedural offices work with the Procedural Publishing Unit and the Parliamentary Digital Service to publish ad hoc declarations made when tabling questions or applying for debates, and to provide hyperlinks to such declarations, or the relevant interest in a Member's Register entry, where declarations of interest are indicated on House business papers. We also recommend that the Parliamentary Digital Service investigate whether enhancements could be made to online Hansard to link to these where a declaration has been made.* (Paragraph 155)

29. Any change to the rules of conduct relating to voting would represent a very significant change to the House's current practices. We do not propose any change at this initial stage, but would welcome any comments and evidence on this issue, before we make our final report to the House. (Paragraph 160)

30. *There is currently no requirement for Members taking up paid employment with an outside organisation to provide a copy of their contract to the Registrar, as there was previously. We do not propose to change this position. We do, however, propose that it should be a requirement for Members taking on outside work to obtain a written contract detailing their duties, in particular, making explicit that these duties cannot include lobbying Ministers, Members or public officials on behalf of that employer and that the employer will give an undertaking not to ask them to do so. A contract should also include an exclusion on providing advice about how to lobby or influence Parliament. Members would be expected to make such a contract available to the Commissioner on request if needed during an investigation. We will consider how and when this should be introduced.* (Paragraph 168)

31. The public expect MPs to act without fear or favour whether they are initiating proceedings or taking part in them. It may therefore be desirable for the House to tighten the lobbying rules so that a Member who has a live financial interest is prevented from both initiating or participating in proceedings or approaches to ministers or officials that would confer, or seek to confer a benefit (not just an exclusive benefit, which is currently the case in respect of participation). We would welcome comments on the potential consequences of such a change, and in particular if it would unduly restrict Members from participating in proceedings or approaches where this confers a benefit, but not an exclusive benefit, on a person or organisation. (Paragraph 169)

32. *We propose replacing the paid advocacy rule in the Code with a reference to the lobbying rules, in order to underscore that Members need to act in accordance with the lobbying rules as set out in the Guide in full, not simply avoid 'paid advocacy'.* (Paragraph 170)

33. *We recommend that the 12-month limit on relevant reward or consideration is restored. We acknowledge that lobbying is one of the most complex areas of the rules, and that Members need confidence that their activities are within the rules. We therefore also recommend the introduction of a "safe harbour" provision within the Code, where a Member is not in breach of the rules for an action on which they have sought and followed the advice of the Registrar. We further recommend that invoking the serious wrong exemption should be explicitly subject to the criteria we set out in paragraph 164 above.* (Paragraph 171)

34. We therefore propose to introduce a ban on Members providing paid parliamentary advice, consultancy, or strategy services, as in the House of Lords. This can be best achieved by the incorporation of the same rules as the House of Lords into the Code together with our recommendation about contracts (see para 167 above), subject to the requirement that those Members who intend to enter into paid roles permissible by these provisions, produce to the Commissioner, in advance of any engagement, a written contract specifying the role and seeking the comfort of the Commissioner's guidance that the role is (or is not) permissible (a so-called 'safe harbour' provision). (Paragraph 179)

35. We acknowledge that there are some who believe that a measure limiting the time a Member can spend on outside interests–or the amount they can earn from outside interests–is necessary, but a significant change of this sort should only be implemented with broad cross-party support. We therefore encourage comments from Members across the House, as well as from external stakeholders and we will take into account the breadth of support for any proposal in making our final recommendations to the House. (Paragraph 192)

The functioning of the Code

36. We intend to request a senior judicial figure to carry out a review of whether the House's current system of investigating and deciding upon breaches of the Code of Conduct for Members of Parliament is compatible with fairness and natural justice, and with Article 6 ECHR, and if appropriate to make recommendations or set out options for improvements to the system. We will announce further details of the review shortly. (Paragraph 196)

37. For both constitutional and practical reasons we do not think it would be right for the House to delegate its powers to suspend and expel a Member, and we do not advocate this. However, we wish to consult on whether the current functions of the Committee on Standards in respect of individual cases should be transferred to an independent body similar to the Independent Expert Panel - or possibly to the IEP itself if its membership and remit were to be expanded. On the one hand, that would have the arguable benefit of removing MPs completely from adjudicating on individual conduct cases (except in relation to decisions on suspension or expulsion by the House). On the other hand, it might be argued to be a step too far, in that Members' knowledge and experience of parliamentary life are a valuable adjunct to the distinct external expertise of lay members in adjudicating upon cases which do not involved bullying, harassment or sexual misconduct. We would be interested to hear views on this issues as part of our consultation process. (Paragraph 200)

38. The Commissioner is currently preparing a revised Information Note which we will consider in the near future. At the same time we will produce a similar Information Note relating to the Committee. This will reflect the fact that the Commissioner and the Committee are independent of each other and exercise separate roles in the process. The production of both documents, which we will publish in a report to the House, will afford an opportunity to clarify and explain the procedures involved in the standards system in the interests of transparency and to reassure Members and the wider public that the system is as fair and robust as we can make it. (Paragraph 203)

39. We shall explore with the Commissioner whether any steps can be taken, either administratively or through an increase in resources to her office, to enable investigations to be concluded more swiftly than at present. (Paragraph 208)

40. Because we have an inquisitorial system rather than an adversarial one, we do not have examination and cross-examination of witnesses or representation by Counsel, with the Commissioner regarded as a 'party', or other courtroom-style procedures. We do not believe they should become part of the process: they would undoubtedly lead to investigations becoming much more cumbersome and protracted, and would lead to an undesirable legalisation of what is, an internal disciplinary process not a criminal trial. Members' rights are however protected by our existing procedures, as we have set out in previous paragraphs. We note that the House has considered on a number of occasions in the past 30 years whether to switch from an inquisitorial to an adversarial system, and has consistently rejected this, for good reasons. We therefore reject this option, and do not propose that it should be considered as part of the judge-led review. We wish to make clear that our rejection of this option does not imply that the fairness of existing procedures cannot be improved, particularly in relation to appeals. We deal with appeals later in this report, and the subject will form part of the judge-led review. (Paragraph 211)

41. We have reviewed whether the Commissioner's and the Committee's processes are compliant with Article 6 of the European Convention on Human Rights (the right to a fair trial), which states that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". On the basis of legal advice we have received, we are confident that the processes are, overall, Article 6 compliant. (Paragraph 212)

42. The Commissioner's forthcoming revised Information Note (see paragraph 202 above) will clarify who Members may inform or consult during an investigation, as well as their rights during an investigation more generally. Our own Information Note, to be issued at the same time, will contain equivalent information about Members' rights at the committee stage of the process. The two notes will confirm that the confidentiality requirements imposed on Members under investigation do not preclude their confiding in a close friend or partner or seeking legal or other advice—it is perfectly reasonable that Members should be able to discuss a case, in confidence, with a limited circle of people they are close to, and that they should be able to access professional advice if required. Our Information Note will confirm that a Member can be accompanied by a lawyer before the Committee, though, in accordance with the rules of the House, representation through Counsel is not

permitted. We emphasise that the standards system should neither encourage nor discourage Members from seeking legal advice but assert their freedom to do so. Notwithstanding this, in our view the processes of the Commissioner's investigation and the Committee's consideration of a case should be sufficiently straightforward and transparent that no Member will be disadvantaged by not taking formal legal representation. (Paragraph 214)

43. Our view is that the current provision for investigatory panels is incoherent and does not reflect the way in the which the House's standards system has evolved over the past 20 years. *We recommend that the provision should be removed from the standing order.* This does not mean, however, that elements from the investigatory panel model might not be adopted as part of a more formal system of appeals in conduct cases—for instance, the presence of an independent legally qualified person on an appeals panel—and such an option will fall within the scope of the forthcoming judge-led review of our procedures. (Paragraph 222)

44. There already exists what is effectively a right of appeal to the Committee against the Commissioner's findings. We have not hitherto used the language of 'appeal' but the reality is that Members who are dissatisfied with those findings have a right to seek to persuade the Committee that they are in the right. This process contains the key elements of an appeal: a fresh consideration of the case by a separate body which has not been involved in the original investigation, with power to seek further evidence, and with a right on the part of the Member to submit written and oral evidence. We believe it is correct, therefore, to say that Members currently have a right of appeal against the Commissioner's findings, even if that is not how it is described. (Paragraph 229)

45. The terms of reference of the forthcoming judge-led review of our process will include consideration of whether the process by which Members make any representations to us should be more formalised in accord with, for instance, the appeal practice of the IEP, for example, by setting out which of the Commissioner's findings they are contesting, and on what grounds. In doing so, however, we are conscious of the imperative to ensure that any Member can go through the Committee's processes without the need for formal legal assistance, and to ensure that Members do not feel prevented from making any representations they consider may assist the Committee in the consideration of their case. (Paragraph 230)

46. The lack of specified "grounds for appeal" in the current system enables the Member to provide us with any information they like, in defence or mitigation, and to challenge any aspect of the Commissioner's investigation. A formalisation of the right to appeal against findings, if it were to include specified grounds for appeal, might therefore reduce rather than expand a Member's rights by contrast with the existing system. (Paragraph 231)

47. As things stand, we would argue that there is an effective appeal to the Committee against the Commissioner's findings on breach of the Code (whether or not that appeal is formalised). There is therefore no need for a further stage of appeal against the Committee's conclusions on breach of the Code. However, this matter will fall within the scope of the judge-led review (see paragraph 195 above). (Paragraph 232)

48. For the reasons set out in previous paragraphs the Committee does not have a preferred option in this matter [i.e. relating to a possible right of appeal against sanction]. All the options we have set out above will be within the scope of the forthcoming judge-led review of our procedures. That review will also be able to consider other options, as well as matters which may have implications for any appeal process, such as whether the investigatory and decision-making roles within the Commissioner's office should be separated. (Paragraph 243)

49. We would also be grateful to receive views from interested parties during the consultation process on what respondents regard as the 'least bad' of the four options, any suggestions as to how the disadvantages of each option might be ameliorated, and indeed any proposals for further options for us to consider. (Paragraph 244)

50. *We propose that the following paragraph be substituted for the final sentence in Paragraph 19 of the Code, to emphasise the respect that Members should show for the standards process:*

> *Members must not lobby a member of the Committee on Standards, the Independent Expert Panel or the Parliamentary Commissioner for Standards, or their staff, in a manner calculated or intended to influence their consideration of whether a breach of the Code of Conduct has occurred, or in relation to the imposition of a sanction.* (Paragraph 248)

Training, advice and promotion

51. *We recommend that the House service develop in-depth training on standards to be delivered to all Members within six months of a general election and for new Members within six months of their election.* (Paragraph 261)

Annex 1: Draft revised Code of Conduct

I – Covering letter from the Committee to accompany the Code

Dear colleague

As a Member of Parliament, you are expected to uphold the values, principles and rules in this Code of Conduct and to act on all occasions in accordance with the public trust placed in you.

The aim behind the Code is to encourage better understanding of the values and principles that the House of Commons expects of its Members – and to support each one of us in adopting those standards as our own.

The public expect you to live by these values and to set the right example to others at all times. This is what it means to be an effective leader in public life. You will be mindful that lapses in judgement can have a significant impact on public confidence in your authority as a Member of Parliament, and on the reputation of the House.

We are keen to build a common understanding within the House of what behaviour and attitudes should be promoted and what should be called out as unacceptable. To that end you, we encourage you to discuss these values and principles and reflect upon them with other Members, with your own staff, and with the staff of the House.

The Code of Conduct is accompanied by a set of rules by which the House expects and requires all Members to abide. They are a tool to promote the purpose of the Code: they are not an end in themselves. But they are the basis on which the Parliamentary Commissioner for Standards launches investigations into Members' conduct.

We would stress two further things. First, it is not the purpose of the Code to intrude into your purely private life, but it is important that any conflicts of interest are declared and resolved. And secondly, the Parliamentary Commissioner for Standards and her team are there to help. If you are ever in doubt about an issue relating to the Code or the accompanying rules, we urge you to seek their advice, which will be offered impartially and in confidence.

The Committee on Standards

II – Code of Conduct for Members of Parliament

A – The Purpose of the Code

The purpose of the Code of Conduct is to

a) build a common understanding of what behaviour and attitudes the House wishes to promote and considers unacceptable,

b) ensure the openness and accountability essential to the proper functioning of a representative democracy,

c) protect and enhance the reputation of the House of Commons, in order that the public can have justifiable confidence in it,

d) ensure all Members can and do speak and act without fear or favour, and

e) give clarity for members and the public about the rules of conduct which underpin these standards and are expected of all Members in undertaking their duties.

B – The Scope of the Code

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives. The obligations set out in this Code are complementary to the procedural and other rules of the House, their Oath or Affirmation of allegiance to the Crown, the rulings of the Chair and the Ministerial Code. In addition, no Member is above the law.

C – General Principles of Conduct

The House of Commons Code of Conduct is inspired and informed by the Seven Principles of Public Life and the principle of respect.

The Parliamentary Commissioner will investigate a complaint only if it is a potential breach of the Rules and it is supported by sufficient evidence.

- Selflessness: Members of Parliament should act solely in the public interest. They should ensure that no private, financial or other personal interest risks compromising their principal role as a Member of Parliament. They should never misuse their position to gain financial or other material benefits for themselves, their family, or their friends.

- Integrity: Members should conduct themselves in a manner which will inspire public trust and confidence in them and in the integrity of Parliament. They should avoid being placed under any influence or obligation which could undermine trust in them as an individual or in their role as a Member of Parliament. They should declare and resolve any interests and relationships which might be construed as a conflict of interest. When such conflicts do arise, they should be resolved in a way that is beyond reproach, maintains the trust of colleagues and the public, and protects the public interest.

- Objectivity: Members are responsible for the exercise of their judgement as fairly as they can according to their conscience. They should avoid discrimination or bias. They should be able to demonstrate that they make decisions on merit, taking account of relevant evidence, advice and of any wider responsibilities.

- Accountability: Members must make themselves accountable to their constituents and to the wider public and to Parliament. They must submit themselves to the scrutiny necessary to ensure this.

- Openness: Members should, as far as possible, act in an open and transparent manner with the public, with colleagues and with others with whom they work. They should not withhold any relevant information unless there are clear and lawful reasons for doing so.
- Honesty: Members should be truthful in everything they say, write or do.
- Leadership: Members are elected as leaders, who can only be effective when they inspire trust by setting a good example. They should refrain from any action which would bring Parliament or its Members into disrepute. Members should promote best practice and challenge poor attitudes and behaviour whenever they occur.
- Respect: Members should abide by the Parliamentary Behaviour Code and should demonstrate anti-discriminatory attitudes and behaviours through the promotion of anti-racism, inclusion and diversity.

D - Rules of Conduct

1) Members must treat their staff and all those visiting or working for or with Parliament with dignity, courtesy and respect.

2) Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

3) The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

4) Members must rigorously follow the rules on lobbying set out in the Guide.

5) Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. New Members must register all their current financial interests, and any registrable benefits (other than earnings) received in the 12 months before their election within one month of their election, and Members must register any change in those registrable interests within 28 days.

6) Members shall always be open and frank in declaring any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

7) Members should only use information, which they have received in confidence in the course of their parliamentary activities, in connection with those activities, and never for other purposes.

8) Members must not misuse facilities and services provided to them by Parliament, including their office and shall ensure that their use of public resources is always in support of their parliamentary activities.

9) Members must not subject anyone to unreasonable and excessive personal attack.

10) Members should not accept any paid work, are agree to provide paid work, to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence Parliament and its Members.

11) 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.

12) A Member who is the Chair and Registered Contact of an All-Party Parliamentary Group must ensure that the Group and its secretariat observe the rules set down for such groups.

Upholding the Code

1) The application of this Code shall be a matter for the House of Commons, and particularly for the Committee on Standards, the Independent Expert Panel and the Parliamentary Commissioner for Standards in accordance with Standing Orders.

2) The Commissioner may investigate a specific matter relating to a Member's adherence to the rules of conduct under the Code.

3) Members must co-operate at all times with the Parliamentary Commissioner for Standards in the conduct of any investigation and with the Committee on Standards and the Independent Expert Panel in any subsequent consideration of a case.

4) Members must not disclose details in relation to: (i) any investigation by the Parliamentary Commissioner for Standards except when required by law to do so, or authorised by the Parliamentary Commissioner for Standards; nor (ii) the proceedings of the Standards Committee or the Independent Expert Panel in relation to a complaint unless required by law to do so, or authorised by the Committee or the Panel.

5) Members must not lobby a member of the Committee on Standards, the Independent Expert Panel or the Parliamentary Commissioner for Standards, or their staff, in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred, or in relation to the imposition of a sanction.

6) Members must not seek to influence, encourage, induce or attempt to induce, a person making a complaint in an investigation to withdraw or amend their complaint, or any witness or other person participating in a complaint to withdraw or alter their evidence.

7) Failure to comply with a sanction imposed by a sub-panel of the Independent Expert Panel shall be treated as a breach of the Code.

8) Failure to comply with a sanction imposed by the Committee on Standards or the House relating to withdrawal of services or facilities from a Member shall also be treated as a breach of the Code.

Annex 2: Seven Principles of Public Life and 'Respect' principle - comparative 'descriptors'

Principle	Descriptor in current Code of Conduct	CSPL current revised descriptor	Welsh Parliament/ Senedd Cymru	Proposed new House of Commons descriptor
Selflessness	Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.	Holders of public office should act solely in terms of the public interest.	Members should take decisions solely in the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.	Members of Parliament should act solely in the public interest. They should ensure that no private, financial or other personal interest risks compromising their principal role as a Member of Parliament. They should never misuse their position to gain financial or other material benefits for themselves, their family, or their friends.

Principle	Descriptor in current Code of Conduct	CSPL current revised descriptor	Welsh Parliament/ Senedd Cymru	Proposed new House of Commons descriptor
Integrity	Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.	Members must not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties. Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Senedd and refrain from any action which would bring the Senedd, or its Members generally, into disrepute.	Members should conduct themselves in a manner which will inspire public trust and confidence in them and in the integrity of Parliament. They should avoid being placed under any influence or obligation which could undermine trust in them as an individual or in their role as a Member of Parliament. They should declare and resolve any interests and relationships which might be construed as a conflict of interest. When such conflicts do arise, they should be resolved in a way that is beyond reproach, maintains the trust of colleagues and the public, and protects the public interest.

Principle	Descriptor in current Code of Conduct	CSPL current revised descriptor	Welsh Parliament/ Senedd Cymru	Proposed new House of Commons descriptor
Objectivity	In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.	In carrying out their business Members should make decisions on merit.	Members are responsible for the exercise of their judgement as fairly as they can according to their conscience. They should avoid discrimination or bias. They should be able to demonstrate that they make decisions on merit, taking account of relevant evidence, advice and of any wider responsibilities.
Accountability	Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.	Members are accountable to the public for their decisions and actions, and must submit themselves to whatever scrutiny is appropriate to the public office of Member of the Senedd.	Members must make themselves accountable to their constituents and to the wider public and to Parliament. They must submit themselves to the scrutiny necessary to ensure this.

Principle	Descriptor in current Code of Conduct	CSPL current revised descriptor	Welsh Parliament/ Senedd Cymru	Proposed new House of Commons descriptor
Openness	Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.	Members must be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only in accordance with statutory requirements, Senedd Standing Orders and rules binding Members of the Senedd and their staff, or when the wider public interest clearly demands.	Members should, as far as possible, act in an open and transparent manner with the public, with colleagues and with others with whom they work. They should not withhold any relevant information unless there are clear and lawful reasons for doing so.
Honesty	Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.	Holders of public office should be truthful.	Members must be truthful, must declare any private interests relating to their public duties and must take steps to resolve any conflicts arising in a way that protects the public interest.	Members should be truthful in everything they say, write or do.

Principle	Descriptor in current Code of Conduct	CSPL current revised descriptor	Welsh Parliament/ Senedd Cymru	Proposed new House of Commons descriptor
Leadership	Holders of public office should promote and support these principles by leadership and example.	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.	Members must promote and support these principles by leadership and example, and be willing to challenge poor behaviour wherever it occurs.	Members are elected as leaders, who can only be effective when they inspire trust by setting a good example. They should refrain from any action which would bring Parliament or its Members into disrepute. Members should promote best practice and challenge poor attitudes and behaviour whenever they occur.
Respect			Members must always behave in ways that promote equality of opportunity, respect the dignity of other persons and not engage in discriminatory or unwanted behaviour.	Members should abide by the Parliamentary Behaviour Code and should demonstrate anti-discriminatory attitudes and behaviours through the promotion of anti-racism, inclusion and diversity.

Annex 3: Proposed changes to the rules on registration

Category	Current rule	Recommendation	Comments
1 (Employment and Earnings)	MPs must register an earnings payment if it is over £100; or if it is £100 or less but the same payer has paid the MP over £300 in that calendar year.	Simplify the thresholds by removing the over -£100 threshold for individual payments. The threshold would be over £300 for payments of whatever size received in the calendar year.	Ending the requirement to register earnings from opinion surveys; making clear that MPs should register under this category any special responsibility allowances received from local authorities, but not carers' allowances.
3,4,5 (respectively, gifts, benefits and hospitality from UK sources; visits outside the UK; gifts and benefits from sources outside the UK)	MPs must register UK hospitality under Category 3 but hospitality on foreign visits under Category 4 (overseas visits), and gifts from a foreign source under Category 5	Amalgamate these categories	Under present rules a Member would not need to register if he/she had received both a foreign visit and UK hospitality, each valued at under £300, from the same source in the calendar year. Under the proposed rules the value of the different benefits would be added together, and the benefits would need registering if the total value was over £300. The change would also end the requirement to register foreign visits where whole value was over £300 but only part of costs were met by a registrable source.
6 (Land and property)	MPs must register property valued at over £100,000 (or part of such a portfolio), or property which generates an income of over £10,000 a year (or is part of a portfolio generating an income over £10,000).	Remove over-£10,000 threshold for income generated by property. So in future Members would need to register only property valued at over £100,000 (or part of a portfolio valued at over £100,000)	Currently, MPs do not currently have to register anywhere which they and their close family use only as homes. We propose bringing within this category homes shared with others (eg siblings or friends).

Category	Current rule	Recommendation	Comments
8 (Miscellaneous)	MPs must register any other financial interest/material benefit which does not fall clearly into one of the other categories which might reasonably be thought by others to influence them; or non-financial interest if he/she considers it might be thought to influence them in the same way.	Introduce requirement to register all unpaid roles eg directorships and trustee roles.	This does not include being a person with significant control, since this is a term used only by Companies House.
10 (Family members engaged in lobbying)	MPs must register any family members who lobby the public sector on behalf of a third party.	Remove this category	

Annex 4: Concise summary of the current standards system

Since its inception in the 1990s, the House of Commons standards system has been inquisitorial rather than adversarial. The Parliamentary Commission for Standards investigates alleged breaches of the Code of Conduct for MPs and makes a finding as to whether there has been a breach. If she finds there has been a breach, she may "rectify" the matter using her own powers given her by the House in less serious cases (which requires the Member to acknowledge the breach and apologise), or she may refer the matter to the Committee on Standards in more serious cases.

The Committee consists of 7 elected members (MPs) and 7 lay members selected following a fair and open competition, most of whom have relevant experience of disciplinary hearings. The Committee must be chaired by an MP from the official Opposition. Its other elected members follow the party proportions in the House: currently 4 Conservative, 1 Labour in addition to the Chair, 1 SNP. The lay members have full voting rights and an effective voting majority (because the MP chair only votes when there is a tie).

The Commissioner refers a case to the Committee by sending it a memorandum describing her investigation and findings, together with the bundle of all the written evidence in the case. She will have previously sent a draft of the memorandum to the Member for him or her to check its accuracy in matters of fact. When the Committee receives the memorandum in its final form, it sends it to the Member and invites them to submit written and/or oral evidence. It then reviews the Commissioner's findings. If it agrees there has been a breach, it decides upon a sanction. It publishes its conclusions in a report to the House.

Lesser sanctions such as an apology can be determined by the Committee, more serious ones (suspension or expulsion) require the approval of the House. The House has approved a recent report by the Committee setting out an expanded suite of sanctions, and also detailing aggravating and mitigating factors the Committee will take into account in determining a sanction.

There is currently no formal appeal process, either against findings or sanctions. However, the Committee's consideration of the Commissioner's memorandum contains many of the elements of an appeal against findings: a fresh consideration of the case by a separate body which has not been involved in the original investigation, with power to seek further evidence, and with a right on the part of the Member to submit written and oral evidence. There are no specific 'grounds for appeal', so the Member can provide any information they like, in defence or in mitigation.

The current system does not include a formal right of appeal against sanction. A motion to suspend or expel a Member is amendable when it is considered by the House, but this lacks anysafeguards of due process.

With regards to confidentiality, the Commissioner publishes a list of Members under investigation and gives outline details of the complaint against them. Otherwise the case is supposed to remain confidential until either the Commissioner announces she has

found no breach or has "rectified" a breach, or until the Committee publishes its report. Together with its report the Committee publishes the Commissioner's memorandum and all relevant case documents.

The Commissioner attends deliberative meetings of the Committee, at the Committee's invitation; her role as an adviser to the Committee is set out in standing orders. However, during the Committee's consideration of an individual case, the Commissioner by convention takes no part in the discussions other than to answer questions on matters of fact concerning her investigation put to her by Committee members.

Members are prohibited from lobbying the Commissioner or the Committee during a case.

Allegations of bullying, harassment and sexual misconduct are dealt with under separate procedures. The House has instituted an Independent Complaints and Grievance Scheme whereby such allegations are dealt with by independent investigators overseen by the Commissioner, then by the Commissioner who makes a finding, and then if necessary by an Independent Expert Panel (containing no MPs) which can impose a sanction or recommend one to the House. The Panel works through small sub-panels which allows for appeals against findings and sanctions.

Annex 5: Code of Conduct Survey Report

Dr. Alistair Clark

7 May 2021

Introduction and Responses

1. This paper extends the brief summary analysis of findings from the Code of Conduct survey of MPs conducted between 19th February and 15th March 2021. The initial overview was presented at the Committee's meeting on 23rd March. This paper further examines whether there are any patterns to be found by party, cohort or gender. It also reports the qualitative survey responses received from respondents.

2. The survey received 173 useable responses. This represents an overall response rate of 26.6%. This is a respectable response rate for an elite survey, where responses can often be as low as 10%.

3. Responses by party are outlined in table 1 below. Although there is a little under and over-representation when compared with the proportion of seats held, this does not appear to be particularly serious. The responses can be considered broadly representative by party.

Table 1: Survey responses

Party	N Responses	% Responses	% Seats
Conservative	88	50.9	56.1
Labour	57	32.9	31.1
SNP	16	9.2	7.4
Lib Dem	4	2.3	1.7
Other	8	4.7	3.7
Total	173	100	100

4. 63.1% of responses were from male MPs, with 34.4% from female MPs (N=147), equivalent to the proportions in the House post-2019.[115] While 86.1% (N=158) of respondents indicated being White British, 8.9% were from an ethnic minority background by comparison with 10% in the House overall.[116] 19.1% of respondents reported having direct personal experience of the investigatory process under the Code of Conduct.

5. Several cohorts of MPs were evident in the data. The largest group of respondents were the 39 (22.5%) elected in 2019, followed closely by 38 (22%) who were elected in 2015 and 28 (16.2%) elected in 2010. Other election dates were also well represented, with 1997, 2005 and 2017 having responses from 12–14 MPs. A handful of respondents were elected in 1983, while 14 (8.1%) were elected outside of the normal electoral cycle in by-elections.

Initial Quantitative Findings

6. Asked what they understood the main objective of the Code of Conduct to be, 65.1% said to provide a general set of principles on behaviour for members. The next closest

115 https://commonslibrary.parliament.uk/research-briefings/sn01250/
116 https://commonslibrary.parliament.uk/research-briefings/sn01156/

response was to provide a set of detailed rules to be followed, albeit only achieving 9.2%. Encouraging positive behaviours among members, and to guard against corruption were both selected in 8.1% of responses.

7. A small proportion of respondents (17.3%) indicated that they don't consult the Code of Conduct at all, while 70.5% indicating consulting it not very often. Only 12.1% indicated consulting the Code quite often.

Table 2: Understanding of Code of Conduct provisions

	Not at all confident, need to check everything	Only somewhat confident, need to check most things	Broadly confident, need to check some things	Very confident, need to check things only rarely	N
When you need to declare an interest if you are taking part in House activities	8.2	18.7	55.6	17.5	171
The rules on paid lobbying & advocacy	10.7	15.4	45.6	28.4	169
Rules relating to the use of House facilities and resources	10.6	18.8	51.8	18.8	170
Employment & earnings	2.9	8.1	44.2	44.8	172
Donations and other support	4.7	14.6	50.3	30.4	171
Gifts, benefits & hospitality from UK sources	2.9	18.6	51.7	26.7	172
Visits outside the UK	10.5	18.6	44.8	26.2	172
Gifts & benefits from sources outside the UK	14.0	18.0	39.0	29.1	172
Land and property	9.4	15.3	43.5	31.8	170
Shareholdings	10.8	13.9	48.2	27.1	166
Miscellaneous (i.e. non-financial or falling outside other categories)	18.8	30.6	40.0	10.6	170
Family members employed	3.0	8.9	24.9	63.3	169
Thresholds required for registration of Members' financial interests	12.6	22.8	49.1	15.6	167

8. On understanding of various aspects of the Code of Conduct, from declaring interests, rules on paid advocacy and lobbying, and on House facilities, through to more specific aspects, such as gifts and benefits, and thresholds, there is a range of up to around 35%

(thresholds) who report either not being confident or only somewhat confident about the Code and needing to check most things (see table 2). The exception to this is with the Miscellaneous category of interests which reaches a combined total for not/somewhat confident of 49.4%.

9. Most respondents (75.7%) indicate having sought advice from the PCS or her staff on the Code, while 45–46% indicate seeking advice from their own parliamentary staff, or MP colleagues. Two qualitative responses indicate that those particular MPs have also sought legal advice, while a small number of others seek advice from Clerks.

10. On the strictness or onerousness of the Code of Conduct, anything between 57–79% think that the Code is about right in its requirements. There are two notable issues: 26% (N=163) say the rules on paid advocacy and lobbying are not strict enough; and 20% (N=163) say the rules on House facilities are too strict/onerous.

11. Questions on the amount of information required by the Registrar show a similar pattern, with anything between 53%-77% answering that the amount of information required is about right. With some questions, a significant proportion indicated that they didn't know – up to 30.8% with miscellaneous interests. Between 10–13% thought that too little information was required on visits outside the UK, gifts and benefits, and shareholdings. The same proportions, 10–13%, thought that too much information was required on employment and earnings, land and property, and family members employed.

12. Asked whether they were satisfied that the Code of Conduct was fit for purpose, 49.4% (N=160) were either satisfied or very satisfied, with only 15.6% reporting being dissatisfied or very dissatisfied.

13. The level of dissatisfaction registered in the survey about the investigatory process under the Code of Conduct appears large at 45.2%. Since the question was restricted to those who had experience of that process, it is only based on 31 responses meaning that dissatisfaction was expressed by only 14 MPs. However, 11 indicated being either or very satisfied, while a further 5 reported neither satisfaction or dissatisfaction.

14. With questions on training, a sizeable proportion rated some aspects of this as being either good or excellent. At its highest, 45.8% rated the Code of Conduct ring binder as good or excellent (N=157). However, with many aspects a large group of respondents claimed not to have received that particular type of training. For example, 51.6% (N=155) indicated not receiving a one-to-one interview with PCS staff, while 65% (N=153) indicated not receiving a joint seminar with other regulators.

Bivariate Patterns

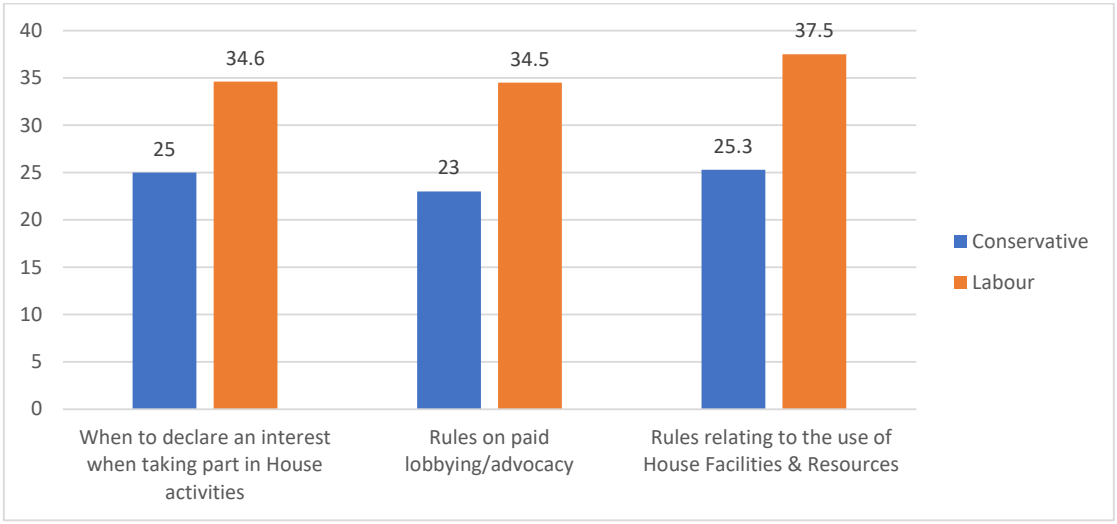
15. This section examines links between respondents' attributes and their answers to questions on the Code of Conduct. The aim is to establish whether any specific characteristics might be linked to issues around the Code of Conduct, which might be focused on in the Committee's subsequent work to improve the Code.

16. The characteristics that can be utilised in this way are respondents' political party, their cohort of MPs; gender; ethnicity; and age. It is important to note that this section reports only key findings that show a distinct pattern that the Committee might find it useful to be aware of in its considerations.

17. In terms of the main objective of the code of conduct, 71.6% of Conservative MPs indicated this should be to provide a general set of principles, with the equivalent figures for Labour and the SNP being 64.9% and 56.3% respectively. 18.8% of SNP respondents thought the main objective of the Code of Conduct was to guard against the risk of corruption, while 10.5% of Labour MPs thought it was to encourage positive behaviours amongst members.

18. Cohort of first election seemed to make some difference to views about the Code's main objective. Examination of the cohorts from 2010 with significant numbers of respondents suggested that while 78.6% of the 2010 cohort (N=28) thought the main objective was to provide a general set of principles, and 71.8% in the 2019 cohort (N=39), this dropped significantly to only 50% of the 2015 cohort (N=38). The 2015 group's other main responses were to guard against the risk of corruption (21.1%) and to provide a detailed set of rules to be followed (15.8%).

Figure 1: Understanding of CoC Requirements, by party: % Not or Only Somewhat Confident



19. Labour MPs seem a little more uncertain in their understanding of the Code of Conduct's requirements than their Conservative counterparts. The survey asked three questions on this. These are detailed in figure 1. On each aspect of understanding, Labour MPs were between 9.6–12.2% more likely to say they were not or only somewhat confident and would need to check most or everything.

20. Examining understanding of the Code of Conduct highlights some difference by cohort. With regard to declaring an interest when taking part in House activities, 28.6% of those elected in 2010 (N=28) were either not or only somewhat confident, as were 21% of the 2015 cohort (N=37). With lobbying and advocacy, 28.6% of the 2010 intake were not or only somewhat confident of their understandings. Significant proportions of the most recent 2019 intake (N=39) reported lack of understanding: 36.9% for the declaration of interests, 29% for lobbying and advocacy, and more than half, 53.8% on the rules relating to House facilities and resources.

21. Across all three modes of understanding, female MPs seem consistently less confident of their understanding of the Code of Conduct than their male counterparts. Female MPs

had a level 16.7% above their male colleagues in signalling their understanding as being either not or only somewhat confident in declaring interests, and around 11% above their male colleagues with both lobbying and advocacy and the use of House facilities.

22. There are some notable differences on responses to the strictness or onerousness of the Code of Conduct. Asked how strict or onerous the Code is in general, 14.3% of Conservative MPs indicated it was too strict/onerous, by comparison with 1.9% of Labour MPs. Conservative MPs were more likely than their Labour counterparts to say the Code's strictness was about right, by 75% to 71.7%. Similarly, male MPs were more likely to think the Code of Conduct either about right (76.8%) or too strict/onerous (11.1%) then their female colleagues (71.7% about right, only 1.9% too strict/onerous).

23. Two issues were noted above as potentially problematic with regard to strictness/onerousness (para 9). These were on lobbying/advocacy and on House facilities. These have both been examined in more detail. Taking rules on House facilities and resources first, Conservative MPs were around 11% more likely to think they were too strict or onerous, and around 7% less likely to think the rule were about right than their Labour colleagues. By cohort, around 15–23% of the most recent cohorts (from 2010) thought rules on House facilities and resources were too strict or onerous.

34. On the strictness or onerousness of the lobbying and advocacy rules in the Code of Conduct, 6.4% more female MPs than male thought the rules not strict enough, while for cohort of election between 20–35% of respondents from the most recent (from 2010) cohorts thought the rules on lobbying and advocacy not strict or onerous enough.

25. The big difference on the lobbying/advocacy rules is evident when examining responses by party. These are outlined in table 3 below. A clear partisan divide is evident, with 40.7% of Labour respondents indicating the rules aren't strict or onerous enough, by comparison with only 7.1% of their Conservative colleagues.

Table 3: Strictness/Onerousness of Lobbying/Advocacy Rules, by Party (%)

	Not strict / onerous enough	About right	Too strict / onerous	N
Conservative	7.1	75.0	7.1	84
Labour	40.7	42.6	0	54
SNP	57.1	35.7	0	14

Note: Rows do not total to 100% as don't knows have been excluded.

26. Respondents were asked about their overall view of whether the Code of Conduct was fit for purpose. The aim was to get an overall view or measure of MPs' satisfaction or dissatisfaction with the Code. Table 4 reports the findings to this question, analysed by party, gender and cohort of election. By party, satisfaction levels appear similar between the two main parties' MPs at just under 52%. Conservative MPs however appear a little more dissatisfied, at 19.3%, than their Labour colleagues, on 11.5%.

27. Male MPs appear both more dissatisfied overall with the Code of Conduct, and also marginally more satisfied. In terms of cohorts, the 2010 cohort appear most satisfied that the Code of Conduct is fit for purpose, as do 51.5% of the 2019 cohort. More than quarter of the 2015 cohort however indicate some level of dissatisfaction. All age groups show more

than 43% satisfaction, although MPs aged 55+ seem particularly satisfied that the Code is fit for purpose. Nonetheless, just under 20% of MPs in the 46–55 age group demonstrate some degree of dissatisfaction.

Table 4: Satisfaction that CoC fit for purpose, by party, gender, cohort and age (%)

	Very dissatisfied	Dissatisfied	Neither satisfied or dissatisfied	Satisfied	Very satisfied	N
Party						
Conservative	3.6	15.7	25.3	41.0	10.8	83
Labour	1.9	9.6	30.8	50.0	1.9	52
SNP	0	7.1	50.0	28.6	7.1	14
Gender						
Female	1.9	9.3	35.2	40.7	7.4	54
Male	2.0	16.3	27.6	42.9	7.1	98
Cohort						
2010	0	11.5	19.2	53.8	11.5	26
2015	8.6	17.1	31.4	28.6	8.6	35
2019	2.9	11.4	25.7	42.9	8.6	35
Age						
36–45	0	8.3	33.3	36.1	8.3	36
46–55	2.0	17.6	35.3	35.3	7.8	51
55+	0	14.0	22.8	54.4	7.0	57

Note: Rows do not total to 100% as don't knows have been excluded.

Summary of Bivariate Analysis

28. The analysis has focused on party, gender and cohort of election. There are clear differences between party and gender in terms of views towards the Code of Conduct. Since responses on both those measures are broadly representative (see paras 3 & 4 above), the results above can be regarded as indicative and reliable.

29. In terms of date of election, the 2015 cohort do seem to have a different pattern of responses to other cohorts on perceptions of and satisfaction with the Code. The two things may be related; different perceptions of what the Code is for could be linked to higher levels of dissatisfaction. It is difficult to know how representative this is unfortunately. It might directly point to an important dissonance between perception and dissatisfaction with that cohort. It may, alternatively, be an artefact of the survey response rates for that particular question. Of the 177 new MPs in 2015, 73 were Conservative (41.2%), 50 Labour (28.2%), 49 SNP (27.7%) and 5 others. Respondents from the 2015 cohort are Conservative and Labour, both on 34.2% and the SNP on 28.9% (N=38).[117]

Qualitative Responses

30. A range of qualitative suggestions for improvements to the Code of Conduct and for other interests that might need to be declared were made. An initial analysis suggested no clear pattern, but issues raised around improvements seemed broadly to be those already

117 Hawkins, O. et al. (2015) General Elections 2015, House of Commons Library Briefing Paper CBP7186, p.76.

being considered in the review, or in other Committee business and reports – principles v. rules; sanctions; the investigatory process; complexity v. simplicity and clarity etc. Several other qualitative comments, some quite critical, were also made in an 'any further comments' question.

31. The following sections attempt to order these responses, and are drawn from the survey response, and not the broader qualitative research being conducted by Prof. David-Barrett. They have been lightly edited to remove any typos, but otherwise are reproduced verbatim.

Should MPs have to declare any further interests?

32. Most of the responses to this qualitative question indicated that, in various forms, MPs should not have to declare any further interests. Those responses are not reproduced here, since most simply answered 'no'. Some respondents did, however, make some suggestions. These are outlined here.

32 a. *Financial/Employment*

> The register is all about what MPs may get and is simply used to undermine their standing by media, political opponents etc. It contains nothing about what they give, choose not to claim, subsidise and forego. These aspects are equally as important as what Members get. However, it is vital that the public can see the 'big' things that might influence votes and decision-making. Declaring a £75 lunch makes no difference and only exacerbates the impression that Members are biddable. If it was also registered that a Member 'bought' lunch or 'refreshments' for constituents etc, then it would give a better impression.
>
> Beneficial third party partnerships.
>
> Trusts and other significant financial benefits from which an MP derives 'Income' ie the main source of money or significant other source of money for the MP. It is odd that an MP who undertakes very modest amounts of work, for example, as a consultant solicitor must declare every penny over the threshold but someone who benefits from a trust or other significant financial vehicle on a regular basis does not need to declare this.
>
> Yes. Interests in foreign property, whether or not held for personal use. Interest in savings. Interest in pensions. Interest in not having assets.
>
> Where a member takes an outside job related to a ministerial role recently relinquished (2 years)
>
> past directorships
>
> Employment & self-employment history
>
> when in receipt of government funding as a business, or when in receipt of agricultural funding as a large landowner
>
> Links to companies with government contracts

I don't think they should be allowed second jobs

Family and trust interests

There's some confusion about declaring spouse interests/employment

31 b. *Other*

Personal or professional connections to Ministers

Yes, but only in areas likely to result in conflict of interest

yes - anything else that may cause a conflict

yes but could be too long and erroneous

Trade bodies including unions

Booking of rooms needs to be clearer - some organisations use MPs for cheap benefits (ie a room in Westminster for free) and some MPs will book a room for a constituency organisation. It's not clear whether there is a benefit for MPs and could be clearer. There are some organisations which abuse the room booking system by rotating requests around MPs and use the HoC as a business base

For transparency, social media accounts they control

32. ***Improvements to the Code of Conduct?***

32 a. *Specific Suggestions*

There must be the introduction of a policy for online conduct.

Conduct any investigations far quicker.

when you seek advice from the commissioner it should be binding on them

It could emphasise the need for members to set a civilised tone in leading the national debate. This seems unlikely to work.

32 b. *Sanctions and Appeals*

Apologies to the House should always be before PMQ's. Currently they're done at quiet times when no one is viewing.

Sanctions can appear arbitrary - there needs to be clear guidelines on sanctions to members for breaches of the code. There needs to be a clear, fair and robust appeals system to give strength to the Commissioner's decisions and comfort of a good appeal system if a member is of the view that the Commissioner has erred.

quicker and clearer sanctions

More sanctions for direct links between financial reward and policy areas.

32 c. *Interests, Thresholds, Representation and Property*

It either needs to be completely rules based so it can be easily followed. Or it needs to be principle based with much higher value thresholds. The chimera is what causes the problems. Members are responsible for following the rules but if something is outwith the rules they are sanctioned anyway on 'principle'.

Make it explicit and incontrovertible in detail with respect to every type of interest and nature of interest needing to be declared, with full reference to every conceivable interpretation of "case law" in respect of previous investigations of which it is unreasonable to expect Members and the public to be apprised so that the Registrar and Commissioner have no scope for interpretation of events or the making of new case law that is prejudicial to Members and unfairly damaging to their reputations. Delete all of the Code's misleading and inconsistent passages and delete any reference to discretion being given to Members and their judgment of whether an interest should be declared, as this does not in fact exist.

The most important thing is transparency. Requirement to register low value hospitality is excessively bureaucratic. The 1% of salary rule seemed sensible bringing together various aspects of codes in a comprehensive guide would help. It would also be useful for clarification on declarations of clubs providing funds to support campaigning where the MP has no direct control over the funds.

Don't understand why our property has to be registered

I am concerned by the influence of outside bodies on APPGs. And I feel that members who do have outside interests should be allowed to do more pro-active work, because they have a greater knowledge and expertise in those areas, providing that they fully announce their registered interests, of course.

The code of conduct needs to be updated particularly in relation to House provided stationery and postage. There also needs to be greater scrutiny of the advice provided to Standards Commissioner in assisting her in her duty which in my experience poor and inadequate and contrary to the code.

There are two rather daft & conflicting shareholding limits. For instance a dormant shareholding of no value but exceeding the 15% shareholding threshold needs to be declared, but value of a shareholding of less than £70k but below the 15% ownership threshold does not. There is also the near impossibility of assessing the value of a small shareholding (potentially on a daily basis) of an unincorporated business particularly if the value is abstract and predominantly based on an assessment of goodwill or market value should a willing buyer be available. Clear guidance should be published (balance sheet value perhaps) as to how this should be assessed in cases that are close to the threshold and a reasonable periodic expectation of value review (perhaps annually). This is not an argument for shareholdings below the 15% threshold and of low value to become registrable.

Requirements and detail required re relatively low earnings from existing career are unnecessarily intrusive and bureaucratic.

yes it is incommensurate with the devolved parliaments codes. Scottish parliament MSPs are allowed to use allowances for an update to constituents yearly which places MPs at a disadvantage having to self-fund this. this should be commensurate one way or the other as it is either allowed or not.

I have concerns about the process under which the Standards Commissioner is currently conducting her business. There appears to be a conflict between the Commissioner`s view of what constitutes parliamentary representation and how Members may legitimately view this issue.

If a complaint is made you are made to feel guilty before any investigation is started. This is not the same in other professions. Also declaring earnings you have to declare the gross amount and not what you are actually paid after tax and this is misleading to the public

The rule on employing family members is ridiculous, counter productive and wrong. This needs to be changed to have a straightforward approval process where family can be employed where members can show they are suitable for the role.

32 d. *Consolidation/simplification*

greater simplicity around use of stationery - all rules brought together rather than across different teams with clear guidance as MPs make mistakes without knowing sometimes

Needs clarity on specifics like use of paper and postage

Simpler, less subjective, and less open to party political games (in and out of Parliament) - as the current system ends up discrediting the House even though it has the best of intentions.

32 e. *Lobbying*

Overall system seems to work, particularly in terms of transparency for commercial and trade union influences, but less so for influences of campaigning charities, third sector organisations or lobbying groups

I think a lot is open to interpretation. This is sensible but when a colleague is sanctioned for eg using their office to meet an organisation it's a bit tough. I'm more concerned about paid advisors and those who use their role to promote organisations for personal benefit rather than the issues of who had a coffee in their office.

32 f. *Training*

Refreshers for new MP's as it's explained in the starting rush and then you rely on colleagues

simple guide at the start of each parliament or by election

More awareness training in this matter

Should be included in online annual training (like the fire course) for MPs to keep their knowledge up to date. A short, online course would probably save the Commissioner and the Committee a lot of work.

Annual online training perhaps?

IPSA are good at regularly reminding us of rules (ie use of IPSA funded stationery etc - regular updates / reminders on the Code would be helpful.

One or two sessions a year to help MPs brush up on their knowledge.

32 g. *Miscellaneous*

There needs to be more emphasis on principles rather than rules.

If possible, it would be useful for the public to assess how much time their MP spends on parliamentary work, as opposed to external, paid employment.

A bit more common sense is needed. These issues require judgements that understand how MPs work and that was lacking in my one experience.

Stop assuming MPs are corrupt and criminals

Didn't know there was one

We should be treated like normal people

No idea what the code of conduct is or where to find it.

The complaint against me was clearly vexatious and politically motivated, from a political opponent locally, which I consider to be an abuse of the system. Such obviously vexatious complaints should be given short shrift.

33. ***Other Comments?***

Respondents were asked, as a final open question, if they had any other comments. They raised several issues, many of which were critical in one form or another. As above, these are direct quotations.

33 a. *Critical Voices*

The words, phrases and rules in the code of conduct are based on definitions used only in parliament and can conflict with common usage and understanding, usage for tax, accounting and legal purposes. Some of the processes require Members to disclose information on third parties and can undermine private life in a serious way.

I have no confidence in the operations of the House of Commons in respect of standards, and it would lead me to recommend against a career in politics for anyone except those with no interest in anything other than the profession of politics itself, gutter sniping and mudslinging. Given how uncertain and distasteful these activities are, and how dysfunctional the

system is in differentiating between valid standards concerns and those which are inconsequential, due both to the Code of Conduct itself and lack of proper procedure and structure in dealing with declarations under it, this state of affairs is likely to lead to even poorer quality candidates being available to the public for election, and even poorer administrative, strategic, tactical and reputational outcomes for Parliament and the people who send representatives to it.

I do hope there is no vested interest in all this in terms of making mountains out of mole hills. It all invariably ends in tears not only for those investigated by the reputation of Parliament itself. QUANGOs who are often responsible for Westminster's mistakes get off so lightly in comparison.

Members of Parliament face increasing pressures from social media, hostile mainstream media and a political culture that seems to value nuance less than declarative statements. Does the Committee's thinking on Standards take these changing factors into account appropriately?

The requirements to declare closes off standing for election to many serious, senior figures in society. They are just not willing to go through the smears we have to tolerate as a result of publicly making declarations. Politics is poorer for it.

33 b. *Practical/Procedural*

Please could someone remind MPs where the code of conduct is as trying to access so much remotely and online is incredibly difficult with our staff not with us to help us.

I think annual refresher training on the Code of Conduct would be helpful. I am not aware that this is available, and the only training I have received was as part of the induction process as a new MP, which is now some years ago

Very little experience of the Code of Conduct as a 2019 intake MP, and most part operating not in normal way. Plus limited declaration to start with plus little experience of when / whether to refer to code, given not normal-times? Training when you arrive is good … but you are bombarded in the first weeks or so … a refresher follow up once you know how the Parliament operates a bit better etc would be helpful.

I would like a training and discussion session on this please.

The Registrar and her staff do their very best to help Members. My feedback is in no way directed at them. The problem is with the rules. The rules are too subjective, too open to political games and end up undermining the House when their intention is the opposite.

the staff are always helpful but too often don't want to commit to what the Commissioner might say on an individual case;

33 c. *Investigations process*

The process of investigating complaints is unsatisfactory, takes too long and can be used harmfully for political purposes.

The biggest issue with the investigation process is that one cannot communicate freely because anything written or said is recorded and published.

The worst problem is the self conviction approach we take to investigate complaints

33. d. *Miscellaneous*

MPs should only have one job. Being an MP.

Why do we need a Code of Conduct? Whence came it?

Annex 6: Code of Conduct Review: Qualitative Research Report

Prof Liz David-Barrett, Specialist Adviser

Background to the research

1) As part of its inquiry into the operation of the Code of Conduct for Members of Parliament, the Committee on Standards consulted Members through two pieces of research. In the first phase, a survey was sent to all Members in February with questions about how the Code and Guide are perceived and used. In the second phase, the Committee undertook interviews with 26 Members to deepen understanding of perceived problems, and canvass opinion on potential solutions.

2) Eleven of the 26 Members interviewed had identified their willingness to take part in the qualitative research when completing the survey and been contacted subsequently. The other 15 came forward to be interviewed following a request sent to a random but party-representative sample of other Members. Interviews were conducted via Zoom during the period from 6th April to 16th June 2021.

3) Of the total, 17 were Conservatives, 7 Labour, one SNP and one Liberal Democrat. Eight respondents were female and 18 male, while three were from ethnic minority groups. They were drawn from eight different cohorts, spanning the period 1987–2019. The length of interviews ranged from 13 to 60 minutes and the average length was 33 minutes. At least six of the participants had personal experience of being the subject of a complaint to the Standards Commissioner.

4) The interview discussion guide was designed in line with the inquiry's terms of reference, the discussions in committee meetings, and the evidence gathered during the survey of Members conducted in February 2021. In qualitative research, sample sizes are small and cannot be assumed to be representative of the wider population of Members, hence it is not possible to generalise about the views held by, for example, representatives of a particular political party or even gender. Interview notes and transcripts are instead analysed to identify the range of views expressed for each of the areas in which questions were asked, as well as to report on how commonly certain views were held.

Purpose of the code

5) Most Members view the code as having two key purposes: as an integral part of their accountability to the public, and as a rulebook to guide them personally. These were summed up by one MP thus: "[The Code is] to ensure that members adhere to the high standards that the public rightly expect of parliamentarians, and that they [MPs] are aware and reminded of the components of what makes a high standard of behaviour" (24).

6) In terms of public accountability, one MP took the view: "It's all about the public knowing why you may or may not have raised something and making sure that it's all transparent" (25), while another suggested that, "more than at any time I can remember it's important that we have transparency and accountability in politics because it's not a given any more. I would like to see it given more teeth for those people who are genuinely doing stuff wrong, and more support for people who just make a mistake" (16).

7) In terms of its value as a personal rulebook, several Members talked about how the role of an MP is quite different to any other job, and that this is what makes the Code especially important. "It's to make sure that MPs who aren't subject to employment codes have an alternative mechanism to do the HR bit about regulating their behaviour" (22), one argued, reflecting "When you're given it you realise you're in a really different world." Similarly, another said, "Because MPs are not employees there is no structural way of giving feedback." (21)

8) Some other Members, however, saw little value in writing down these rules: "there's no job description for a member of parliament but the things you should do and shouldn't do are blindingly obvious" (18); "how you behave is pretty obvious" (9). One argued, "I personally haven't got the faintest clue what it is, no idea what's in it. I don't believe in it for that reason. Either people in public life in general behave as they should do, in which case that's fine. Or they don't, in which case there will be consequences. Producing a code of conduct doesn't particularly help." (11) Another said, "I think if we got rid of this bureaucratic wonderland and told people to use their common sense… I don't think we need all of this personally. The public are more than capable of regulating politicians' behaviour. It's become a job creation scheme for bureaucrats." (12)

9) Two Members, from different parties, perceived class-related bias in the language of the Code and the Register, and even in the categories of interests that need to be declared. One argued that "Parliament is not made for people like me. It was made for people who are landowners, gentry, the upper classes."(17). Another said that many of the terms used in Parliament were alienating, "Go through the onboarding procedure from the perspective of someone who earned 25k in the previous year and hasn't been to London for three years…it's like a Whig dictionary." (22)

Principles vs rules

10) One part of the interview asked about the structure of the Code, in terms of the balance between the Nolan Principles and the more detailed rules in the Guidance. This also elicited quite divergent views.

11) Some Members argued that the Nolan Principles should be more prominent – e.g., one argued that, "We should have a situation where everyone understands what they are, and can name all seven of them" (16) – and several thought that the Principles were a good way of connecting with the public. One argued forcefully that a principles-based approach is preferable to a rules-based approach: "My general concern is that as we move more and more into rules, it gives licence to move further away from principles. Philosophically it's a mistake. The concept of honour in office is something we should move back to – and principles are core to that" (9).

12) A few Members thought the Principles were too prominent. One said, "I think the Nolan principles are far too often quoted now. At the Brexit referendum people were saying you're going outside the Nolan Principles. They are misunderstood and in need of a pruning themselves" (14); another argued that they were "so potentially open to interpretation that it's potentially highly unjust" (18).

13) Some Members thought of the Code quite negatively, that it was there to catch them out. One said, "The big folder that you put on your bookshelf and get out when someone's accused you of something is not helpful. It's written from a prosecutor's point of view not

a defendant's, more about stopping bad behaviour than promoting good behaviour." (16) A few Members conversely used the Code as a form of protection, and recalled citing it in conversations with constituents.

14) Several Members asked for more aides-memoire or dissemination of aspects of the Code in user-friendly formats. Suggestions here included a 'Frequently Asked Questions' section on the Commissioner's website, a guidance booklet "like the one IPSA produces", a quick-reference checklist, posters with visual cues about the Nolan Principles displayed around parliament, a six-page 'Beginner's Guide', anonymised examples of cases where a Member "sailed too close to the wind". In addition, there were some concrete recommendations for making the online Register of Interests more accessible, e.g., by providing pop-up explanations when hovering over certain terms, making it more interactive, and increasing the font size.

Promoting positive behaviours among Members

15) The research asked whether the Code could do more to encourage positive behaviours among Members. Several Members took the view that this was not an appropriate role for the Code. Some thought this was too political and that "your positive behaviour may be different to mine" (23), some were averse to perceived "mission creep", while others thought it was simply unlikely to work, arguing that "I'm not sure rulebooks ever change people's behaviour. Peers do. The accountability of the press does" (22).

16) Of those who thought the Code could and should do more to promote positive behaviours, one line of argument was that more could be done to promote the cross-partisan identity of Members, encouraging them to see themselves as part of a profession. "When members come in, you've just come through an election campaign where you've been campaigning against opponents. It can be difficult to see people across the chamber as colleagues. We should create an environment that encourages positivity and positive engagement. Even the language of the chamber is structured to be oppositional – my honourable friend, as opposed to just honourable member." (8)

17) In discussing this question, many Members began to reflect on reasons for poor conduct. Several attributed bad behaviour to an attitude of arrogance, such as this Member who said, "The issue is more about the attitude of Members, not believing they need to learn anything, like about how to manage people, especially those elected longer ago" (1).

18) Others blamed poor tone at the top, lack of consequences when breaches occurred, and perceived inconsistent enforcement. These factors were regarded as crucial in terms of eroding public confidence. One Member commented, "The general perception is that we are a law unto ourselves. You can do things in parliament that would get you sacked in the private sector. That's completely unfair. That would be gross misconduct. People don't feel it exists – it feeds into this idea that we live in a consequence-free bubble." (19)

19) Several Members argued that there should be more peer-policing of conduct. "Obviously we should police our own behaviour and recognise when we get it wrong. Equally if you see something – if I saw one of my colleagues behave in an inappropriate way it would be far better for me to say something to them there and then. Or also when you see someone deal with a difficult situation well…" (21) Another argued, "There needs to be more pulling up of behaviour, probably by the speakers, and also by the clerks. […] We shouldn't just shrug." (10)

20) However, a potential barrier to this was also mentioned by several Members: "The level of deference in the House encourages aloof bad behaviour – and bystander behaviour - which can in some cases lead to bullying. Deference includes the practice of addressing Members as Mr or Ms X. 'I've never worked in a work place where everyone calls me Mr X' … […] people don't see it as their place to correct somebody." (2)

Building public confidence

21) Most Members thought that the public has very little understanding or awareness of the Code. More broadly, many Members think that the public is quite unaware of what is involved in being an MP, running an office etc, and several thought that it would be helpful to think about how to engage the public more on this. One suggestion was to learn from the work that the education centre does with children to design a similar programme for adults. However, it was acknowledged that engaging adults is more difficult. Moreover, "Part of the problem is that it is so complicated, so many different rules, sub-rules, caveats about what you don't need to declare. That makes it difficult for the public to access it. The way to make it better is to simplify it. Less of the minutiae need to be declared. Simplify some of the categories" (14). Another said, "The interesting nut to crack is how do you get the public to care. We know that they care very much when there's a massive scandal. What is the opportunity to try and say, the vast majority of people ended up doing that job for the right reasons? There is a huge job of work to be done to say this is what real politics is about. Politics needs a better PR agency." (20)

22) A few Members argued that it was better not to remind the public about the Code. This view aligned with a more widespread view that the media uses the Code to "catch out" (3) MPs, "bring them down" (4) or "beat you up" (23). One suggested that, "So many people are not bothered about whether something is true – they just want to do as much harm as possible" (7).

23) Relatedly, many Members are extremely concerned about the threat of vexatious complaints. One Member's comments here highlight how the Code is seen as part of political weaponry: "All of this stuff basically gives people more ammunition to make vexatious complaints. That doesn't restore people's trust in politicians, it just erodes it. People make a complaint so that they can leak to the press that they've made a complaint. Whenever… weeks or months later.. it's found to be a load of old cobblers, there's no attention" (12). It was also noted that the (ab)use of the Code as a political weapon is more dangerous in marginal seats.

24) Several members placed great store in the role of electoral accountability as the ultimate check on their power, with many arguing that this is the only legitimate arbiter of their conduct. One said, "You are judged either by the electorate or by the courts. Having a code of conduct neither makes it more difficult nor easier" (11), while another returned to the issue with "I just want to reiterate my concern that not enough store is given to the fact that we are elected by our constituents and ultimately they should be the arbiters of our behaviour. I worry about mission creep which in effect starts telling us how we should behave." (12) A few others argued that elections were flawed as a mode of accountability, because some seats were safe or because party selection procedures were more important. For example, one argued, "Elections are not a powerful check on behaviour. Politics is

ethnic, tribal. The biggest checks are really the party, members" (7). Another said, "whether it's the least bad system or not, first past the post does not give you a nuanced reflection of how is the world actually thinking about politics." (20)

25) This question also elicited a number of views about 'tone at the top' and the role of leadership in building public confidence, although different layers of leadership were invoked to justify the point. One said, "The standards commissioner and the speaker and leader and shadow leader and party leaders – all of them absolutely agree on adherence to the Nolan principles. Those are the ones with responsibility to provide leadership. They have an obligation." (7) Others argued that there was too little enforcement of breaches of the rules and that this sent the wrong message: "They also need to see that MPs stick to the rules and that when they don't stick to the rules, there are consequences." (21)

Multiple codes

26) In addition to the Code of Conduct, there are a number of codes and rules in operation that apply to Members, relating to behaviour and expenses for example, as well as the Ministerial Code for Members that are ministers. While most Members acknowledged the need for the Ministerial Code to be separate, there was strong and consistent support for simplifying the other codes – and the interactions with institutions governing them - where possible. The multiplicity of codes is regarded by many as a source of inefficiency and unintentional rule-breaking. Several MPs expressed a wish for simplification, perhaps as a "master document that corrals everything together" (20), "one consolidated point of reference with sub-sections" (24), or a single website with possibilities for interactive navigation.

Social media

27) Most Members thought that there is very little guidance about how to behave in the realm of social media, but a few thought this was inevitable, given the fast pace of change. Others argued that the problem was not a lack of guidance in the Code but social media companies taking insufficient responsibility for policing and managing content.

28) Some thought there was no need for more guidance because all that is needed is an "extension of the respect that you show colleagues in the chamber. The same rules apply." (8) Anotehr argued that, "There is something missing in the Code of conduct which was in the behaviour training, about recognising our own status. Members need to remember our status. We ought not to get into arguments with the public" (7)

29) Only very few Members called for more guidance on social media conduct to be included in the Code. Social media is, however, very widely seen as a dangerous and unpleasant arena. Members described "vile abuse" (4), an "utterly toxic" environment (8), and the problem of being "signed up to awful groups without your knowledge" (4).

30) Another concern is around the difficulty of separating out parliamentary and party political business when operating on social media, leading Members to worry that they might fall foul of expenses rules when spending resources on communicating through social media platforms.

Lobbying and paid advocacy

31) Around one in four respondents to the Committee's survey said that the rules on paid advocacy and lobbying are not strict enough. The interviews asked Members to reflect on what might be behind such a view. A few of those interviewed expressed disagreement with the proposition, arguing that the rules were perfectly clear. Among the others, the issues raised were rules about MPs holding second jobs, lack of transparency, links between lobbying and party donations, the revolving door and obligations to firms in one's constituency.

32) The most contentious issue in this area is second jobs. Several Members – from more than one party - held strong views that second jobs should be banned while equally, several held strong views that second jobs were very valuable.

33) Those seeing second jobs as a problem argued that this led to Members establishing contacts and networks that then made them vulnerable to influence, while several argued that having a second job was problematic because it competed for time or interest with the responsibilities of being an elected MP, which were already onerous and time-consuming. Several individuals argued that Members with second jobs could not possibly also carry out their duties well.

34) Those arguing for the value of second jobs talked about the need to attract talent to parliament (and at least not deter people who might be put off by the lack of job security), the case for MPs having experience of the "real world" that they could "bring back to policy-making", the need to recognise that individuals in some sectors take major pay cuts when becoming an MP, and the need to allow individuals from certain professions – medicine and law were frequently cited – to keep their skills current. One Member even argued that second jobs should be compulsory. Some argued that the salaries of MPs should be linked to civil service pay, to avoid politicised discussions about increments.

35) There was more agreement over the need for greater transparency about lobbying activities. For some, the only regulation needed in this area is full disclosure - of financial benefits received and meetings held with companies or interest groups. They argued that, as long as everything is transparent, there is no need to ban certain activities.

36) There was some concern about the lack of transparency in the business of All-Party Parliamentary Groups, however. One Member said, "The area I find the shadiest is APPGs because they can publish reports that look almost like a select committee report and yet they might be paid for by a company that has a strong interest. And although if you burrow through it you can generally find who funded it, I think that should be more upfront" (15).

37) A few Members raised the issue of party donations and the possibility that they provide a way of buying influence. However, most Members were fairly cautious here and tended to talk about whether such a donor expects something in return, rather than suggesting that such improper influence is a common occurrence.

38) The problem of the 'revolving door', ie the potential conflicts of interest created when MPs and ministers move on to private-sector jobs, was mentioned by several Members. Revelations about former prime minister David Cameron having used informal links to lobby on behalf of Greensill were in the news at the time of many of the interviews. In discussing the issue, Members talked about problems of tone at the top and inconsistent

application of rules. One warned against becoming, "like America", where "the congressmen [are] in the pocket of vested interests. […] Our system needs to be far stricter. I don't agree that two years after being a minister you can become a lobbyist. No member of parliament should be paid as a lobbyist – it's democracy for sale." (19)

39) A final issue raised on this topic related to Members providing support and assistance to firms in their constituencies. There is considerable uncertainty about what the expectations are of Members in this regard, with several Members making a judgement that part of their duty as a representative was to seek support for firms in their constituencies. One argued that, "Our active job is to be available and to represent and try to get the ear of ministers and yet that same activity is thrown in our faces as being sleaze. And it isn't. Or if it is we should make it known and I'll stop answering letters to constituents." (9)

40) A concrete recommendation from one Member was to remove the parliamentary passes of Members once they leave office.

Proposed new Nolan Principle

41) One question asked for Members' views as to whether a new Nolan principle should be added to promote inclusion or guard against discrimination. Eight were firmly in favour and eleven firmly against, with others taking a more nuanced view. Of those in favour, several talked about the need to counter unconscious bias and/or underlying racism; others mentioned the importance of adapting and evolving. A few said that they hoped that it was a given, but that there was no harm in spelling it out in the Code.

42) Of those against this new principle, a small minority argued that it represented over-reach. One said, "I don't think it's a good idea or necessary. I think it's a load of rubbish. If you start trying to police that, you'll get away from your core. This organisation is just trying to be woke" (5), while another said, "No, it's nonsense. You're leaving yourself way open all the time to interpretation." (23) One Member saw it as a threat to open debate: "You wouldn't want to flatten out the cut and thrust of parliamentary debate." (15)

43) Others opposed the new principle on the grounds that it was not necessary, since "discrimination is already against the law" (12), or that including it as a new principle would not achieve anything. "I would hope there's no need, it's a basic decency. If you wanted to start listing all the basic decencies, where would you stop? I know it's very in-fashion at the moment. The legislation is there. I don't see why we need to state the obvious when it comes to decency." (24) One Member argued that eight principles was simply too many: "Do I think we should be respectful and inclusive? Yeah definitely. Do I think that making it point 8 on a list of 8 makes any difference? I'm not sure. Is it symbolic? Fine, no objections. But I can't see what practical value it would have." (22)

Training and advice

44) Members were asked to reflect on the training and advice about the Code that they had received. Eight Members could not recall receiving any training or advice. Those who recalled one-on-one sessions spoke highly of them and appreciated that they then became aware of the Commissioner and Registrar as persons, so that future contact was easier.

45) Most Members said that training received in the early days of becoming an MP was difficult to process because of the sheer volume of information to process in that period – "probably the busiest week of my professional life" (12). Many said that, although they see the need for an immediate briefing on the Code, it would also be helpful to have more in-depth training after a few months in office because "the challenge is that the induction process is almost entirely done in an absolute haze" (20) and "it's a life-changing event" (12), whereas a few months later "you know what the job entails" (9).

46) Several Members said that they would welcome a refresher course on the Code. Some admitted to never having read it, and a few said that they only reached for the Code when they saw peers being investigated or sanctioned.

47) Some Members expressed interest in training on the Code being conducted through party-specific sessions, arguing that it would be "beneficial to take away the politics" (3) or was "a very interesting suggestion […because…] you're trying to produce a one-size-fits-all approach to a bizarre job that is not like any other. " (26) Others supporting this idea thought that newer MPs would be more comfortable about asking questions in such a context, saying "There is always a lack of trust. If you're asking a question genuinely trying to establish how to behave, there is a risk that it would be misrepresented. It could be a good way to get people to open up more." (25) However, others saw no advantage in training being organised according to party, and thought there was a danger that the message would be "nuanced depending on the party" if it was "filtered through the party apparatus". (24)

48) Six Members reported seeking advice from the Commissioner frequently and finding it extremely helpful. One said, "now my office seeks clarification from the Commissioner for everything" (3), while another reflected, "It's about building that relationship with the Commissioner's office, rather than suffering in silence. How do you create a culture where that flow of communication is possible? It might seem odd asking advice from someone who might investigate you but I think that's what you need." (6)

49) Another Member was clearly more concerned about the latter point, saying "Ideally one would be able to get a confidential and anonymous source of guidance, and it needs to be helpful – not just re-stating the rules. You want advice based on their experience of regulating MPs. I'd like to benefit from them having seen these circumstances before. But when you go for advice you don't really get advice, you get restatement of rules." (7) This was also mentioned by another MP: "When you ask for advice they are slow to get back to you and they are non-committal. So you are left feeling worried." (19)

50) In terms of other sources of advice used by Members, many reported relying on parliamentary staff, other offices in the House (the Censor, Human Resources), and from more experienced peers (although higher turnover was seen as having reduced opportunities in this regard). There were mixed views on seeking advice from the Whips. A common thread of scepticism here is summed up well by one Member, "there is always a risk that you might be creating a hostage to fortune by asking something of the whips that they might use against me." (4) Another said, "the whips have their own agenda. they are not there to promote the code." (5)

Investigations and enforcement system

51) The final part of the interview asked about the overall system for enforcing the Code. The main concern here related to the length of time taken to reach decisions when complaints are made. Several Members argued that delays cause additional stress and "an unfair sense that the subject hasn't complied", with one individual who had been the subject of a complaint pointing out that, "it's an emotional time, difficult to think straight" (1) while another said, "Not enough thought is given to how distressing it is when people have a complaint hanging over their head" (12). One argued that, "we need safeguarding for members where allegations have been made about them because it's brutal. It's horrific. Colleagues will drop you like a stone." (2) Equally, the length of the investigative process is seen to reduce accountability, because "By the time they decide on a sanction, people have largely forgotten about it." (19)

52) When probed on how to address this issue regarding the length of the process, several Members proposed that there should be an improved 'triage' when a complaint is first made, to (i) identify vexatious complaints more efficiently and rapidly and (ii) to ensure that investigations are proportionate to the severity of the potential breach. Some Members said that they had faced complaints that might have been resolved quickly if they had been asked to provide information or if the Commissioner had undertaken more preliminary research on the issue.

53) Regarding the 'hybrid' nature of the system, with an independent Commissioner and the presence of lay members as well as MPs on the Standards Committee, most Members were comfortable with the current balance. However, in discussing the system, it was very common for Members to emphasise that they found it reassuring to have their peers, elected Members, on the committee that decided sanctions, because they felt strongly that only other MPs could truly understand the nature of the role. One suggested that, "I'm not certain that a lay member would understand the passion with which most members of parliament fight for their constituents […] It worries me that on a panel of people who will consider our case, 50% of them will not be qualified to understand why we think and act in the way we do." (18) Another argued, "I would always prefer to have a 50/50 but a supermajority of elected members, but have the records state what the elected members and lay members have said separately. With the best of intentions, lay members might impose judgements that don't actually work when you've lived in two different places for a week and run around being the property of others." (22)

54) A few MPs said, without any suggestion that this was under discussion, that they would not like to see the number of lay members increased, and expressed suspicion about how lay members were appointed and/or what "agenda" they might serve. One argued that "ultimately no-one is truly independent and there are axes to grind." (14) Some Members also expressed scepticism about the Committee's independence from the Commissioner, with one claiming that "I can't find a case where the committee has disagreed with the commissioner in her findings, which would suggest that it is a rubber-stamping exercise." (18)

55) On the other hand, some MPs talked about the need not to be seen to be "marking our own homework", and thought the lay members and Commissioner were critical to the credibility of the system. Another encouraged perspective: "We should be very proud of the scrutiny that parliament… the way parliament works and that it is probably more

transparent than most. That doesn't stop us asking questions of ourselves. But by and large our standards are quite high. Lobbying, corruption, fraud – we do hear the bad stories but broadly speaking, in comparison to many others, we fare quite well. We should recognise that and try to improve." (24)

Annex 7: Review of the Code of Conduct for Members by the Parliamentary Commissioner for Standards

Introduction

This paper sets out for consideration by the Standards Committee the Parliamentary Commissioner for Standards' recommendations for changes to the current Code of Conduct.

1) In drawing up these recommendations, which are listed in an annex to this paper, the Commissioner has drawn on her experience of casework, and of the concerns brought to her by Members and by the public. The changes she would like to see relate mainly to the scope of the current Code, and to the way it is written and presented.

Background

2) Standing Order No 150 includes the following among the Commissioner's principal duties:

> *(d) to monitor the operation of [the Code of Conduct] and registers, and to make recommendations thereon to the Committee on Standards or an appropriate subcommittee thereof.*

3) In February 2003, the Committee on Standards and Privileges approved the recommendations of the Committee on Standards in Public Life (CSPL) that the Commissioner should initiate a review of the Code of Conduct in each Parliament. The CSPL envisaged that the Commissioner would propose changes to the Committee, which would then consult on those and recommend any amendments to the House.

4) 5. In practice the review process has rarely happened like this. In 2016 the last Commissioner, Kathryn Hudson, undertook a review of the Code. The Standards Committee discussed her proposals but it did not reach a final view on them, or put forward proposals to the House, before the 2017 General Election. In the current Parliament the Standards Committee has initiated a review of the Code and has from time to time sought the Commissioner's views on the way forward. Thus many of the changes the Commissioner would like to see have already been discussed with the Committee.

5) This paper sets out in an ordered way the recommendations from the current Commissioner. Her concerns arise from her experience of undertaking the role since January 2018. That role involves advising Members and the Committee on the Code and Rules, keeping the Registers in accordance with the Rules, and investigating complaints about breaches of the Code and Rules. The Commissioner's recommendations have also been informed by her experience and that of her staff in responding to enquiries and correspondence from the general public, whose concerns may be different from those of Members.

1: The scope of the current Code

6) It is often said that the current Code focusses too much on financial matters and too little on behavioural issues. The main gaps of current concern are:

Misuse of social media

7) The Code predates the widespread use of social media. Social media are not responsible for new behaviours by MPs but the scale of the problem is new. For example, at the time when the Code was introduced, a report of an MP indulging in personal invective or intemperate language during an after dinner speech would generate a spate of letters to the Commissioner's office, but probably little more. Today, MPs can quickly become a trending topic on social media which in turn alerts more people to whatever view or opinion they have shared. For example, 1721 of the allegations made in October 2019 were about a single out of remit issue, which was widely circulated on social media.

8) Following recent Resolutions of the House, if the Commissioner became aware of a Member misusing social media, she can now give formal or informal words of advice, depending on the exact circumstances. But the Commissioner cannot investigate a social media post, unless it involves a further breach of the rules, or unless it is grave enough to meet the high threshold for paragraph 17 of the Rules of Conduct:

> *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.*

9) An increasing number of the complaints received by the Commissioner focus on Members' misuse of social media. Analysis of incoming correspondence in the year from 1 April 2020 shows that the Commissioner received 1,717 complaints about matters outside her remit, of which 810 (almost half) concerned the use of social media. This compares with 388 in 2019–20 and 257 in 2018–19.

10) The Commissioner has given careful consideration to the scope of a possible rule. She is aware that the criminal law already prohibits incitement to racial hatred and that there are legal remedies for defamation. At this stage she does not see a case for additional parliamentary rules on these matters. Nor does she consider that it would be helpful to introduce a rule requiring Members to ensure that their tweets are true and accurate. Truth and accuracy are not matters she could easily investigate. But she remains concerned about the effect on other individuals of what MPs may say about them.

11) The Commissioner notes that other UK parliaments have adopted rules on social media. The Senedd rule says:

> *"Members must not subject anyone to personal attack—in any communication (whether verbal, in writing or any form of electronic or other medium)—in a manner that would be considered excessive or abusive by a reasonable and impartial person, having regard to the context in which the remarks were made."*

The rule of the Northern Ireland Assembly says

> *You shall not subject anyone to unreasonable and excessive personal attack.*

12) The Commissioner is attracted to the second option. The Commissioner would like to see Parliament introduce such a rule in relation to the written and spoken word as well as to the use of social media.

Recommendation 1: The House should adopt a rule which would prohibit unreasonable and excessive personal attacks on social media, in person or in writing.

Overlap with the Ministerial Code

13) The Commissioner receives regular correspondence about the behaviour of Ministers (115 items in 2020–21).[118] Much of this correspondence concerns policy matters, or the content of speeches, or the actions of government departments. These things are clearly outside the Commissioner's remit.

14) However, the Commissioner is concerned that the rules for MPs and the rules for Ministers do not join seamlessly as they should. Ministers are not required to record in the Members' Register benefits received in a Ministerial capacity. Sometimes it is not clear in what capacity they received the benefit. The Commissioner believes it would be clearer if Ministers registered in the Members' Register all benefits which they received in their capacity as an MP or a Minister, subject to the usual rules and thresholds. (She accepts that some of these would also be listed as part of Ministerial disclosures.) It should also be clear that Ministers would be expected to declare (draw attention to) interests in the same way as any other Member. This would require an amended paragraph in the Code or rules. If however the Commissioner was to investigate disclosures of benefits received as a Minister, she would need to be certain that her remit allowed her to obtain evidence from civil servants.

Recommendation 2: The Code should require Ministers who are also MPs to record in the Member's Register the gifts, benefits and hospitality which they receive, including foreign visits, subject to the usual rules and thresholds.

Outside work

15) The Commissioner believes that the Code should impose limits on Members' outside work. It is clear from the correspondence she receives, and from recent petitions, that the public expects a Member to regard his or her parliamentary work as the first claim on their time. The Commissioner recognises that outside experience can enrich debate and scrutiny, and she does not believe that it would be proportionate to ban all second jobs. She also recognises that it would not be practicable to limit the number of hours which a Member may devote to external work, whether paid or unpaid. But she believes that it would be helpful to add further commentary to the Principles, making clear that a Member should always regard their parliamentary activities as their principal commitment. Alternatively, if the Committee believes that it is feasible to devise rules on outside employment, these could be listed amongst the rules of conduct, under the section on conflicts of interest (currently paragraph 11 of the Code), or in the Guide to the Rules.

118 16.Ministers of the Crown who are Members of the House of Commons are subject to the rules on registration and declaration of interests in the same way as all other Members (although Ministerial office is not registrable and salaried Ministers may still speak in support of Government policies without breaching the restrictions on lobbying for reward or consideration). Members are not required to register either Ministerial office or benefits received in their capacity as a Minister. But Ministers are subject to the further guidelines and requirements laid down by successive Prime Ministers in the Ministerial Code, available from the Cabinet Office. These are not enforced by the House of Commons and so are beyond the scope of this Guide.

16) Generally speaking the Commissioner does not think it would be helpful to assign different values to different types of outside work, and to encourage some types while discouraging others. However she would like to see new subsidiary rules which would

- prohibit sales jobs and those where MPs are paid by commission;
- include the present limitations on the outside work of select committee chairs, which are currently in another document;
- prohibit roles involving the giving of parliamentary advice, as the House of Lords does. The Commissioner acknowledges the difficulties in framing a rule to tackle this. The key part of the House of Lords Guide to the Rules is as follows:

  …Members thus have a responsibility to maintain a clear distinction between their outside interests and their parliamentary work. It is incompatible with the maintenance of this distinction for a member, by offering parliamentary advice or services to paying clients, to seek to profit from membership of the House. The Code therefore prohibits members from accepting payment in return for parliamentary advice or services.

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

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

Recommendation 3: The Principles should be expanded to make clear that Members should always regard their parliamentary activities as their principal commitment. This should be supported by subsidiary rules.

Lobbying

17) The current paragraph on lobbying in the Rules of Conduct says

> *12. No Member shall act as a paid advocate in any proceeding of the House.*

In fact the lobbying rules also apply when approaching other Members, Ministers and public officials, as is clear from the Guide to the Rules. It would be helpful if this paragraph was amended accordingly. The Commissioner would prefer the rules to use the term "paid lobbying", as it is clearer than "paid advocacy".

Recommendation 4: The current paragraph on lobbying in the Rules of Conduct should be expanded to prohibit "paid lobbying" not only in proceedings but also when approaching other Members, Ministers and public officials.

Use of information

18) Paragraph 15 of the Rules of Conduct says:

> *15. Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. Such information must never be used for the purpose of financial gain.*

19) The Commissioner has not investigated an allegation under this paragraph and is not aware of any predecessor having done so. On the other hand she does receive regular complaints about the misuse of personal information, usually personal contact details, which come to an MP through their parliamentary activities but are then passed to a party organisation and used for their purposes. The Commissioner therefore would like to see this provision amended in order to allow her to investigate in such cases (unless the Information Commissioner is already taking action).

Recommendation 5: The current paragraph on the use of information should be expanded to prohibit a Member who has received confidential information in the course of their parliamentary activities from using that information for other purposes.

Use of parliamentary resources

21. Paragraph 16 of the Rules of Conduct says:

> *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.*

20) The Commissioner notes that Members do not always find "the rules laid down on these matters" clear. In particular, Members who were found to have breached the stationery rules or the rules forbidding raffles and auctions for access to the estate. While noting that this is not a matter for the Code itself, the Commissioner welcomes the transfer of responsibility for rules on stationery and hopes that the rules can be clarified.

21) The Commissioner notes that there are no clear rules on the proper use of parliamentary hardware or software. She would like to see these developed. These should mirror the rules on House stationery.

All-Party Parliamentary Groups (APPGs)

22) The Commissioner welcomes the proposal to make plain that Members are responsible in most circumstances for actions carried out by their staff in the course of their duties. She believes that it would be helpful if the Code also included a paragraph explaining that each Member who is Chair and Registered Contact of an APPG is responsible for the APPG's compliance with the rules of the House.[119]

119 This responsibility rests with the Member who holds the role of Chair and Registered Contact

Recommendation 6: The Code should make plain that that each Member who chairs an APPG is responsible for that APPG's compliance with the rules of the House.

2: Presentation and accessibility

23) It is clear from the correspondence the Commissioner receives that the general public often do not understand the Code; and they often also do not understand that she is unable to investigate breaches of the Principles, or breaches of all the rules in the Code. While the Commissioner's remit is set out in the Guide to the Rules it may not be immediately obvious to a reader of the Code, and the Commissioner would like to see this explained more clearly.

24) It is important that the Code itself does not become longer. One way forward would be to make a different division between the Code and the Rules, removing paragraphs 10 to 18 (the high level rules of conduct) from the Code and making it part of a new rules document, which would incorporate the current Guide to the Rules and the new stationery rules. That would have the advantage of a clear division between principles (in the Code), which are not investigable, and Rules which can be investigated.

25) If this recommendation is not accepted the Commissioner believes there should be new introductory material in plain English about the scope of the Code, and about the types of behaviour the Commissioner can and cannot look into. She commends to the Committee her predecessor's drafting. The Commissioner believes it would be helpful to have the final draft of the Code reviewed by a specialist in plain English, with a view to adopting a clearer layout and a simpler and more up to date vocabulary (without specialist language).

26) The Commissioner favours retaining the Nolan principles as part of the Code, but with clearer descriptors. In the last Parliament, a subcommittee of the Standards Committee began the process of developing new descriptors for the Code of Conduct for MPs. The Commissioner welcomes this and the other work which has taken place since then. If the Commissioner's proposal about the format of the Code and Rules is not accepted, as explained above she would like to see a change in the way the principles are presented so it is made absolutely clear that she cannot look into breaches of these.

27) The Commissioner believes that the Rules of Conduct should signpost the reader (whether Member or general reader) to sources of detailed rules or guidance about particular topics, as her predecessor suggested. Such guidance should be available (and easy to find) on the external parliamentary website as well as internally. For the benefit of Members, the Commissioner believes that internal documents (as is the case on the Rules Register) should carry the name of the document owner and the official responsible for providing advice.

Recommendation 7: The Rules of Conduct should be removed from the Code and located in a new rules document, which would incorporate the current Guide to the Rules and stationery rules as well as advice on key issues.

Recommendation 8: The Nolan principles should be retained (but with clearer descriptors). The Code should make plain that the Commissioner cannot look into breaches of these.

Recommendation 9: The language and structure of the Code should be reviewed in order to make sure that Members and the general public can understand it quickly and easily. It should have a new introductory section explaining – among other matters - what can and cannot be investigated.

Recommendation 10: The rules of conduct should signpost Members and the public clearly to detailed rules, and (for Members) to sources of advice.

Conclusion

28) This paper sets out the Commissioner's views on the Code of Conduct as it currently stands. The paper focusses only on the concerns which can be addressed through the Code of Conduct and the rules. For this reason this paper does not touch on some of the biggest areas of concern for the public as evidenced by the correspondence to the Commissioner.

29) Much of the out-of-remit correspondence received by the Commissioner falls under the heading of constituency casework. She receives complaints about replies received or not received from constituency MPs as well as about MPs' refusals to take up particular issues or to pursue these with ombudsmen. Correspondents email or phone with concerns relating to such diverse matters as rubbish collection, traffic, pavement surfaces, unfair dismissals, espionage or failure to report miscreants to the police, all of which are well outside the Commissioner's remit, and often outside the MP's responsibilities too. Whether the MP is at fault or not, many people have fundamental misapprehensions about an MP's responsibilities. These are not appropriate for resolution through a system of rules and enforcement. The Commissioner hopes that the House authorities will work with MPs and others to manage expectations and promote high standards.

30) The second area of concern is MPs' behaviour to each other and to others. The media are quick to report on instances of drunkenness or what they see as antisocial or unpleasant behaviour. Correspondents often comment (rightly or wrongly) that these behaviours would not be tolerated in other professionals. There is a general perception that if behaviour falls outside the scope of the Independent Complaints and Grievance Scheme, nothing will be done about it.

31) The Commissioner's recommendations are set out in Appendix 1. Of course, if the structure or format of the Code is to change, some of these changes might best be incorporated into the Rules rather than the Code. The Commissioner would be happy to consider her proposals further with the Committee.

32) This paper does not include the Commissioner's recommendations on the detailed rules which accompany the Code, which she intends to submit separately.

Office of the Parliamentary Commissioner for Standards

May 2021

Appendix 1

Summary of recommendations

Recommendation 1: The House should adopt a rule which would prohibit unreasonable and excessive personal attacks on social media, in person or in writing.

Recommendation 2: The Code should require Ministers who are also MPs to record in the Member's Register the gifts, benefits and hospitality which they receive, including foreign visits, subject to the usual rules and thresholds.

Recommendation 3: The Principles should be expanded to make clear that Members should always regard their parliamentary activities as their principal commitment. This should be supported by subsidiary rules.

Recommendation 4: The current paragraph on lobbying in the Rules of Conduct should be expanded to prohibit "paid lobbying" not only in proceedings but also when approaching other Members, Ministers and public officials.

Recommendation 5: The current paragraph on the use of information should be expanded to prohibit a Members who has received confidential information through their parliamentary duties from using that information for other purposes.

Recommendation 6: The Code should make plain that that each Member who chairs an APPG is responsible for that APPG's compliance with the rules of the House.

Recommendation 7: The Rules of Conduct should be removed from the Code and located in a new rules document, which would incorporate the current Guide to the Rules and stationery rules as well as advice on key issues.

Recommendation 8: The Nolan principles should be retained (but with clearer descriptors). The Code should make plain that the Commissioner cannot look into breaches of these.

Recommendation 9: The language and structure of the Code should be reviewed in order to make sure that Members and the general public can understand it quickly and easily. It should have a new introductory section explaining – among other matters - what can and cannot be investigated.

Recommendation 10: The rules of conduct should signpost Members and the public clearly to detailed rules, and (for Members) to sources of advice.

Appendix 2

Terms of reference for review of Code of Conduct for MPs by Parliamentary Commissioner for Standards in the summer of 2021

Aims

1. The aims of the review are as follows

- To identify any possible gaps in the Code [eg possibly social media, Ministerial benefits, lobbying; rules on employment and on acceptance of benefits]
- To identify elements in the Code that are misunderstood by MPs or the general public;
- To propose changes to the Code which would make it more accessible and easier to understand;
- To report to the Committee on Standards by 19 May 2021.

Background

2. The Committee on Standards in Public Life recommended in its Eighth Report (Cm 5663) that in each Parliament the Parliamentary Commissioner for Standards should initiate a review of the Code and the Guide to the Rules.[120] The Standing Orders of the House include the following among the Commissioner's principal duties:

> (d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards or an appropriate subcommittee thereof.

3. In 2016 the last Commissioner, Kathryn Hudson, undertook a review of the Code. The 2017 Election prevented the Committee and the House giving full consideration to her proposals. The current Commissioner supports Kathryn Hudson's proposals and her recommendations build upon those.

4. The Standards Committee has itself been reviewing the Code and has from time to time sought the Commissioner's views on the way forward. The Commissioner's own review provides an opportunity to make reasoned arguments for the changes she wishes to see.

Method of working

5. The Commissioner's team will

- Conduct a review of records by the Commissioner's office, notably records of correspondence and phone conversations with the public, and investigation records
- Survey staff in order to identify areas which can give rise to misunderstandings

6. The Commissioner will deploy the staff resources of her office.

120 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336882/8thInquiry_Fullreport.pdf

Timescale

7. We aim to submit a report to the Standards Committee by 19 May 2021.

Registrar of Members' Financial Interests, May 2021

Annex 8: Length of investigations

Case	Date investigation commenced	Memorandum sent to Committee	Length of investigation (adjusted for suspensions)	Report published	Length of Committee consideration (adjusted for days when Committee was not in existence)	Total duration (days)
Mr Owen Paterson (HC 797)	30 October 2019	16 July 2021	447	26 October 2021	102	549
Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers (HC 582)	08 December 2020	25 June 2021	199	21 July 2021	26	225
Boris Johnson (HC 549)	02 March 2020	17 May 2021	357	08 July 2021	52	409
Dr Rosena Allin-Khan (HC 904)	24 February 2020	02 October 2020	221	22 October 2020	20	241
David Morris (HC 771)	28 January 2020	02 September 2020	218	17 September 2020	15	233
Marcus Fysh (HC 213)	26 September 2018	24 October 2019	393	18 June 2020	120	513
Greg Hands (HC 211)	07 June 2019	16 December 2019	151	04 May 2020	62	213
Conor Burns (HC 212)	12 March 2019	21 October 2019	223	04 May 2020	78	301
Stephen Pound (HC 209)	10 July 2019	26 February 2020	190	27 April 2020	55	245
Kate Osamor (HC 210)	23 January 2019	18 December 2019	288	19 March 2020	16	304
Sir Henry Bellingham (HC 274)	30 January 2019	09 October 2019	252	31 October 2019	22	274
Keith Vaz (HC 93)	12 September 2016	17 July 2019	681	28 October 2019	103	784
Mr Geoffrey Cox (HC 2591)	13 May 2019	02 July 2019	50	25 July 2019	23	73
Boris Johnson: Further Report (HC 2113)	04 February 2019	25 March 2019	49	08 April 2019	14	63
Boris Johnson (HC 1797)	16 October 2018	26 November 2018	41	06 December 2018	10	51
Ian Paisley (HC 1397)	13 September 2017	04 July 2018	294	17 July 2018	13	307
Dame Margaret Hodge (HC 591)	29 June 2017	20 November 2017	144	06 December 2017	16	160
Nigel Adams (HC 1098)	13 June 2016	23 February 2017	255	22 March 2017	27	282
Kevin Barron (HC 676)	21 March 2016	01 September 2016	164	20 October 2016	49	213
Karl Turner (HC 393)	12 November 2015	31 May 2016	201	29 June 2016	29	230

Appendix: The Role of an MP (extract from Committee on Standards, Sixth Report of Session 2014–15, *The Standards System in the House of Commons* (HC 383), p 22)

THE 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).

MPs represent individual constituents with intractable problems in a variety of ways, from making private enquiries on their behalf, to raising matters publicly in the House of Commons, but there are many matters where other bodies will be better able to help, especially in the first instance. This is particularly so when matters are not within the responsibility of Government or Parliament, such as:

- private problems with neighbours, landlords, employers, family; or companies who have sold you faulty goods.
- decisions made by the courts.
- issues that are the responsibility of a local council, such as council tax, dustbins or street repairs.
- questions about government policies should be directed to the government department that deals with that subject.

Formal minutes

Tuesday 23 November 2021

Members present:

Chris Bryant, in the Chair

Tammy Banks

Alberto Costa

Rita Dexter

Mark Fletcher

Sir Bernard Jenkin

Dr Michael Maguire

Mehmuda Mian

Dr Arun Midha

Paul Thorogood

Draft report (*Review of the Code of Conduct: proposals for consultation*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 265 read and agreed to.

Annexes agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Fourth Report of the Committee to the House.

None of the lay members present wished to submit an opinion on the Report (Standing Order No. 149 (8)).

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 10 November 2020

Anthony Omo, General Counsel and Director of Fitness to Practice, General Medical Council; **Duncan Rudkin**, Chief Executive and Registrar, General Pharmaceutical Council; **Juliet Oliver**, General Counsel, Solicitors Regulation Authority — Q1–33

Tuesday 24 November 2020

The Lord Evans of Weardale KCB DL, Chair, Committee on Standards in Public Life; **Dr Jane Martin CBE,** Member, Committee on Standards in Public Life — Q34–68

Tuesday 8 December 2020

Pippa Crerar, Political Editor, Daily Mirror; **David Walker**, Author and former journalist, The Guardian; **Esther Webber**, Red Box Reporter, The Times — Q69–90

Ms Alexandra Runswick, Senior Advocacy Manager, Transparency International UK; **Dr Hannah White**, Deputy Director, Institute for Government — Q91–132

Tuesday 12 January 2021

Sir Graham Brady MP; **Patrick Grady MP**; **John Cryer MP** — Q133–163

Gary Sambrook MP; **Allan Dorans MP**; **Feryal Clark MP** — Q164–184

Tuesday 2 March 2021

Dr Claire Foster-Gilbert, Director, Westminster Abbey Institute — Q185–207

Ken Gall, President, FDA, Trade Union Side, House of Commons; **Amy Leversidge**, Assistant General Secretary, FDA, House of Commons — Q208–230

Wednesday 14 April 2021

Rt Hon Jacob Rees-Mogg MP, Leader of the House and Lord President of the Council, House of Commons — Q231–258

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

COD numbers are generated by the evidence processing system and so may not be complete.

1 Allan, Sir Alex (COD0028)

2 Bain CBE, Douglas (Senedd Commissioner for Standards) (COD0033), (COD0034)

3 Ball, Mr Simon (COD0003)

4 Brehany, Mr Frank (COD0008)

5 CO-Gas Safety, The Carbon Monoxide & Gas Safety Society (COD0011)

6 Committee on Standards in Public Life (COD0014)

7 Foster-Gilbert, Dr Claire (Director, Westminster Abbey Institute) (COD0027)

8 Gall, Ken (COD0032)

9 HM Government (COD0029)

10 Hawkins, Matt (Co-Director, Compassion in Politics) (COD0030)

11 House of Commons Trade Union Side (COD0020)

12 Kumar (COD0017)

13 Kumari, Ms Sneta; and Ballard, Mr Michael (COD0002)

14 May, Dr Alex (COD0001), (COD0005)

15 May, P (COD0010)

16 McCullough, Dr Melissa (Commissioner for Standards, Northern Ireland Assembly) (COD0035)

17 Petit, Sarah (Cultural Transformation Director, House of Commons) (COD0024)

18 Rees-Mogg, Rt Hon Jacob (Lord President of the Council and Leader of the House of Commons) (COD0031)

19 Rose, Dr Jonathan (Associate Professor in Politics, De Montfort University) (COD0012)

20 Rose, Professor F D (COD0037)

21 Runswick, Ms Alex (Senior Advocacy Manager, Transparency International UK) (COD0026)

22 Snedd Cymru (COD0036)

23 Sutherland, Dr Judi (COD0021)

24 The Scottish Parliament Standards, Procedures and Public Appointments Committee (COD0023)

25 Transparency International UK (COD0013)

26 Traveller Movement (COD0006)

27 White, Dr Hannah (Deputy Director, Institute for Government) (COD0025)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	Boris Johnson	HC 549
2nd	Mrs Natalie Elphicke, Sir Roger Gale, Adam Holloway, Bob Stewart, Theresa Villiers	HC 582
3rd	Mr Owen Paterson	HC 797

Session 2019–21

Number	Title	Reference
1st	Kate Osamor	HC 210
2nd	Stephen Pound	HC 209
3rd	Greg Hands	HC 211
4th	Conor Burns	HC 212
5th	Mr Marcus Fysh	HC 213
6th	Confidentiality in the House's standards system	HC 474
7th	Sanctions in respect of the conduct of Members	HC 241
8th	David Morris	HC 771
9th	Dr Rosena Allin-Khan	HC 904
10th	The House of Commons and the criminal law: protocols between the police and the Parliamentary Commissioner for Standards and the Committee on Standards	HC 883
11th	ICGS investigations: Commons-Lords agreement	HC 988
12th	Sanctions and confidentiality in the House's standards system: revised proposals	HC 1340