

Written evidence submitted by HM Government

Foreword

The Government is grateful to the Standards Committee for its work reviewing the Code of Conduct for Members, its place within the Standards system in the House of Commons and as part of this its consideration of the ethical principles which apply to all holders of public office, including Government Ministers.

We have prepared a Joint Response which reflects the Government's view that the rules regulating Members' interests and Ministerial interests are necessarily distinct, reflecting the underlying constitutional principle of the separation of powers.

The Government response to recommendations 137, 139 and 140, which gives consideration to the rules on Registration and Declaration as they apply to Members in their capacity as Government Ministers, is provided by the Chancellor of the Duchy of Lancaster.

The response to the Committee's recommendations which relate specifically to the way the Code is drafted and the rules on paid advocacy and lobbying is provided by the Leader of the House of Commons. The Government welcomes, and shall observe with interest, Sir Ernest Ryder's forthcoming review of the House's current system of investigating and deciding upon breaches of the Code of Conduct and its compatibility with the principles of fairness and natural justice.

In relation to the question of the nature of outside work undertaken by MPs and the question as to whether there should be further limits on such activity, the Government shall consider the range of responses to this Committee's consultation. The Government and indeed the whole House have endorsed the need for reform of the rules on outside interests. The changes in this area must command cross-party support.

The Government awaits with interest the Standards Committee's final report and looks forward to further debate on this matter to ensure that our Standards system commands both the confidence of the public and Members on a cross-party basis.

**CHANCELLOR OF THE DUCHY OF LANCASTER
THE RT. HON. STEPHEN BARCLAY MP**

**LEADER OF THE HOUSE OF COMMONS
THE RT. HON. MARK SPENCER MP**

The context and purpose of the Code

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)

The Government agrees with the Standards Committee that the Seven Principles of Public Life ought to remain the foundation of the Members' Code of Conduct. The Principles are a long-standing and widely understood set of standards which serve as the basis of the ethical standards expected of public office holders.

We note that the Committee on Standards in Public Life (CSPL) has indicated that it would support an update of the Members' Code so that the descriptors align with the current descriptors as published by CSPL. To update the descriptors in the Members' Code (which currently reflect the original wording set out in the CSPLs First Report in 1995), would be a useful change to reinforce that these are principles which apply to a range of public office holders.

The Government, however, does not agree that the descriptors attached to the Principles should be adjusted for their specific application to Members of Parliament. The strength and value of the Principles is that they serve as an established standard of behaviour that apply to a range of public office holders. To adjust the descriptors only in the context of the Members' Code of Conduct could undermine the force and standing of the principles and the value of ensuring codes of conduct for public office holders remain aligned.

We would be concerned that unnecessary attempts to over define the Principles – which are already widely understood – would endanger robust political debate in our institutions.

We also express concern that the revised descriptor on openness has lost the important qualification on the public interest. The consideration of whether it will be in the public interest to place information into the public domain always involves a careful balancing exercise, weighing up the need for transparency and openness against other important and long standing, and often competing, principles (such as the need to protect legal confidentiality and Cabinet papers for reasons of collective responsibility) and legislation (such as the Data Protection Act). This principle was endorsed by Parliament in the Resolutions on Ministerial Accountability, passed by both Houses in 1997, and is reflected in the Freedom of Information Act 2000 passed by Parliament.

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)

The Parliamentary Behaviour Code, as currently drafted at paragraph 18, rightly sets the expectation that all Members must "treat their staff and all those visiting or working for or with Parliament with dignity, courtesy and respect." This formulation strikes the right balance between ensuring that all members of the parliamentary community are able to work in a positive and safe environment and also to engage in free and open policy and political

discussions. The Government further notes that the Committee on Standards in Public Life has published an amended descriptor attached to the Leadership principle to reflect the importance of treating others with respect. Whilst the Government does not consider it necessary to adjust the descriptors specifically in relation to Members of Parliament (or the Lords), we think it is of overarching importance to emphasise tolerance of different viewpoints and protect free debate when considering any changes.

We would not want to stifle legitimate debate on politically contentious issues which are important to our democracy – as an indirect consequence of the proposed new requirement for ‘anti-discriminatory attitudes’ or demonstrating ‘inclusion and diversity’. This could have a chilling effect on free speech on contentious and polarised political issues. This has recently been illustrated in the Lords, in the controversy over the role of the Lords Standards Commissioner in relation to a complaint made against four peers for comments they made in a debate. Even if a Members’ views or opinions are not in scope of the standards process, such a provision risks generating partisan complaints that could ultimately discourage Members’ free speech on highly contentious matters of public policy.

We therefore do not support the addition of Box 3, over and above the existing provisions on showing dignity, courtesy and respect.

Scope of the code and what can be investigated

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)

The Government is aware of the Commissioner’s consideration of public complaints about the use of social media by Members, and believes it is imperative that in the course of debate (whether online or in person) the views of all participants can be freely expressed and treated with tolerance. It is important to distinguish between strongly felt political debate on the one hand, and unlawful acts of abuse, intimidation and violence which seek to suppress free speech on the other. British democracy has always been robust and oppositional. We note that free speech within the law can sometimes involve the expression of political views that some may find offensive.

We agree with the Commissioner’s assessment that in respect of a prohibition on the incitement of racial hatred, a further rule is not needed as this is an illegal practice under the existing criminal law. Similarly, in respect of defamation there are legal remedies already available. Of course, it is necessary to distinguish between strongly felt views robustly expressed in a political debate and acts of abuse, intimidation and violence - whether online or otherwise.

It is also incumbent on all Members to uphold the highest standards and observe the principles of 'respect, professionalism, understanding others' perspectives [and] courtesy', as set out in Parliament's Behaviour Code.

There is also a role for political parties in this area. The Government response to the Committee on Standards in Public Life report on tackling intimidation in public life, asserted that all political parties should put in place their own individual, tailored code of conduct; this should set out the standards of behaviour expected of their party members and representatives. All of the political parties represented in the House of Commons now have in place their own code of conduct.

As the Committee notes, 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. The Government agrees that this fundamental provision is essential in protecting the rights of Members in both Houses to raise issues of public concern in Parliament. Members should be able to freely express their views without fear that they will be subject to an investigation under the Code.

Whilst it is the responsibility of all Members to conduct themselves in a way that does not bring the House into disrepute, further strictures in the rules would serve inadvertently to have a chilling effect on debate outside of Parliament, be it in person or online. We therefore oppose this underlying proposal. Such changes in this area risk undermining the fundamental principles of our constitution or unduly limit the ability of Members to express their views.

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)

However, there are instances where an instant judgement 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)

The Government agrees that, in accordance with the fundamental principle of exclusive cognisance, the Speaker of the House of Commons has an established role to play in maintaining order in the Chamber. We support the preservation of these tried and tested arrangements where the Speaker is responsible for determining whether, during debate, the rules of the House have been complied with.

As the recommendation relates to behaviour that has the potential to result in an ICGS case, the Government notes that under the policies and procedures of the ICGS incidents may

only be reported by the individual affected and not by a third party. This position was confirmed by the 18-month review of the ICGS conducted by Alison Stanley CBE FCIP in 2021. We consider that this requirement would make this recommendation challenging to implement.

Beyond ICGS cases, there are existing mechanisms by which Members are held to account when participating in parliamentary proceedings in a committee meeting or the division lobbies. Ensuring high standards of behaviour is also a matter for the political parties through their own Codes of Conduct and disciplinary processes.

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)

The Government considers it to be critical that all of those who interact with Parliament, be they elected officials, Peers, members of staff, visitors or select committee witnesses, are treated with respect and dignity. In relation to select committee witnesses, the Government welcomes the work already being undertaken by the Committee of Privileges on the fair treatment of witnesses. We consider that the public and potential witnesses, when engaging with select committees, should have reasonable access to the rules and expectations of the House. As part of this work, we agree that it would be helpful if the application of the ICGS to witnesses was clarified.

Any changes in this area would need to be carefully considered - particularly in relation to freedom of speech considerations and the existing powers of select committees to collect evidence from witnesses - so as to safeguard Parliament's ability to perform its scrutiny role.

Relationship between the Code and other codes

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)

The Government supports the principle of this recommendation. Confidentiality sits at the heart of the ICGS. It is critical that those who use the scheme can be confident that information they supply is always handled appropriately; without this, participation in the scheme would be fundamentally eroded.

It would be important that other ICGS stakeholders support the introduction of such a rule; if it is introduced, it would be necessary to clarify who Members could consult for personal support during an ICGS case.

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)

Stationery resources and services are a necessary source of support for Members in the performance of their parliamentary duties but should not be misused. It is incumbent on all Members to act with integrity and responsibility in the use of resources funded out of the public purse (so as to avoid damaging the reputation of the House) but these rules, once clearly articulated, also need to be applied with a sense of proportion.

We therefore welcome the Standards Committee's forthcoming update of the rules to clarify how these resources are to be used. This should affirm the existing position that stationery should not be used for financial, partisan or commercial advantage and also assist Members in ensuring that they have not inadvertently misused parliamentary facilities.

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)

The Government agrees that in line with the principle of exclusive cognisance, each House regulates its own proceedings, including the development of its own Code of Conduct, although the Behaviour Code is common across both Houses. The two Codes are rightly drafted to reflect the distinct role of each House, taking into account their differences in composition and function.

The Government notes that the House of Lords (as the revising and scrutinising Chamber) has a distinct role from the House of Commons (as the elected Chamber). It is also important to note that many members of the House of Lords are not full-time legislators and many have current or former outside employment interests.

As the Committee has observed elsewhere (in respect of the 'safe harbour' provisions) there may well be aspects of each Code that could be usefully included in the other to provide greater alignment but we do not consider that root and branch reform to achieve alignment should be an end in itself. Instead, changes should be made on a case by case basis if appropriate, always having regard to the differing nature of the two Chambers and the constitutional significance of that difference.

We will await consultation responses and the final report in this area with interest.

Registration, declaration and paid advocacy

Registration and declaration

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)

In respect of the proposed changes set out in Annex 3, the Government supports these adjustments (and the corresponding changes to the Guide to the Rules) insofar as they serve to simplify the current rules on registration under categories 1, 3, 4, 5.¹ We also support the removal of the income thresholds that currently apply to income generated from property. This change maintains the current requirement to register property valued at over £100,000 while removing the additional income threshold declaration which is not of particular relevance.

The inclusion in category 8 of a requirement to register all unpaid roles (such as directorships and trustee roles) is a useful change insofar as it contributes to ensuring Members are transparent about interests which might reasonably be thought to influence them even if they are not remunerated for such roles.

The CSPL noted in evidence to this Committee that ‘Such a rule should only cover roles, such as directorships or trustee positions, and not memberships of organisations where MPs have no formal responsibilities.’ The Government agrees that this is a reasonable and important distinction: an overly expansive policy including all non-pecuniary interests could undermine the right of a Member to enjoy a private life and be a member of, or volunteer for, organisations where they do not hold decision-making powers. We therefore suggest that further clarification is needed so that these rules apply only where Members hold substantive positions of authority.

It is vital that the public have confidence that our arrangements are robust and comprehensive so that they are able to scrutinise the record of Members with an understanding of where such interests may exist.

The Government notes the proposal to remove category 10 (which requires Members to register family members who lobby the public sector on behalf of a third party). The purpose of the Registration of Interests is to put on record the interests of individual Members’ and this aspect of declaration arguably sits beyond the appropriate scope of registration.

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)

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

¹ Category 1 (Employment and Earnings), Category 3 (gifts, benefits and hospitality from UK sources), Category 4 (visits outside the UK) and Category 5 (gifts and benefits from sources outside the UK).

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)

It is the Government’s view that the rules regulating Members’ interests and Ministerial interests are necessarily distinct, reflecting the underlying constitutional principle of the separation of powers. This is a position that the former Leader of the House of Commons previously set out in evidence to the Committee, and it is also a position which was reflected in HM Government’s written evidence submitted to the Committee on Standards on 16 March 2021.

It remains the Government’s view that benefits received by Members in their Ministerial capacity should not form part of the Members’ register. Gifts and hospitality received by Ministers are subject to official advice within departments, often in advance of being accepted, and recorded and handled immediately by departments in line with guidance. This is the point at which ‘declaration’ occurs and full details are provided. The publishing regime simply reflects routine points at which relevant data for gifts and hospitality that are accepted is published. Furthermore, gifts given to Ministers in their Ministerial capacity are the property of the Crown, not the individual (unless purchased by the recipient under the Ministerial Code process). It is therefore appropriate that there are different rules for dealing with these, and that they are declared and made public separately.

By contrast, for MPs (including Ministers of the Crown acting in their constituency MP capacity), there is no mechanism to take advice about whether acceptance is appropriate in advance, the requirement is just to have declared it subsequently within 28 days.

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)

Consideration and advice on acceptance of gifts, or organisation of outside interests often happens in advance of occurrence or in real time. This is the point at which it is declared. Publication of relevant information provides further reassurance about such assessments as a secondary check that judgements are being made appropriately. The Government is giving consideration to the Committee on Standards in Public Life’s recommendations and will respond in due course. It is of course important that the Government conducts itself openly wherever possible so that the public can scrutinise its acts. This is facilitated by information being set out in an accessible manner and we are working to deliver this objective.

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)

The maintenance of the digital Register and its interaction with the business papers of the House is a matter for the House Authorities to consider, and if these proposals are approved, to implement. The Government supports efforts to ensure that Members' declaration of interests (or ad hoc declarations) are easily accessible and displayed in a way that is clear when relevant to a particular debate. This will ensure that the electorate can properly scrutinise Members' declared interests.

Paid advocacy

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)

The Government has reservations about whether it is appropriate, or indeed viable, to regulate the terms of employment contracts between individual MPs and outside employers. However, we agree that the rules of the House should be sufficiently robust in terms of the nature of outside work that MPs are able to undertake; the Government has made clear its desire to see an explicit rule precluding MPs from providing advice on how to lobby or influence Parliament. We welcome the Committee's consideration of how this could be introduced to ensure that the rules regarding outside work are sufficiently clear and if it is appropriate, reflected in MPs employment contracts.

The Government also agrees with the Committee's conclusions that while it would not be desirable or appropriate to return to the previous position of employment contracts being published as a matter of course, it is incumbent on all MPs to share all necessary information with the Commissioner during the course of an investigation.

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)

Noting that the existing rules on lobbying rightly prevent a Member, when they are in receipt of a reward or consideration, from initiating proceedings or approaches that would confer an exclusive financial or material benefit on such a person or organisation, the Government shares the Committee's caution in respect of strengthening the rules on participation.

While it is right that Members should not seek to participate in proceedings with the intention of conferring a benefit on an outside individual or organisation, stricter rules could serve to prevent MPs from enhancing debate on the basis of expertise. It is conceivable that, by participating in a debate on which a Member has particular expertise by virtue of their previous career or ongoing outside work which results in a live financial interests, a general benefit could be conferred on a sector at large. To restrict participation in this way could serve to diminish rather than enhance our debate and prevent Members from fully participating in proceedings.

This is a complex matter as it is of vital importance that the public can have confidence that when Members participate in debate they do so in service of the electorate and are not subject to undue influences, financial or otherwise. We await the Committee's final conclusions with interest.

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)

The Government agrees with the Committee's recommendation that paragraph 12 of the Code of Conduct be replaced with a reference to the stronger form of words set out in Chapter 3 of the Guide on 'Lobbying for reward or consideration'.

We suggest that a form of words could be found in paragraph 4 of this chapter, and offer this a suggestion to the Committee in the first instance (additions italicised and underlined in the below):

No Member shall act as a paid advocate *or engage in activity which could be construed as suggesting that the parliamentary or policy agenda can be set by an outside individual or organisation making payments to a Member as a 'reward' in the expectation that their actions in the House will benefit that outside individual or organisation.*

To incorporate a reference to the rules on lobbying would make clear the standards to which all MPs must adhere when participating in debate and would provide a useful clarification that activity that does not fall within the 'strict definition of paid advocacy' is not permissible.

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)

Time limits on relevant rewards or considerations

The Government agrees with a previous report from the Committee on Standards and Privileges, that it is ‘difficult to contemplate circumstances where any benefit received some time in the past, particularly an interest which has not been current in the past twelve months could be sufficiently relevant to be taken into account under’ the lobbying rules.²

Any adjustment to the length of time after a reward or consideration was received during which the lobbying rules apply should, in the Government’s view, go no further than the previous rules of the House. Whether the limit is extended from six to twelve months is ultimately a matter for the House to consider.

For Ministers, the Ministerial Code, at 7.25 sets out that:

“On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee.” [Ministerial Code, section 7.25]

This means that a former Minister should not engage in communication with Government with a view to influencing a Government decision, policy or contract award/grant in relation to their own interests or the interests of the organisation by which they are employed, contracted or with which they hold office. This does not prohibit contacts, including at a social or party political level which is unrelated to such lobbying. This provision in the Ministerial Code also ensures that the Business Appointment Rules³ apply to former Ministers and they are required to seek advice from the Advisory Committee on Business Appointments.

A “safe harbour” provision

It is right that Members are able to seek clarification and advice from the Commissioner in respect of their obligations under the Code of Conduct and the associated rules, which are necessarily expansive and as a result complex. As the Committee notes, the Guide to the Code of Conduct for Members of the House of Lords provides a useful model for how a “safe harbour” provision could operate in the Commons.

We would support the inclusion of an equivalent provision that a Member, having sought and acted on the advice of the Commissioner both with regards to registration and declaration,

² Paragraph 2, page 37 of ‘The Guide to the Rules relating to the conduct of Members’, approved 9 February 2009 and printed June 2009.

³ Business Appointment Rules for former Ministers

and the lobbying rules more widely, would be considered to ‘have fully satisfied the requirements of the Code of Conduct’.⁴

The Lords ‘Guide to the Code of Conduct’ also specifies that in respect of participation in parliamentary proceedings where interests are concerned, the ‘final decision’ rests with the peer concerned. The Government would welcome the Committee’s consideration of this point in relation to MPs, recognising that it is for each individual Member to adhere to the Code of Conduct and determine how best to represent their constituents. In this regard, our initial view is that we think individual Members should be responsible for determining the instances in which they seek to participate in parliamentary proceedings.

The serious wrong exemption

The criteria that the Committee proposes to strengthen the circumstances in which the ‘serious wrong’ exemption can be invoked warrant careful consideration. It is vital that any changes in this area would not have an inadvertent ‘chilling effect’ on Members raising concerns where it is in the public interest to do so. Whilst the Government agrees that this exemption should not exist as a ‘wide loophole’ that can be relied on retrospectively, we suggest further evidence is needed that Members are routinely using this provision as justification for activity that could be construed as paid advocacy before introducing a more prescriptive set of criteria. Generally speaking, the Government’s view is that the current arrangements enable Members to strike the right balance between their duty to raise matters which are in the public interest (and their constituents) whilst prohibiting the initiation of approaches in return for reward or consideration.

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)

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)

First and foremost, Members have a duty to their constituents and any outside work should be within reasonable limits, in order for an MP’s parliamentary duties to take priority. That is why the Government brought forward an amendment (which the House approved on 17

⁴ Guide to the Code of Conduct for Members of the House of Lords, September 2021.

November 2021) to support the introduction of limits on Members undertaking outside work. These were that MPs should be prohibited from any paid work to provide services as a parliamentary strategist, adviser or consultant and that outside work should be undertaken only within “reasonable limits”. It is imperative that paid advocacy work is regulated in order that any employer be they businesses, NGOs or trade unions do not obtain undue access or strategic parliamentary advice.

It is the Government’s initial view that the imposition of fixed constraints such as time limits on the amount of time that Members can spend on outside work would be impractical. The imposition of time limits would not necessarily serve to address recent concerns over paid advocacy and the primary duty of MPs to serve their constituents. It could be possible, for example, for a Member to conduct work within the accepted time limits but that does not necessarily mean such work is “appropriate” even if it did not constitute ‘paid advocacy’.

In respect of a cap on earnings from outside work to impose such a limit could serve to prohibit activities which do not bring undue influence to bear on the political system. Earnings from activities such as writing books for example, would not preclude Members from meeting their principal duty to their constituents. Moreover, in practice, a long-standing Member could inadvertently reach the ‘ceiling’ through earnings accrued over time. In this scenario, there is a question of whether it would be fair to subject that Member to a standards investigation. To avoid this issue would require a substantive earning threshold to be set such that it would not serve to prevent MPs from taking on outside work for which they were properly remunerated in line with salaries in that sector. The introduction of such an arbitrary cap therefore may not have the intended effect of ensuring that Members prioritise their parliamentary duties and the needs of their constituents.

It is for these reasons that we support reforms to restrict the type of outside work which MPs are able to undertake. We believe that it is possible for MPs to strike the right balance between their parliamentary duties and outside work so long as it falls within reasonable limits as historically, the House can and has benefited from Members having outside experience. In respect of both of these matters and the wider question on the nature of outside work that Members are able to undertake, the Government shall review the range of consultation responses and the Committee’s final conclusions with interest. Any such substantive change must necessarily command cross-party support.

The functioning of the Code

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)

The Government welcomes the Committee’s announcement that it has appointed the Rt. Hon Sir Ernest Ryder to conduct a review of fairness and natural justice within the Standards system. It is vital that all Members of the House and indeed the public can have confidence in our arrangements. Compatibility between the process for the investigation of breaches of

the Code and these fundamental constitutional principles of fairness and natural justice is a matter of great import. The Government awaits Sir Ernest's conclusions with interest.

As the terms of reference set out, consideration will be given to whether 'greater clarity can be achieved about the roles of the Commissioner and the Committee' and also whether 'additional elements of appeal' can be introduced into the system. Whether the current arrangements do provide a sufficiently effective route of appeal is something that needs to be carefully considered. Rather than rely on the existing arrangements (whereby a Member can seek to persuade the Committee to re-consider the Commissioner's findings), the Government thinks that to be fully effective, there ought to be a mechanism for a Member's appeal to be adjudicated by a different, independent party.

Recognising the importance of fairness and impartiality in the standards process, we welcome that it is within Sir Ernest's terms of reference to consider the responsibilities of the Commissioner as both an advisor to the Committee and also as the office holder responsible for the investigation of potential Code of Conduct breaches. Arguably, under the current arrangements the Commissioner is placed in an invidious position of both having to advise the Committee in general terms whilst the Committee deliberates its findings in specific cases.

The Committee raises the concern that the formalisation of an appeals process (and the development of 'specified' grounds for appeal) could serve to 'reduce rather than expand a Member's rights'. Whilst the development of an overly prescriptive set of grounds for appeal could serve to have this effect, the Government thinks that the procedures of the Independent Expert Panel (IEP) are instructive. The IEP's 'Guidance for the parties' in respect of appeals, referrals and sanctions' sets out the grounds on which an appeal can be brought and that the Chair of the Panel will appoint a sub-panel of three members to hear the appeal. The 'Guidance for the parties' also specifies that the panel will be 'flexible in addressing the issues raised...against the different grounds'. The Government thinks that these conditions provide a sufficiently broad set of criteria for an individual member to appeal against a decision. Moreover, the IEP arrangements provide a clear independent process for cases to be re-considered. This is a desirable feature that the Government thinks warrants further careful consideration, to ensure that the development of such a scheme does not reduce a Member's rights.

We support the principle of a right to appeal to make the standards system in the House of Commons fairer. The Government welcomes Sir Ernest's careful consideration of this matter and awaits with interest the Committee's proposals so that this issue can be considered by the whole House on a cross-party basis.

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)

The Government agrees with the Committee that it is right that the Standards Committee, the Commissioner for Standards and the IEP are able to work independently, in a fair and transparent manner when conducting their inquiries. Of course, this does not negate the need to ensure that all Members have the right to make appropriate representations and present their case to all bodies concerned with standards in the House of Commons. Here, the provisions set out in Standing Order No.150 provide for such a process which we believe is of vital importance.

The Government therefore supports this proposed amendment to paragraph 19 of the Code insofar as it serves to emphasise the principle of independence that the House has recognised elsewhere (namely in establishing the IEP) as this will ensure the investigatory process is sufficiently robust and commands the confidence of both Members and the public.

Training, advice and promotion

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)

The provision of induction training and programmes to support the development of Members is an important matter as it is essential that all Members are well-versed in the House's procedures and standards system, in order to uphold the highest standards and to be able to effectively represent their constituents. We are also grateful to the House of Commons Library for the work that it does in providing support to all Members and their staff.

The Government supports the provision of training for Members, particularly the newly elected, at the start of each Parliament. The offer of further training once Members have become more established in their roles could also be a useful development, building on the services already provided by the House.

The Government however does not consider it appropriate or indeed necessarily practical to make training mandatory and impose timescales in which such training should be undertaken. Whether training should be compulsory is a matter for each political party to consider.

The approach taken in this House in respect of the Valuing Everyone training (which was introduced in 2019 to support the launch of the Behaviour Code, ICGS policies and procedures) is instructive. Whilst training was not compulsory, Members were encouraged to take part in the training on offer to make Parliament a place of work where everyone is treated with dignity and respect.

To date the vast majority of MPs have completed the Valuing Everyone training without it being mandatory.

01 March 2022

