

Written evidence submitted by Rt Hon. Dame Andrea Leadsom MP

Rt Hon. Dame Andrea Leadsom MP submission to the Committee on Standards Review of the Code of Conduct: proposals for consultation

The remarks I made in the General Debate on the Committee on Standards' Review of the Code of Conduct for Members of Parliament on February 3rd 2022 set out the overarching concerns I have about the current House processes, and my views on what action should be taken:

- *A far broader review (than the current Standards Committee review) of how the standards process works in Parliament. Constituents want to be able to hold us all to account - and we want to hold ourselves to account.*
- *There is a grave inequality in how the non ICGS process works in comparison to the ICGS scheme. There is also a concern that in its regular reviews under standing orders, the Standards Committee is in effect being tasked with 'marking its own homework.'*
- *The ICGS envisaged changing the culture within Parliament for the better. Specific agreed actions included induction courses for all newcomers to Parliament, including MPs, compulsory and developmental training for all, and exit interviews to identify why staff (and Members) choose to leave. These are not taking place, nor does the Standards Committee make more than a passing reference to the need to provide support and training to Members - all very well to set out various codes, but no real effort to ensure members know about and understand them.*

This all feeds into the bigger picture - that the House of Commons Commission processes are opaque and unaccountable - there should be a major review of how it manages and supervises all of our parliamentary processes, the taxpayers money that is spent, and the robustness and accountability of its decision making.

Part 4: Scope of the Code and what can be investigated

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

My views are: I completely agree that the Speaker should uphold the rules, but I think in recent years we have seen examples whereby the Speaker's own behaviour has been inappropriate. I am sure the Standards Committee will say it is out of scope for them to consider any remedy, but if that is their response to such a clear weakness in accountability of the Chair, then it highlights that the Committee itself is unable to carry out a role that is fit for purpose in the 21st century.

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

My views are: I disagree with this. Drawing from my own experience as a backbench Member, I rarely accept any hospitality because of the potential for the public to be offended by it. However, as a Minister, part of my role required attending a variety of dinners and other occasions that might be deemed as entertainment. I believe that the obligations for a Member vs. a Minister are very different and that a combined declaration will merely appear to the public that Ministers are behaving in a more profligate or even ‘suspicious’ way.

Part 5: Relationship between the Code and other codes

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

My views are: I am concerned to see the assertion that complaints or allegations under the ICGS are investigated by the Parliamentary Commissioner for Standards. This was NOT the intention of the working group in establishing the ICGS. All complaints against anyone who works or visits Parliament were to be made to the ICGS helpline and evaluated by an independent caseworker, reflecting the fact that in the evidence we took, up to 80% of complaints were 'workplace grievance' type matters that are best resolved via mediation, training and apology. The 20% of complaints that are more serious, regarding harassment, sexual harassment and bullying, would be referred to the PCS in the case of a Member only when the independent investigation had been completed. The focus of the ICGS on improving the culture of Parliament for the better required that everyone who works here is treated equally, and with a similar process that intentionally pursues the laws of natural justice.

Part 6: Registration, declaration and paid advocacy

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

benefits and hospitality received by Members in a ministerial capacity should be registered in the House's register."

My views are: See comments on point 96.

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

My views are: See comments on point 96.

Part 7: The functioning of the Code

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

My views are: in spending an intensive year of work on the ICGS, a fundamental principle was that those elected to office should be only 'sacked' from office by either their constituents or their elected colleagues. It was even put to us that a system where the unelected can sack the elected is a slippery path to the destruction of democracy. I therefore fundamentally object to any system that could lead to the expulsion of a Member being carried out by non-elected individuals. I realise that in effect this has already happened with the establishment of the IEP, but I strongly objected to that at the time and continue to object today. This is primarily a constitutional matter. However, it is also true to say that it is only other Members who can appreciate the complexities of the job. I know there is a general concern among the public that 'MPs will let each other off' but I think the exact opposite is true - MPs are their own harshest critics. For example, I would argue that the establishment of a cross party select committee to review the processes of the Standards Committee would not result in any form of 'stitch up' as some have suggested. Members will all agree that Chairs of select committees go to great lengths to ensure cross party agreement to their reports and findings. I continue to

believe that a cross party review of this type would inject greater fairness into the process but would not weaken the outcomes.

“Members’ rights in the process.

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

The Commissioner is an independent Officer of the House, appointed to advise this Committee, and Members generally, on the House’s Code of Conduct, and to undertake investigations into alleged breaches of the Code, under Standing Order No. 150.

The Commissioner’s status is as an independent and impartial office holder. She follows an inquisitorial process in her investigations, in which she gathers evidence she considers to be relevant to her investigation, weighs it in order to come to a conclusion, and reports on her findings. As part of that process, Members are given an opportunity to see the evidence, to respond fully to the allegations and to provide any material to the Commissioner that they consider to be relevant. It is open to the Commissioner, having opened an investigation, to find that no breach has occurred, and she regularly does so.

As an independent officer, the Commissioner has no personal interest in whether a breach is found or not. She is not akin to a ‘prosecutor’, making the best case for the finding of a breach. Rather, she acts as an adviser to this Committee, advising impartially on whether she considers there has been a breach of the Code. We are grateful for the Commissioner’s advice, but are not bound by it, and determine on the basis of the evidence before us, including any further written or oral evidence provided by the Member, whether we agree with her findings.”

My views on this are: I have concerns that whilst the Standards Committee alleges the role of the Parliamentary Commissioner for Standards is inquisitorial rather than adversarial, from discussions with colleagues over the years, that is not how the process is perceived by them. I therefore recommend that either the perimeters and the scope of a PCS investigation including timelines and limitations should be articulated clearly, or the role of PCS should be redefined as adversarial, in which case, the role of PCS should be redefined as requiring judicial expertise.

“214. The Commissioner’s forthcoming revised Information Note (see paragraph 203 above) will clarify who Members may inform or consult during an investigation, as well as their rights during an investigation more generally. Our own Information Note, to be issued at the same time, will contain equivalent information about Members’ rights at the committee stage of the process. The two notes will confirm that the confidentiality requirements imposed on Members under investigation do not preclude their confiding in a close friend or partner or seeking legal or other advice—it is perfectly reasonable that Members should be able to discuss a case, in confidence, with a limited circle of people they are close to, and that they should be able to access professional advice if required. Our Information Note will confirm that a Member can be accompanied by a lawyer before the Committee, though, in

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

My views on this are: this again asserts that because it is an inquisitorial system there are restrictions on a Member's rights to defend him or herself using representation. Since Members may well have never given evidence, particularly on matters that can be of significant public interest and private embarrassment, it concerns me that the Committee neither permits representation (even if by a 'friend' rather than by a lawyer) nor does it require that committee members stay for all or even part of the evidence. Members may vote even where they are in possession of only some of the facts. Further, the role of the PCS in advising the Committee is a clear conflict. The role of PCS should not be to both provide the evidence against the Member and then - after the Member has set out their own defence - influence the interpretation of the Standards Committee Members.

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

My views on this are: I am astonished that simply because investigatory panels have never been used that the Standards Committee should propose removing them. There is no clear justification given yet there is evidence that some Members would have welcomed a chance to put their case before an investigatory panel rather than to the PCS alone. It is not acceptable simply to remove the provision without consideration of an alternative means to provide an appeal. Furthermore, since the Standards Committee is proposing a judge led review of procedures, that is also a clear contradiction – if the Standards Committee claims it is not seeking to follow any form of legal process, then why should a judge be brought in to consider if the appeals process is fair or not? The Committee can't have it both ways.

"224. In its response to the Committee's report, Sanctions in respect of the conduct of Members, published in November 2020, the Government commented: [...] we believe that the principle of separating investigatory and sanctioning powers is important to ensure independence in the process. The Commissioner has significant powers in both spheres in relation to non-ICGS cases. In this context we welcome the Committee's conclusion (paragraph 136) that "it would be equitable for the Member concerned in those cases to have a right of appeal against such a sanction to the Committee". The Committee's proposal that the House approve the principle of there being an appeals process for non-ICGS cases in line with that of ICGS will go some way to mitigating the risks of maintaining the Commissioner's dual role in less serious cases. "

My views on this are: this comment from the government acknowledges that the Commissioner has significant powers, both in investigations and in sanctions, and that these should, in principle, be separated. So it welcomes the Committee's conclusion that Members should have a right of appeal against such sanctions to the Committee. The Committee's proposal is, however, of an undefined appeals process, and for reasons stated above, I do not believe this work should be abdicated to an external judge led review- resolution of this issue is absolutely fundamental to the question at hand around the fairness and robustness of the Committee's own processes.

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

My views on this are: in contrast to the previous point in 224, here, the Standards Committee asserts that it already has an appeals process because Members can 'persuade the committee that they are in the right.' As I said before, either it is an appeal or it isn't an appeal.

1) if it is an appeal, why are Members not required to be present for all of the evidence submitted? 2) Why is the PCS both providing evidence for the appeal and advising the appeal board on what conclusions it should draw? I therefore disagree with the Committee's assertion that Members currently have a right of appeal.

"233. In the ICGS, an investigation is undertaken by an external investigator, with the Commissioner acting as the decision-maker at first instance. In Code of Conduct cases, the Commissioner is both the investigator and first-instance decision-maker. The scope of the judge-led review will also include consideration of whether the roles of investigator and first instance decision-maker should also be separated in Code of Conduct cases, and if so, how this could be achieved (whether by a separation of roles in the Commissioner's office, or the Committee acting as the first instance decision-maker)."

My views on this are: this contradicts the point made in point 98 that the PCS investigates 'that complaints or allegations under the ICGS are investigated by the Parliamentary Commissioner for Standards.'" In point 233, this asserts that an investigation is undertaken by an external investigator, which is indeed what was agreed in the ICGS report of July 2018, but, in that report the Commissioner was to be the appeal point not the decision maker.

I understand that this role for the PCS may have changed as a result of the introduction of the IEP, and if that is the case, I deeply regret it because under the ICGS, evidence we took demonstrated that up to 80% of complaints were 'workplace grievance matters', with 20%

more serious misconduct. The intention of the ICGS was to change the culture of Parliament for the better - upheld grievances would be solved through a combination of mediation between perpetrator and victim, compulsory training, sincere apologies and other appropriate workplace remedies. These would be imposed by the independent case examiner, and only serious wrongdoing, and only where a Member was the perpetrator, would be escalated to the PCS for sanction. Otherwise, the role of the PCS in the case of a Member was that of providing an appeal route. So, 1) I am concerned that this has changed, and 2) I believe that it is wrong that the PCS is both the 'investigator and the decision maker.' I also feel that for the Standards Committee to abdicate responsibility for addressing this fundamental problem by putting it to a judge led review is wrong.

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

My views on this are: I agree that ICGS and non ICGS are treated differently with regards to the capability of appeal, and that a fundamental objective of the House should be to ensure that the two are aligned in future. With regards to the options put forward in the report, I would argue against any appeal structure that excludes elected Members. To repeat, it is a constitutional necessity for elected Members to be removed from office either by their elected peers or constituents. As it was put to me during the ICGS, work to have an elected Member removed from office by non-elected people is 'the slippery slope that leads to destruction of democracy.'

Overall, I continue to advocate for the purpose of the ICGS which was to change the culture of Parliament and ensure that everyone that works and visits here is treated with dignity and respect.

I do not find that the Standards Committee report gets to the nub of that problem. The ICGS in advocating a proper induction for those that come to work here, proper training for everyone and exit interviews for those who leave plus sanctions that leave perpetrator and victim with their integrity, and where appropriate, privacy intact is a much better way forward.

In concluding, I note that in the introduction and point 10, the Standards Committee state that in a survey of Members, 50% of respondents indicated they were satisfied that the current system is fit for purpose as against 16% who were dissatisfied. The Standards Committee should consider whether there is a correlation between those who are investigated by the Standards Committee and those who are dissatisfied by the system. All Members will acknowledge that those who have not come into contact with the conduct system are unlikely to have spared much time in considering whether it is fair and appropriate or not!