

Written evidence

1. Letter from a member of the public (the complainant) to the Commissioner, 20 February 2019

5 I am making a formal complaint to you in respect of the attached letter from Conor Burns, Member of Parliament, addressed to me in my role with a company called [redacted].

10 I am attaching to this letter an Annex¹ which provides some factual background to the letter. I am doing so simply to help you understand the context of my complaint. I do not, of course, expect you as Commissioner to become involved in the issue which is the subject of the letter from Mr Burns.

My complaint is based on the following breaches of the Code of Conduct:

Part V Paragraph 16

"Members should ensure that their use of public resources is always in support of their Parliamentary duties"

15 The letter from Mr Burns deals with a purely personal family interest but it is on headed House of Commons notepaper using a House of Commons envelope (copy attached) and presumably using House of Commons postal arrangements.

Part V Paragraph 11

20 Mr Burns is attempting to secure a payment to his father by using parliamentary privilege to raise the case. This may be inconsistent with the rule that obliges members to "*avoid conflict between personal interest and the public interest*".

Part V Paragraph 17

25 Mr Burns states that he will use parliamentary privilege to name me in the House. He states that he is conscious that my "*high profile outside [the company] could well add to that attention*", that is, attention he will generate by raising the matter under parliamentary privilege. I presume that any reference to me will not be kindly. It is clear from his letter that I can avoid this potentially unpleasant experience by helping to secure payment to his father. Is his proposed action consistent with his obligations under paragraph 17?

¹ Annex not reproduced as this is not relevant to the alleged breach of the rules

In identifying specific potential breaches of the rules, I am, of course, conscious of the limitations of my layman's understanding of the interpretation of the rules. Nonetheless I could refer to Paragraph 8 of the Code of Conduct.

Selflessness

- 5 "... should not do so in order to gain financial or other material benefits for themselves, their family or their friends".

I hold the original letter and envelope and, if for any reason you need to have these, I am happy to pass them on to you.²

20 February 2019

10 **Enclosure with letter of 20 February 2019: Letter from Conor Burns MP to the complainant, 6 February 2019**

15 On a recent visit to Spain I had a long discussion with my father regarding the loan he made to [the company] and his extensive attempts over the years to reach a settlement on repayment of that loan. No such settlement has been made and his attempts have been thwarted at every step by the company's Directors [names redacted]. I have had the opportunity to review his file in detail and it would appear that his correspondence has often simply been ignored by the Directors.

20 I was astonished to see that this extended to you as Chairman of [the company]. I attach a letter which was sent to you and the other directors to which a response was never received. Whilst one would like to believe this was mere oversight taken with the pattern explained above one can only, reluctantly, come to the conclusion that the lack of any acknowledgement or willing[ness] to engage on repayment of the loan was the result of a deliberate strategy developed by the Board led by you as Chairman.

25 My father told of me his reluctance to take legal proceedings because of age and family sensitivity and I am writing to you and inviting you to respond to the attached letter and to inform you that failure to do so will ensure my involvement to secure the return of the money owed to my father and interest on the capital since the cessation of interest paid on the loan by [the company].

30 My father will be 77 this year and I regard the way he has been and is being treated by [the company], its directors and therefore by you as completely unacceptable. I have reflected carefully before deciding to become involved. I am acutely aware that my role in the public eye could well attract interest especially if I were to use parliamentary privilege to raise the case (on which I have taken advice from the

² [the complainant] subsequently provided the originals

House authorities). I am also conscious that your high-profile role outside [the company] could well add to that attention.

5 I would urge you to revisit the file of correspondence on the matter because in so doing you will understand that [name redacted] accepted that the money was a loan and not an investment which she later claimed to be the case. In addition, my father has a mail from [name redacted] on [the company] heading urging him to "*seek recompense*" from [them. He] was CEO and Managing Director at the time of the loan. If you revisit the file you will see that interest was paid on the loan for some time. You pay interest on a loan not an investment.

10 Before deciding my next step to secure the return of the money to my father I look forward to your comments and observations on the above. I can of course supply you other evidence should you request.

Should you wish I would be very happy to meet you in person

2. Letter from the Commissioner to Mr Conor Burns MP, 12 March 2019

15 I am writing to seek your help with an inquiry into an allegation that your letter of 6 February 2019, [to the complainant], represented a misuse of House-provided stationery.

My inquiry

20 I have decided to begin an inquiry into whether you have acted in breach of paragraphs 11 and 16 of the House of Commons' Code of Conduct for Members and, as part of that inquiry, I will also consider whether you have acted in breach of paragraph 17 of the Code.

The Code of Conduct for Members

25 Part IV of the Code of Conduct contains the general principles of conduct, which are "*taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct in Part V of the Code*". Those principles include; selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Paragraph 11 of the Code states:

30 *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.*

Paragraph 16 of the current Code states:

5 *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.*

Paragraph 17 of the Code says:

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

The rules for the use of stationery and postage-paid envelopes provided by the House of Commons, and for the use of the crowned portcullis

15 I enclose a copy the over-arching principles for the use of House-provided stationery are found in paragraph 2 of the stationery rules. That states:

20 *The rules cannot be expected to cover every eventuality; Members should therefore always behave with probity and integrity when using House-provided stationery and postage. Members should regard themselves as personally responsible and accountable for the use of House-provided stationery and postage. They must not exploit the system for personal financial advantage, nor (by breaching the rules in paragraph 3 below) to confer an undue advantage on a political organisation.*

25 Paragraph 3 of these rules lists examples of uses for which House-provided stationery should not be used. That list is not exhaustive.

Paragraph 9 of the rules relates specifically to the use of the crowned portcullis. It begins with the following explanation:

30 *"The principal emblem of the House is the crowned portcullis. It is a royal badge and its use by the House has been formally authorised by licence granted by Her Majesty the Queen. It should not be used where its authentication of a connection with the House is inappropriate, or where there is a risk that its use might wrongly be regarded or represented as having the authority of the House"*

Next steps

35 I have seen your letter dated 6 February to [the complainant]. I would appreciate your comments on the following questions:

- (1) Did you use a House-provided postage pre-paid envelope to send the letter?
- (2) Did you take advice from the House authorities before using House-provided stationery for this purpose?
- 5 (3) If you did, please describe the advice given and provide copies of any correspondence you exchanged with House officials on that matter.
- (4) Did you consider using other stationery, such as your own personal notepaper to write to [the complainant]?
- (5) If you did, please say why you decided against doing so.
- 10 (6) In light of the guidance above, do you consider it was appropriate for you to use House-provided stationery to write to [the complainant]?
- (7) If you do, please explain the basis for that belief.
- (8) If not already covered, please describe the basis for considering the subject of your letter to [the complainant] to be a matter of public, rather than personal, interest.
- 15 (9) I note that you refer to having taken advice from the House authorities about using parliamentary privilege to raise this case - please provide a copy of any relevant correspondence and, if there is none, say from whom you sought advice, when you did so, and summarise the advice received

20 Any other points you may wish to make to help me with this inquiry would be most welcome. However, I should emphasise that my inquiry will focus only on whether or not you have acted in breach of the House's rules; as [the complainant] acknowledges, the issue which is the subject of your letter to him is not a matter in which I should be involved.

25 Important information

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

30

Procedure

I am writing to [the complainant] to let him know that I have decided to begin an inquiry into this matter.

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

10 This letter and any subsequent correspondence between us in connection with this inquiry is protected by parliamentary privilege. It should be kept confidential until the outcome of my inquiry is published. (I have made a similar request of the complainant.) All the relevant evidence, including our correspondence, will be published when I have concluded my work.

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

15 I should say now, as a matter of courtesy, that I may seek the advice of the House authorities and others as part of this inquiry.

Action

I would be grateful to have your response to this letter as soon as possible and no later than 22 March 2019.

20 *12 March 2019*

3. Email from Mr Conor Burns MP to the Commissioner, 20 March 2019

I have received your letter of 12 March regarding the complaint you have received from [name redacted].

25 I had intended to respond in full by your deadline of 22nd March and had set aside time today to do so.

However, I note in [the complainant's] letter to you he makes reference to an attached annex to his letter which he states, "*provides some factual background to the letter*" and will "*help you understand the context of my complaint.*"

A copy of the annex does not seem to be included with your letter.

30 As it will be important in your deliberations for you to determine whether I was seeking personal 'financial advantage' by writing to [the complainant] I do not feel I can respond to you fully or in time without sight of the so-called annex.

For the record I will vigorously dispute [the complainant's] offensive allegation that I was motivated by personal gain as there is none.

I would be grateful if you could send me the annex and agree to extend your deadline until next Thursday to allow me time to reply fully to you.

5 19 March 2019

4. Email from the Commissioner's Office to Mr Conor Burns MP, 20 March 2019

Thank you for your email.

10 I have put another copy of the missing annex (double-enveloped) in the internal post this evening. I am not sure what has happened, as I have checked our file and our copy of the Commissioner's letter to you has the annex attached. Please accept my apologies if it was omitted from the package sent to you on the 12th.

I have spoken with the Commissioner and she is content to extend the deadline for a reply until next Thursday, 27 March., as you have requested.

15 20 March 2019

5. Letter from Mr Conor Burns MP to the Commissioner, 28 March 2019

Thank you for your letter of 12 March.

20 I am sorry that [the complainant] wrote to you as he did. As an aside, [the complainant] has not responded to my letter except through a solicitor as he has not responded to numerous other letters from my father.

You are, of course, correct as is [the complainant] that the subject of my letter is not one for you. However, it is impossible to understand the context of my letter without setting out some of the facts behind the dispute.

25 I would firstly ask you to consider the motivation of [the complainant] in writing to you in the terms he did. [the complainant] assures you that he is not a member of the board of [the company] let alone Chairman of the Board. He asserts he is merely a consultant.

30 I attach a screen grab of the company's website which states clearly "*having joined the Board in 2009*" and refers to "*his valuable tenure at [the company].*" A google search of [the complainant's] name shows a reference to membership of the [sector redacted] Board and in his bio states "*he is currently chair of [the company].*"

I would ask you to reflect why [the complainant] would state something so categorically untrue to you.

A couple of quick points on [the complainant's] Annex paper marked 'Context'.

5 [Text redacted - The substance of the dispute between Mr Burns and the complainant is not relevant to my inquiry.]

Your first question is, did I use a House provided pre-paid envelope to write to [the complainant]?

No I did not. The letter was sent at my personal expense by recorded delivery. I attach as evidence the proof of postage.³

10 I answer your second and third questions together.

I did not seek formal advice on this letter. However, in all cases I take advice from the published rules on use of stationery (attached and highlighted). I take seriously the advice that "*They must not exploit the system for personal financial advantage*" To be clear there is no financial interest for me whatsoever in this dispute between my father and [the company].

15 You ask if I considered using personal notepaper. I take account of the advice that '*5. Modest use of stationery (but not pre-paid envelopes) for personal correspondence is permitted.*' I believe I followed this advice in this case and, as stated above, I did not use pre-paid envelopes. In light of the current security situation I avoid where possible using my home address.

20 In answer to your fourth point I can see that it may have been better to have used other paper to write this letter. However, I did believe that I was adhering to the guidance on the limited use of stationery for personal correspondence. This matter is clearly a family one which I do not dispute. However, I believe that a fraud has been committed by the company [the complainant] chairs and my father is the victim of this fraud. My letter was one written by a son which is very concerned at the stress and distress that [the complainant's] repeated refusal to engage of the subject has caused to a man in his late 70s. If the charge is being a caring son, I would accept it.

30 Lastly you asked about the advice I took on the use of parliamentary privilege. I studied the attached document from the library.⁴ I also took informal advice from a clerk. This was not formal or written but verbal. The advice was that it is for each member to use their judgement in the use of privilege. I was also advised that it

³ Proof of postage provided

⁴ The enclosed document, produced by the House of Commons Library (SN/PC/02024) examined "the concept of privilege as it applies to Members, staff and publications of the House, press reports of Parliament, and members of public authorities." It was not advice tailored to Mr Burn's situation.

would be prudent to seek formal advice before raising anything in the Chamber. For the record, to date, I have not done so and would, of course seek such formal advice before doing so.

5 In conclusion I accept it may have been better to use other stationery even though I believed and still believe that I was following the rules. I have no personal financial interest in the matter raised and I was seeking to bring the resolution to a deeply unpleasant matter for my father.

10 It would be somewhat ironic that, should [the] complaint lead to a finding against me, I would have to explain all of the above to the House and place on the record the very things [the complainant's] solicitors' letter sought to keep concealed.

I would of course, be very happy to meet you to discuss any aspect of this should you think that useful.

28 March 2019

6. Letter from the Commissioner to the Clerk of the Journals, 2 April 2019

15 I would like to ask your advice about an allegation I am investigating concerning the conduct of Mr Conor Burns MP. It is alleged that Mr Burns misused House-provided stationery to write to [the complainant] on 6 February 2019. As part of my inquiry, I am considering whether the letter, which bore the crowned portcullis, was sent in breach of paragraph 9 of the Rules for the use of stationery and postage-paid
20 envelopes provided by the House of Commons, and for the use of the crowned portcullis.

Please would you tell me how you would have advised Mr Burns about the appropriateness of using stationery bearing the crowned portcullis to write in the terms that he did if you had had the information provided in the enclosed
25 correspondence.

2 April 2019

7. Email from Clerk of the Journals to the Commissioner, 4 April 2019

30 In answer to your letter of 2 April, if asked in general terms without sight of the text of the letter, I would have advised that the use of stationery bearing the crowned portcullis was inappropriate in this case. However, in the first instance I think I would have treated the use of the crowned portcullis simply as one element of the use of House-provided stationery: I would have expected such stationery to include a crowned portcullis, so the fact that it did would not have seemed to me to have aggravated any breach of the rules.

35 I have read the correspondence between you and the person concerned. As you note the original letter raises the possible use of parliamentary privilege. That does cast

a different light on the matter and suggests that the use of the crowned portcullis may have been more deliberate than accidental. To the extent that that is so, the use of the crowned portcullis may be seen less as an automatic consequence of a careless choice of stationery and more as support for an ill-concealed threat. That would in my view be a use of the badge *'where its authentication of a connection with the House is inappropriate or where there is a risk that its use might wrongly be regarded or represented as having the authority of the House'* (para 9 of the rules on use of stationery) and therefore a separate and more serious breach of the rules on its use.

4 April 2019

10 **8. Letter from the Commissioner to Mr Conor Burns MP, 2 May 2019**

When I wrote to you on the 2 April 2019, I said I was seeking the advice of the House authorities and that I would give you the opportunity to comment on that advice before I reach my decision.

I have now received a response from the Clerk of the Journals. He said:

15 *"In answer to your letter of 2 April, if asked in general terms without sight of the text of the letter, I would have advised that the use of stationery bearing the crowned portcullis was inappropriate in this case. However, in the first instance I think I would have treated the use of the crowned portcullis simply as one element of the use of House-provided stationery: I would have expected such stationery to include*
20 *a crowned portcullis, so the fact that it did would not have seemed to me to have aggravated any breach of the rules.*

25 *I have read the correspondence between you and the person concerned. As you note the original letter raises the possible use of parliamentary privilege. That does cast a different light on the matter and suggests that the use of the crowned portcullis may have been more deliberate than accidental. To the extent that that is so, the use of the crowned portcullis may be seen less as an automatic consequence of a careless choice of stationery and more as support for an ill-concealed threat. That would in my view be a use of the badge*
30 *'where its authentication of a connection with the House is inappropriate or where there is a risk that its use might wrongly be regarded or represented as having the authority of the House' (para 9 of the rules on use of stationery) and therefore a separate and more serious breach of the rules on its use."*
35

I would be grateful to receive any comments you wish to make in the light of the above advice by 9 May 2019.

2 May 2019

9. Letter from Mr Conor Burns MP to the Commissioner, 8 May 2019

Thank you for your letter of 2 May.

5 I have read the response from the Clerk of the Journals. I would reiterate the points made in my previous letters especially those regarding my not using prepaid envelopes, being guided by the rules on limited personal use of stationery.

However, overall, I accept that on reflection it would have been much better had I used personal paper for the letter to [the complainant].

10 The Clerk makes the point that "*there is a risk that its use might wrongly be regarded or represented as having the authority of the House.*" There was no intention for that to be so on my part. I would also suggest that [the complainant] would not have taken it as such. He is a former [senior civil servant - details redacted] and would certainly know that it had no such authority. Indeed, knowing the rules well enough to make his complaint in the first place would suggest this to be true.

15 Although as you previously acknowledged the circumstances of the dispute are not matter for you it may interest you to know that to this day [the complainant] has not responded in any means - except by way of an email from a solicitor to say that all communication should go through here - to any of the points of substance I put to him.

It may now be useful for us to meet in person before you conclude your enquiry.

20 8 May 2019

10. Letter from the Commissioner to Mr Conor Burns MP, 11 June 2019

25 Thank you for your prompt response to my letter 2 May 2019. I am sorry for the delay in replying. The information you have provided was helpful. I have considered very carefully all the correspondence, and I believe I now have sufficient evidence on which to base a decision.

Thank you for acknowledging that it would have been better if you had used your own paper to write to [the complainant].

My decision

30 I find that you breached paragraph 11 and paragraph 16 of the Code. I will deal first with the rules about House-provided stationery (paragraph 16) and then with the broader question of conflict between private and personal interest (paragraph 11).

Paragraph 16

The rules relevant to the use of House-provided stationery are clear that the crowned portcullis should not be used "... where there is a risk that its use might wrongly be regarded or represented as having the authority of the House".

5 You told me that you did not use the crowned portcullis with that intention. However, the test relates not to intent but to the risk of misunderstanding.

In his advice to me, [the Clerk of the Journals] said:

10 "As you note, the original letter raises the possible use of parliamentary privilege. That does cast a different light on the matter and suggests that the use of the crowned portcullis may have been more deliberate than accidental. To the extent that that is so, the use of the crowned portcullis may be seen less as an automatic consequence of a careless choice of stationery and more as support for an ill-concealed threat. That would in my view be a use of the badge 'where its authentication of a connection with the House is inappropriate or where there is a risk that its use might wrongly be regarded or represented as having the authority of the House' (para 9 of the rules on use of stationery) and therefore a separate and more serious breach of the rules on its use."

15

I agree with [the Clerk of the Journals] that a risk of misunderstanding was created by your use of the crowned portcullis. I also agree with [him] that your reference to the possibility of naming [the complainant] during parliamentary proceedings suggests that the use of paper bearing the crowned portcullis was "*more deliberate than accidental*". I have, therefore, reached the conclusion that you acted in breach of paragraph 16 of the Code of Conduct.

20

Paragraph 11

25 The content of your letter to [the complainant] was concerned with a personal interest, that is, the financial affairs of one of your family members. Your letter was not part of your parliamentary activities, but it did refer to the action you might take on that private matter in your capacity as a Member. I believe that brings paragraph 11 of the Code into play.

30 You refer to [the complainant's] previous role as a senior civil servant, suggesting he should have known that your letter (despite appearances) did not carry the authority of the House. I think that you would also have expected him, as a former civil servant, to understand the inference to be drawn from the following statement.

35 "I am acutely aware that my role in the public eye could well attract interest especially if I were to use parliamentary privilege to raise the case (on which I have taken advice from the House authorities)."

As you will know, if you had raised this private matter during parliamentary proceedings, your words would have been protected from challenge through legal

proceedings. I think you might reasonably have expected [the complainant] to have understood the significance of this implied threat.

5 You have since told me that you had “*studied the Library document*” attached to your letter to me of 28 March and had received only informal advice from the House authorities to the effect that it is “*for each Member to use their judgement*”. It was misleading, I think, to refer to advice from the House authorities.

Taking all this together, I believe your conduct was in breach of paragraph 11 of the Code of Conduct.

Next steps

10 Although a breach of paragraph 16 of the Code may be resolved without reference to the Committee on Standards in certain circumstances, I do not consider that to be appropriate in this case. In any case, a breach of paragraph 11 of the Code cannot be resolved in that way and I must, therefore, submit a formal Memorandum to the Committee on Standards. It will be for the Committee to decide whether it accepts
15 my findings and what, if any action, is required.

I will give you an opportunity to comment on a draft of the Memorandum before I send it to the Committee. However, if you wish to meet me before I start drafting that Memorandum, please contact my PA, [details redacted].⁵

20 Please let me have a response to this letter by 19 June 2019. In the meantime, our correspondence remains protected by parliamentary privilege, and I must ask that you continue to maintain the strict confidentiality of the inquiry.

11 June 2019

11. Letter from the Commissioner to Mr Conor Burns MP, 26 June 2019

25 We met on 25 June 2019, at your request, after I wrote to you on 11 June to give you my decisions on the allegations I have been investigating following a complaint by [a member of the public]. As I explained then, I cannot resolve a breach of paragraph 11 of the Code without making a referral to the Committee on Standards.

I am writing now to summarise our discussion, before I draft my Memorandum to the Committee.

30 Thank you for your frank acknowledgement that writing to [the complainant] in the terms that you did, using stationery bearing the crowned portcullis was a serious error of judgment. Thank you too for giving me your word that you will not use your position as a Member to pursue, in the Chamber or otherwise with the protection of

⁵ A meeting was subsequently arranged for 25 June 2019

parliamentary privilege, the issues about which you wrote to [the complainant] on 6 February 2019.

5 You told me that this has been a very acrimonious dispute and particularly distressing for your father, on whose behalf you had "*wrong-headedly*" intervened. You also provided confidential information about very serious health issues affecting another close family member, as well as noting your own chronic health condition. I appreciate your candid disclosures of such sensitive information and recognise that together these factors have placed you under immense personal pressure in recent months. I am sorry that I did not think to give you the details
10 when you were here, I ought to have reminded you of the existence of the Parliamentary Health and Wellbeing Service. They provide a wide range of services for staff and for Members, including confidential advice and counselling. I enclose a leaflet in case this is of some assistance.

15 You told me that you recognise that the Committee on Standards may, if they agree with my analysis, recommend that you make an apology on the floor of the House. You said that, if asked to make such an apology, you think you would have to provide some information during the proceedings about your father's dispute with [the complainant]. You noted that that would be a perverse consequence, given one of the things that [the complainant] was concerned about was the possibility that you
20 would 'name' him in the House. I agree that would be a perverse outcome.

You asked if I might perhaps explain this to [the complainant] and seek his views on the way forward. I explained that, as my role is to determine whether a Member has acted in breach of the rules of conduct, rather than to provide redress to complainants, it would be inappropriate for me to act on this suggestion. I also
25 explained that, in circumstances when I refer a Memorandum to the Committee, I play no part in the Committee's decision-making.

30 You asked what would happen if [the complainant] were, for some reason, to withdraw his complaint. I said I would have to consider whether or not to continue with my inquiry. As you know, I would not be bound to discontinue the inquiry in those circumstances.

35 You mentioned a possible conflict of interest for one Member of the Committee on Standards, should this matter come before the Committee. As you will be aware, Members are required by the rules on Select Committee practise, to declare relevant interests and to recuse themselves if their involvement would reflect badly on a Committee or its work.

I undertook to reflect carefully on what you have told me. I appreciate that recess is drawing near, and I will send you a draft of my Memorandum as soon it is drafted so that you have an opportunity to comment on its factual accuracy before the Committee undertakes its own consideration of this matter.

I will send you a copy of the Memorandum so that you may comment on its factual accuracy before I write to the Committee.

26 June 2019