

**Submission to the Committee on Standards inquiry on sanctions from the Standards, Procedures and Public Appointments Committee of the Scottish Parliament (SCT0006)**

Thank you for your letter of 9 April regarding your inquiry into sanctions against MPs in which you specifically seek information on the scope of a sanction of the withdrawal of Parliamentary facilities. The following response seeks to set out the provisions relating to sanctions in the Guidance on the Code of Conduct for Members of the Scottish Parliament as well as the more specific issue of the withdrawal of the right to access Parliamentary facilities and services.

[Schedule 3, paragraph 2 of the Scotland Act 1998](#), provides that Standing Orders may include provision for withdrawing from a member of the Parliament his rights and privileges as a member. Consequently, the first version of the Code of Conduct for MSPs included a range of potential sanctions, including the ability to withdraw the right of access as a member to Parliamentary facilities and services provided by the Scottish Parliament's Corporate Body.

[Section 39 of the Scotland Act](#) also envisaged sanctions for breaches of any arrangements made specifically in relation to a register of Member's interests. Accordingly, the [Interests of Members of the Scottish Parliament Act 2006 \(the 2006 Act\)](#), at Section [17A](#), sets out a range of sanctions available to the Parliament for breaches under that Act, including the withdrawal of the member's right to use the facilities and services provided by the Scottish Parliament's Corporate Body.

Section 17A was introduced by the Interests of Members of the Scottish Parliament (Amendment) Act 2016. This Act drew on some of the measures that were already available (e.g. exclusion from the proceedings and the wider premises of the Parliament, withdrawal of salary and allowances, withdrawal of access to parliamentary facilities) under the power to withdraw a member's rights and privileges under [Rule 1.7 of the Standing Orders](#) in relation, for example, to Code of Conduct breaches. Specifying these in statute was felt to be consistent with section 39(8) of the Scotland Act 1998 which envisages legislative provision being made by or under an Act of the Scottish Parliament.

The [Guidance on the Code of Conduct](#), from paragraph 51 onwards, sets out the full range of sanctions currently available to the Parliament. Standing Orders allows the Standards, Procedures and Public Appointments Committee (the Committee), by motion, to recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion. This could be for breaches of 2006 Act or for breaches of the Code of Conduct which do not relate to the matters covered by the 2006 Act.

The sanction involving the withdrawal of the right of access to the facilities and services of the Scottish Parliament's Corporate Body (SPCB) has been used only once since the Code of Conduct introduced in 2000. This was in June 2005, when four members of the Scottish Socialist Party staged a protest in the debating chamber. The sanction was part of a range of sanctions imposed on the group. The full motion agreed was as follows:

“That the Parliament agrees that Colin Fox MSP, Frances Curran MSP, Rosie Kane MSP and Carolyn Leckie MSP be excluded from all proceedings of the Parliament for the month of September 2005 and that their right of access to the Parliamentary complex, their right of access to Parliamentary facilities and services and their salaries and allowances be withdrawn for that period.”

As a consequence of this sanction, the staff of these MSPs lost their salaries and this was felt, on reflection, to be a regrettable and unintended outcome. In the only other complaint that involved the recommendation of a financial sanction, which was considered in 2018, the Committee concluded in its [report](#) that:

“The final decision on whether to issue sanctions lies with the Parliament. The Committee looked at the full range of sanctions available to the Parliament and agreed that these sanctions should send a clear signal about the seriousness of Mark McDonald’s conduct, but should not have a financial impact on his staff nor unduly impact on his ability to represent his constituents.”

In order to avoid any impact on staff or constituents, the sanction recommended by the Committee focused on the Member’s salary and access to his right of access to the Holyrood Parliamentary complex. There was no restriction on the right to access the MSP’s constituency office nor the right to access Parliamentary services. This avoided any consequential impact on constituents or staff. The sanction recommended by the Committee and agreed by Parliament was to:

- exclude Mark McDonald from proceedings of the Parliament for a period of one month which will not overlap with any period of recess;
- withdraw his salary for a period of one month to coincide with his exclusion from proceedings of the Parliament;
- withdraw his right of access as a member to the Holyrood Parliamentary complex for the period of one month to coincide with his exclusion from the proceedings of the Parliament; and
- withdraw his rights to any representational, ceremonial and related privileges until dissolution.<sup>1</sup>

The approach taken to complaints made against MSPs to the Commissioner for Ethical Standards in Public Life in Scotland involves a separation of roles and

<sup>1</sup> The motion agreed by the Parliament was the following:

That the Parliament notes the Standards, Procedures and Public Appointments Committee's 5th Report, 2018 (Session 5), *Complaint against Mark McDonald MSP* (SP Paper 362), and agrees to impose the sanctions recommended in the report that the Parliament excludes Mark McDonald from proceedings of the Parliament for a period of one month, to take place from 3 September to 2 October 2018 inclusive; withdraws his salary for a period of one month to coincide with his exclusion from proceedings of the Parliament; withdraws his right of access as a Member to the Holyrood Parliamentary complex for the period of one month to coincide with his exclusion from the proceedings of the Parliament, and withdraws his rights to any representational, ceremonial and related privileges until dissolution.

responsibilities. Where the Commissioner has considered an admissible complaint against an MSP, the Commissioner's report will establish the facts of a case and conclude whether a breach has occurred or not. It is then for the Committee to agree or disagree with the Commissioner's conclusions and findings in fact and, if it concludes that a breach has occurred, to recommend a commensurate sanction in its report to the Parliament. You may wish to note that the Commissioner does not have rectification powers in the same way that the House of Commons Standing Order 150 provides for in relation to the Parliamentary Commissioner for Standards.

This model allows the Commissioner to conduct an independent investigation and reflects an approach that an MSP is judged by their peers. One of the Committee's predecessor Committees was responsible for establishing the model. Its thinking is set out in this [report](#), published early on in the first Session. The Committee felt that having responsibility for carrying out investigations into Members would consume too much of its time and that the introduction of an independent investigatory element was essential to ensure public confidence in the robustness of the Parliament's procedures. The Committee does, nevertheless, retain the power to undertake its own investigations although it has never chosen to do so.

The Committee, once it has decided that a sanction would be appropriate, considers the options and formulates a recommendation for a sanction which reflects the nature and severity of the breach of the Code or the 2006 Act. It is then for the whole Parliament to agree whether or not to impose the sanction, on a motion by the Committee. In only one example, the Parliament disagreed to the imposition of a sanction. This was in the case of Wendy Alexander MSP, in 2008. The Committee agreed by division to recommend a sanction that would exclude the Member from all proceedings of Parliament for one day. The Parliament (by majority) disagreed so no sanction was imposed.

Once the Parliament agrees to sanction a member, if the sanction involves a withdrawal of the right of access to the facilities and services of the SPCB, the SPCB writes to the Member concerned setting out the detail of how the sanction will operate. Such a letter would include details about matters such as a restriction from entering the building or the cancellation of a Member's Parliamentary pass.

I hope the information contained in this letter is of assistance to you. Please do not hesitate to get in touch with me or the Clerks to the Committee if there are any additional details which would be helpful.

*5 May 2020*