



Committee on Standards

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From Chris Bryant MP, Chair of the Committee

Rt Hon Sir Ernest Ryder
The Master
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8 December 2021

Dear Sir Ernest,

Review of fairness and natural justice within the House's standards system

I am writing to follow up our recent very helpful discussion.

As you know, the Committee on Standards announced, in its recent report reviewing the Code of Conduct for MPs,¹ that:

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.
(Paragraph 196)

The Committee's report sets out (at paragraphs 197, 211, 222, 230, 232, 233 and 243) more specific matters within the scope of the review; and the Committee has agreed detailed terms of reference for the review which I attach.

I am delighted that you have agreed to carry out this review. The Committee and the House will be grateful to you for your assistance.

We stand ready to offer you any assistance you may need in conducting the review, and look forward to receiving your conclusions early next year.

The Clerk of the Committee will liaise with your office over the administrative aspects of the review.

With best wishes,

Chris Bryant MP
Chair, Committee on Standards

¹ Committee on Standards, Fourth Report of Session 2021-22, [Review of the Code of Conduct: proposals for consultation](#) (HC 270), published 29 November 2021

House of Commons Committee on Standards

Review of committee processes

Statement by the Committee

The Committee on Standards has responsibility for recommending changes to the House of Commons Code of Conduct and Guide to the Rules, but it also has a responsibility for ensuring that the processes whereby breaches of the rules are investigated and adjudicated are fair and appropriate. The Committee believes that MPs 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 where the Independent Expert Panel decides on appeals and sanctions). The Committee does not propose to move from an inquisitorial system to an adversarial one, which would lead to significant delays and require legal representation on all sides, and would therefore be disproportionate.

In that light we have commissioned the Rt Hon Sir Ernest Ryder, former Lord Justice of Appeal and Senior President of Tribunals for the UK, to carry out a review with the following terms of reference. A brief summary of the existing system is set out as an annex.

Terms of reference

1. To consider 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 of the European Convention on Human Rights; and if appropriate to make recommendations or set out options for improvements to the system.
2. In particular, to consider:
 - i) Should the Parliamentary Commissioner for Standards be (as at present) both the investigator and the decision-maker on whether there has been a breach of the Code; if so, whether the investigatory and decision-making roles within the Commissioner's office should be separated; if not, what new system should be introduced?
 - ii) If the Parliamentary Commissioner for Standards remains both the investigator and the decision-maker:
 - (1) under what conditions should the Commissioner interview witnesses in person during an inquiry? Specifically, is there an obligation to interview all witnesses, whether they appear on paper to be relevant to the issues or not?
 - (2) under what (if any) conditions should the Committee interview witnesses in person during an inquiry by the Commissioner? What about in considering the Commissioner's memorandum? Specifically, is there an obligation to interview all witnesses, whether they appear on paper to be relevant to the issues or not?
 - iii) If the Parliamentary Commissioner for Standards remains the investigator, the decision-maker and presenter of a case, should the Commissioner also be present and answer questions, in her separate advisory role to the Committee, when the Committee deliberates

on individual cases, notably after the Commissioner has provided a memorandum? Should the Member under investigation have an equivalent right to attend the Committee's deliberative meetings and answer questions?

- iv) If the Parliamentary Commissioner for Standards did not remain both the investigator and the decision-maker, but was to investigate and then report to the Committee, so that the latter became the decision maker, under what (if any) conditions should the Committee interview witnesses in person during an inquiry by the Commissioner? What about in considering the Commissioner's memorandum? Specifically, is there an obligation to interview all witnesses, whether they appear on paper to be relevant to the issues or not?
- v) If that in the current system the commissioner is the decision maker, a Member has a *de facto* (but not formalised) right of appeal against the Commissioner's findings to the Committee. The Committee's practice has been to allow the Member to address them on any point they wish to raise. Were the Committee to become the decision maker, should that practice continue?
- vi) If the Commissioner remains the decision maker, does natural justice require that the Member be allowed to address the Committee on any point they wish to raise? Would it be compatible with natural justice for specified grounds of appeal to be introduced? If a formalised right of appeal against findings were to be introduced, what would be the pros and cons in terms of the Member's rights, contrasted with the present arrangement?
- vii) If the Committee were to become the decision maker, would natural justice require a right of appeal? Would it be compatible with natural justice for one sub-panel of the Committee to take the initial decision, followed by a second sub-panel to hear an appeal? In that case, would it be compatible with natural justice for specified grounds of appeal to be introduced? If a formalised right of appeal against findings were to be introduced, what would be the pros and cons in terms of the Member's rights, contrasted with the present arrangement?
- viii) Under current practice, the Committee takes the decision on sanction in cases referred to it by the Commissioner. Is it desirable to introduce a right of appeal from the Committee against the decision on sanction? If so, what options would be most appropriate (for example, successive sub-panels within the Committee on Standards; or an appeal panel with membership from the Committee and some independent external membership; or a separately constituted appeals panel? If the latter two, what composition of any appeals body would be appropriate (e.g. lay membership, MP membership, involvement of somebody with judicial experience)?
- ix) Whatever form of decision making or appeal body is recommended is it compatible with fairness and natural justice if the individuals making up that body to change during the consideration of an individual case?
- x) Within the constraints of practicality and proportionality are there any other ways in which the fairness of the existing system can be enhanced?

Annex: the existing 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 any safeguards 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.

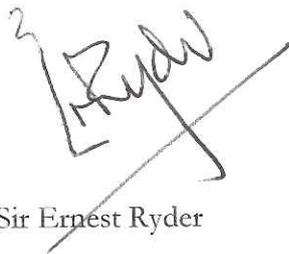
Wednesday, 08 December 2021

Chris Bryant
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Committee on Standards
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Dear Chris

Thank you very much for our recent discussion and for your formal invitation to carry out the review described in the Fourth Report of Session 2021-22 at paragraph 196. I am delighted to accept the invitation and look forward to working with the Committee and your officials to assist the House in conducting its review. I shall be in touch with officials to provide a very short biography for the press release and am very happy for that to be released at your convenience

With kind regards



Sir Ernest Ryder