Written evidence submitted by Anonymous MP (3)

Response to Consultation of changes to Members Code of Conduct.

2, Refers to the distinction between Rules and Principles. When conducting investigations, I believe emphasis in determining an outcome should reflect the reasoning behind the rule, rather than just if it can be seen as a technical breach.

4, Additional Nolan Principle
This is an unnecessary and very bad idea. It is vague, **unnecessary**, ill-defined and appears to be promoting a particular agenda. No other UK legislature or local authority have adopted it as far as I am aware. It is widely open to interpretation and would closedown speech on some of the most difficult and critical issues we need to be able to debate in the House. The example of complaints being raised against members of the House of Lords for discussing male-bodied prisoners in women's prisons, which is a matter of genuine public interest, makes it abundantly clear where adopting a principle like this could lead us.

Judge-led review of the current system of investigation. This is extremely welcome as the current system lacks the standards of checks and balances which we would expect for our constituents in either workplace tribunals or the court system, as uniquely it is not subject to any form of proper independent appeal process to check that processes have been followed fairly and unbiasedly or the right judgment and punishment is given. There is also currently no redress to a higher court or Judicial Review process. This cannot be described as following principles of Natural Justice however much confidence we place in the individuals conducting the process.

12, Paragraph 12 of the recommendations states:
"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)"

The reference to "deep-rooted in parliamentary history and practice" is not just about the authority of the Chair but also actually the important principle of free speech and Parliamentary Privilege.

The following paragraph 13 directly contradicts paragraph 12.

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

If this recommendation is accepted, it will mean the effective end of free speech and privilege of what Members can or feel able to say in the Chamber or in Select Committees.
While I am not aware of any evidence that breaches to the code of conduct have occurred in the Chamber, committee sessions or the division lobby that have had to go unremedied to necessitate this suggestion. It is also extremely dangerous. When the recommendation states "In such cases, **especially** potential ICGS cases involving bullying, harassment or sexual misconduct, the Speaker could have the option to refer...", does it **only** refer to those that could be IGCS cases, or could it be other types of complaint? This suggests it could leave the door open to other types of complaint that aren't potential ICGS cases involving bullying, harassment or sexual misconduct. For example, it

leaves the Speaker able to refer cases of references made in debate that would normally be considered part of the rights of members guaranteed by the principle of 'free speech' in the House. Especially if the additional "Nolan" principle were adopted it could work in conjunction with that, meaning complaints could be made about failing to demonstrate inclusion for example?
I am not aware if anyone has asked for the Speaker to be given this new referral power. However, once it is enacted, the Speaker of the House would be inundated with complaints from Members and third parties once it is thought possible that comments from Members can be interpreted as bullying or with the inclusion of a new "Nolan" principle, insufficiently promoting anti-racism, inclusion and diversity etc. This will put the Speaker and Committee Chairs in an impossible position as the flood gates open and they feel compelled to forward on investigations. The only possible result of that scenario will be a totally freezing effect on what Members are safe to say in formal proceedings of the House. **It will also upend vital principles of centuries; it strikes right at the heart of our constitutional arrangements, and I believe it is vital that we maintain and indeed reassert that only the Speaker should have powers of discipline within proceedings of the House.**

17, Ministerial Interests.
This looks like an unnecessarily expansion of remit and puts additional pressure and unfair additional risk onto busy government ministers. Ministerial interests are already well monitored by their civil servants and carefully logged. This is a recipe for disaster in fact. Ministers already have to declare a great deal more than back bench MPs in terms of connected interests. It is also the case that ministers have to undertake events in their roles and that they would never accept hospitality for where they not required of their role. This will give members of the public a wholly misleading impression that to be a government minister is to enjoy a succession of "freebies". It may well be that it would be desirable to update Ministerial interests more often than quarterly but not to have to report to two places. People who have suggested three months is insufficient to reassure the public a particular acceptance of hospitality had not affected a minister's attitude to legislation, do not know how long in the crafting and passage of legislation takes. Transparency is critically important but transparency alone without increasing understanding or how Government and Parliament functions and for example civil service procurement functions, runs the risk of actually increasing undue suspicion over Ministers conduct and motivations.

20, I think there does need to be clarity in use of facilities and a clear understanding of why the rules exist in certain areas. For example, it is clear that mass mailing of political campaigning material to voters on Common's paper is abusing tax-payers money where political party funds should be used. Writing to individuals or organisations uninitiated, to help achieve a legitimate political or constituency aim is clearly reasonable a proper use of headed paper. Hiring of meeting or banqueting for a party-political fundraising event or for clearly commercial interests would be inappropriate but occasional meetings on the estate, for example in a café or a Member's own Parliamentary office, when required here by parliamentary business would be proportionate. Writing articles or books for renumeration on the estate need not be considered "using the facilities" if we mean a desk, heating and light.

35, I think it would be fruitless and over-complicated to set rules on earnings or time spent on outside interests. It is greatly to the benefit of the House, the quality of debate and legislation that there are some Members who keep their business or professional knowledge current. It is also irrelevant what level of remuneration they receive provided it is transparently declared. If they are well renumerated it should be a reassuring sign that they are highly valued in their field. To interfere with this long-standing practice may deter really able people from considering becoming Members which would not be beneficial to anyone. Provided everything is transparently declared it should be a matter for their constituents to judge in the ballot box, not for this House or the Standards Committee.

37, I would be strongly opposed to taking Members of Parliament out of the Standards Committee process. Lay people, even relatively new Members cannot be expected to understand how we work or the various strains we are under or threats we are presented with. It is only when we are dead that anyone has a good word to say of politicians. However, it is irrelevant whether we maintain the power of the House to suspend and expel a Member, as we have already witnessed only recently, it is effectively (politically) impossible for the House to go against the Committee's ruling, which makes it all the more important we have a majority of MP membership and oversight of investigations and in deliberation on cases.

38, This would be welcome to see how the separateness of the functions of the Commissioner and Committee works in practice as it is not currently clear to Members. I have heard concerns voiced that the Commissioner advises the Committee in their deliberations, meaning that Members of the Committee may feel reluctant to criticise or disagree with the Commissioners findings, partly because anyone would naturally feel awkward doing so in front of someone but not least because the elected Members may themselves be subject to an investigation at some point by the Commissioner.

39, Length of investigations
Yes, it is desirable that enquiries are conducted much more speedily, though obviously not at the expense of thoroughness and fairness. There seems to be very little recognition of the appalling strain the entire process of being under investigation, under threat of punishment and public humiliation, places on Members. I am pleased to see it clarified that Members can now confide in others if they are under investigation and presumably will no longer be threatened, on pain of "Parliamentary Privilege" to suffer in silence without support or advice of "any third party" as has been recent practice. I think more resources should be available to the Commissioner (not necessarily on a full-time basis) which should specifically include more independent qualified legal support, other than Speakers Counsel, which would also reassure Members and make them less likely to feel they need their own legal advisers.
While it does not form a recommendation in the Report, I think that the potential full impact on Members of any punishment by either the Committee or IGCS process is not sufficiently recognised or taken into account. It seems to be treated often as if it is a discrete internal process, perhaps with a short barely noticed apology on the floor of the House, when in reality it can mean enormous public humiliation for the Member and their families, dragged up over and over on social media, forever on their Wikipedia page and could cost them re-election or re-adoption/de-selection and subsequent employment prospects outside Parliament. There seems also little recognition that the eventual publication of all the details of the investigation in a report is effectively also part of the punishment. It is also wrong there is no Maxwellisation process for these reports. Members have no way of knowing what will appear in the final report and the risk it could feel very selective and they are only given it an hour before it is officially published on the internet.

There is a real risk that if we are too regulated and too desperate to prove our behaviour is being made truly exemplary, even on minor technical transgressions or mistakes, and so focused on public punishments which humiliate Members, that we will destroy peoples' mental health, we will have more suicides and fewer people will be willing to enter public life. We also run the risk of the process back-firing and far from improving the reputation of Parliament we risk portraying it as one where numerous Members are under constant investigation. I am also not aware if non-elected members of the House staff have such a degree of exposure and public punishment for similar transgressions. There is also an imbalance I believe in how the process regards the "power" of elected Members. It feels very much as if we considered uniquely powerful whereas I would argue we are in myriad ways

uniquely vulnerable. There should be much more emphasis or alternative potential outcomes where possible such as training or mediation.

I also believe the decision to reveal who is under investigation at any given time was a serious mistake. One which could encourage vexatious complaints in the run up to election times which would hang-over individuals and again could cost Members either votes or even the chance of standing again, as their local political Associations fear the political risk of having a candidate who is under a cloud of suspicion until a lengthy investigation is completed.

40, I am sorry moving to an adversarial system rather than an inquisitorial system was explicitly not made part of a judge led review, this seems to have restricted his remit to ensure a fair process.

41, Given the potential severity an adverse ruling could have on a Member's entire reputation and future prospects and observations by many lawyers in recent times that it is **definitely not** compliant with Article 6, it would be more transparent to see this legal advice and who gave it.

43, Just because the current provision for an investigatory panel has not been utilised in recent years, does not seem a sufficient reason to remove it. I think it is a model which may be highly suitable to the more serious contested cases and I do not think it should be jettisoned with so flimsy a justification as is given in the Report.

44, the claim that a Member has a right to appeal to the Committee does not really stack up while the Commissioner remains an adviser to the Committee in their deliberation. Or if the Clerk or Legal Counsel to the Committee are also involved in investigations and determining of cases before they reach the committee. Standing Orders is entirely contradictory on this. 1.49 states the Standards Committee oversees the work on the Commissioner and 1.50 states the Commissioner advises the Committee meaning the Commissioner is an ex officio member of the Committee.

50, **This seems a very dangerous additional paragraph. While it may be well intended it amounts to saying that a Member cannot plead in their own defence which is surely contrary to all rules of natural justice. This absolutely needs clarifying because as it stands a Member could stand accused of this multiple times during the course of an investigation and interactions with the Commissioner and his staff and again when before the committee.**

Are members of the ICGS panel, Lay members of the Standards Committee and Commissioner required to declare their interests, connections and any political affiliations and keep these updated to make sure there are no conflicts of interest?

10 February 2022