

Submission to the Committee on Standards inquiry on sanctions from the Trade Union Side (SAN0003)

The trade unions representing House of Commons staff (the TUS) welcome the opportunity to submit evidence to the Committee's inquiry on sanctions.

We would like to start by putting on record that most of the time most Members of the House treat staff with respect and that working relationships between most staff and most Members are harmonious. Cases of bullying, harassment or inappropriate behaviour are a small minority. However, when it happens the impact on health and well-being is devastating and in some cases, it can result in dedicated, talented and hardworking staff to leave their career in the House of Commons which can be in nobody's interest. We want to ensure that when House staff are being bullied or harassed at work there are effective mechanisms of redress – this means that staff have trust and confidence that their complaints will be taken seriously, investigated properly and when the complaint is upheld there are appropriate sanctions.

The letter of 2 May 2019 from the [PCS to the Committee](#) sets out new sanctions that may apply to MPs, including in Independent Complaints and Grievance Scheme (IGCS) cases of bullying, harassment and sexual misconduct. While we agree that a wider range of meaningful and effective sanctions is needed, the proposal leaves decisions on those sanctions for the most serious cases to be made by the Committee on Standards. This is inconsistent with Dame Laura Cox's recommendation that:

Steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.¹

And the Commission's agreement on 29 October to:

support the implementation of the two principal recommendations which fall to the House to agree to: effective access to the Independent Complaints and Grievance Scheme for those with historical complaints, and determination of complaints without the involvement of MPs.²

The Commission agreed in December 2018, that a small informal working group should be set up to take this work forward.³ In February 2019, it said it had made progress in agreeing the membership and that an announcement would be made soon⁴.

Three months on, and nearly eight months on from the Cox report, nothing further has emerged. With reports of the six-month review of the IGCS and Gemma White QC's on bullying and harassment of MPs' staff forthcoming, the working group must now be set up as a matter of urgency. It should be given a tight timescale and terms of reference - to decide the details of a system for complaints against MPs which is fully independent. Anything less will not have the trust and confidence of staff. They have the right to proper HR processes, fit for a modern workplace.

¹ [The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report](#), Dame Laura Cox, 15 October 2018

² [House of Commons Commission decisions – 29 October 2018](#)

³ [House of Commons Commission decisions – December 2018](#)

⁴ [House of Commons Commission decisions – February 2019](#)

Issues to be considered by the inquiry

Given the above, whilst we agree that a more robust sanctions regime is needed, our concern is that we have a confusing and potentially contradictory set of proposals risk being developed concurrently by different bodies. The questions posed by the Committee for its [sanctions inquiry](#) – on who should make decisions on sanctions and the appeals process – are those that will also be considered by the working group on independence.

We believe that an independent complaints and grievance policy, that has the trust and confidence of staff and Members of the House alike, will affect a positive change on the culture of the House. This is because it makes clear that everyone must be treated with dignity and respect at work and bullying and harassment will not be tolerated or excused.

For this to be effective, we need clarity over rights, roles and responsibilities in what is already a very confusing governance arrangement for MPs.

As the trade unions representing House staff, we have been considering how we would like to see a new fully independent process work, including the issue of a range of sanctions that would be available to decision making body. I attach a copy of our submission which I think, deals with the questions raised in your consultation.

Given our concerns over the requirement for a fully independent process we would welcome the opportunity give evidence to the Inquiry.

TUS proposal for a fully independent complaints and grievance procedure

The Independent Complaints and Grievance Procedure was introduced in July 2018. The process starts with an independent investigation process with completed investigations submitted to the Parliamentary Commissioner for Standards (PCS).

The PCS has the power to recommend the sanction of training or an apology with more serious complaints going determined by the Committee on Standards before going to the House for a vote. The Committee on Standards also hears all appeals. The Committee is made up of both MPs and lay members with lay members recently given full voting rights.

Dame Laura Cox's recommendation was clear that there should be no involvement of MPs. Anything less than full independence cannot work. Therefore, there can be no role for the Committee on Standards or the House.

Instead the TUS proposes that following the investigations stage (that follows the process set out in the Independent Complaints and Grievance Procedure) the process would be:

- Decisions would be made by a new 'Parliamentary Tribunal' (PT), chaired by the Parliamentary Commissioner for Standards with two independent individuals with employment expertise who would each be appointed for a fixed term of three years. The PT considers the investigation report and as decision manager writes a report with a decision about the case and a decision about a sanction. The PT would be able to issue the following sanctions:
 - a. Issue an apology, training or behaviour agreement in less serious cases.
 - b. A written warning to last for a specified time period (6 months; 12 months; 24 months; remainder of Parliamentary term). While in receipt of an active warning the MP may be prevented from certain activities e.g. sitting on a select committee.

- c. To trigger recall under the *Recall of MPs' Act 2015* which provides for a recall petition to be triggered if one of three conditions is satisfied.⁵ Under the Act a petition is open for signing for eight weeks. If at the end of that period at least 10 per cent of eligible electors have signed the petition, the seat is declared vacant and a by-election follows. The Member who is recalled can stand in the by-election.
 - There will be a suitable appeals body that has the authority to hear an appeal against a PT (and by virtue, a PCS) decision and is independent from MPs.

The Parliamentary Tribunal body is designed to be comparable to an employment setting, as we would see managers operating in workplaces. It is not designed to be a quasi-legal court or a regulatory body for parliamentarians. The Parliamentary Tribunal is designed to determine a sanction to an MP if they have been found to have behaved in a manner that in any other workplace would find them on a final written warning or dismissed.

Therefore, the standard of proof required in cases (as written in the Independent Complaints and Grievance Procedure) is the balance of probabilities i.e. that the incident(s) in question are more likely than not to have occurred and are considered in the specialist opinion of the investigator to constitute bullying, harassment and/or sexual harassment.

Legislation required

Primary legislation would be needed to:

- Establish the new Parliamentary Tribunal body.
- Establish an appeals body (or enable an existing function e.g. the Parliamentary and Health Service Ombudsman, IPSA etc to hear appeals).
- Add bullying and harassment and sexual harassment to the list of offences that can trigger recall under the *Recall of MPs Act 2015*.

These provisions could be included in a Public Service Ombudsman Bill proposed by the Government in 2016.⁶

Benefits of TUS's proposal

- Additional sanctions - currently under the Independent Complaints and Grievance Procedure the only sanctions are an apology and training or for more serious cases, suspension and recall (when an MP is suspended for more than ten days this would automatically trigger recall). Therefore, this approach has the benefit of introducing intermediate sanctions in the forms of warnings which allow for the Parliamentary Tribunal to take a more considered approach so they only need to use recall in the most serious and egregious cases.
- Warning system deals with repeat offenders – the use of timed warnings, the same as one may experience in an employment environment, allow for the Parliamentary Tribunal to sanction repeat offenders with progressively worse sanctions e.g. if an MP is on a 12 month warning and they have a complaint made about them during the time they're on a warning the Tribunal can issue a more serious sanction the next time.

⁵ i) the MP is convicted of an offence and imprisoned; ii) the MP has been suspended from the House for at least 10 working days; iii) the MP is convicted under section 10 of the Parliamentary Standards Act 2009

⁶ Library Briefing Paper CBP -7496 [The Parliamentary Ombudsman: role and proposal for reform](#) (June 2018)

- Warning system allows for other sanctions to be applied – e.g. while on a warning an MP may not be allowed to sit on a select committee.
- System allows for MPs to legislate for the principle of the sanctions rather than individual sanctions – this means the system is independent of MPs (as Dame Laura Cox recommended) so avoids the party political decision making that comes with MPs having to vote on whether a specific MP should be sanctioned in each specific case.
- The ability of the Parliamentary Tribunal to trigger recall follows procedures already in place under the *Parliamentary Standards Act 2009* so does not have any additional constitutional implications as the ability to trigger a recall petition without a vote of the House is already in place.

Details to be considered:

- Consideration needs to be given about when cases will be made public and when they will be kept confidential.

6 June 2019