

Submission from Dr John Benger, Clerk of the House of Commons (SCT0005)

Standards Committee inquiry into sanctions

Thank you for your letter of 5th November 2019 inviting me to contribute to your work on sanctions, which I hope will be resumed now that the Standards Committee has been reappointed.

This note sets out my answers to each of your questions in turn. For ease of reference I have numbered the questions. My responses are designed as a starting point for further discussion and, as some of your questions raise significant procedural and indeed political considerations, it would be helpful to discuss these issues informally with you and other Committee members in the first instance. Such a discussion could also assist the Committee in focussing its thoughts on what information it might particularly wish me to include in a more detailed formal submission to the Committee, and to cover at any formal hearing.

Before addressing your questions, I'd like to make two points by way of setting the context. First, I would emphasise that when discussing sanctions on Members, we are considering the behaviour of only a very small minority of Members. Most of the time, relations between Members and staff (and others in the parliamentary community) are constructive and cordial. Where problems arise, it can be a single incident of rudeness or other behaviour which may be swiftly dealt through an informal conversation and an apology, after which no further action will be necessary.

Second, it is important to note the distinction between the sanctions available to the House authorities to respond quickly to inappropriate behaviour in the absence of any formal complaint and sanctions imposed as a consequence of an investigation and finding. I address these in particular in response to question 7 below. There may be substantial overlap in the sanctions themselves – for instance a ban from a particular catering outlet - but on the one hand there are certain sanctions that could/should not be imposed simply by management action and on the other it is important that the House authorities retain the ability to take urgent action when required.

1. *The extent to which, procedurally and constitutionally, it is proper and/or desirable for the House to delegate its sanctioning powers in respect of breaches of the Code of Conduct or the Behaviour Code; in particular, whether sanctions of various levels of severity can and should be delegated to the Committee on Standards, to an external body (as envisaged as an option in the Dame Laura Cox report), to the Parliamentary Commissioner for Standards (PCS) or to House of Commons staff.*

Members, as the elected representatives of the people, are not employees of the House of Commons. However, they are members of it and it has long been recognized that the House has authority over its own proceedings and membership.¹

Ultimately the House has the authority to delegate its own powers as it thinks fit (and regularly does so, for example, in granting powers to select committees to send for persons, papers and records). Under the existing rules relating to Members' conduct the power to impose some sanctions is already delegated. For instance, if the Parliamentary Commissioner for Standards (PCS) upholds a complaint about a Member's behaviour, she has the power to

¹ See *Erskine May*, 25th edition, paras 11.14ff.

require the Member to make an apology or attend a training course. Non-compliance with such a sanction would in itself be a breach of the Code of Conduct and the PCS would have recourse to the Committee on Standards to impose a more severe sanction.

But there comes a point beyond which any delegation would be inappropriate. I do not think, for instance, that the House would readily contemplate a proposal to delegate its power to impose the sanctions of suspension or ultimately expulsion from the service of the House. Similar concerns might apply to any other sanction which effectively barred a Member from carrying out their core parliamentary duties, such as tabling questions and amendments to legislation or participating in the formal proceedings of a select committee of which they are a member.

There may, however, be sanctions less serious than suspension which the House would be willing to delegate even though they directly impacted Members in the conduct of their parliamentary functions.

These might include:

- Restrictions in participation in select committee activities (e.g. overseas and UK visits);
- Exclusion from specific locations (e.g. Lower Table Office; Members' Library; Vote Office outlets);
- Exclusion from participation in overseas delegations.²

There are other sanctions which might not be seen as restricting Members' ability to undertake parliamentary functions. These could include a requirement to make a written apology, temporary exclusion from entering a part of the Estate such as a bar or catering outlet or being required to attend a training course.

The Speaker has ultimate authority over many aspects of the accommodation and services in that part of the Palace of Westminster and precincts occupied by or on behalf of the House of Commons.³ This means the Speaker is able to withhold access to locations on the Commons Estate and indeed to withhold the granting of a House of Commons security pass (other than in the case of Members).

2. *How far is it feasible to keep confidential the fact that a sanction has been imposed? (e.g. in ICGS cases) [Note – i.e. corrected to e.g. after consultation with committee clerk]*

The Independent Complaints and Grievance Scheme operates on the basis of confidentiality. Managers have no way of knowing who is ringing the independent helpline, which is the access point into the scheme. If a formal complaint is made under the Scheme, information about it is restricted

² It might be necessary to draw a distinction between travel under the auspices of one of the inter-parliamentary groups, such as CPA UK, which have their own Executive Committees, and other delegations.

³ *Erskine May*, 25th edition, para 4.27.

to those involved in investigating and resolving it – these individuals will be different depending on who the complaint is about. All parties to a complaint are required to treat the matter as strictly confidential during the investigation process. Information about individual complaints is not released in response to Freedom of Information requests (although statistical data about the ICGS is proactively published on a quarterly basis), and the Parliamentary Commissioner for Standards does not publish information about individual ICGS complaints.

In terms of sanctions, though, the imposition of a sanction by the House following reports from the Commissioner for Standards and the Committee on Standards is a very public affair. And in between there are sanctions, such as the temporary barring from a catering outlet, which would have to become reasonably well-known as for operational purposes quite a large number of people would need to know in order to enforce the sanction. Denial of access to bars and catering outlets would require the staff working in those areas to know, including in some cases Doorkeepers and security personnel, and an alteration of service in the Vote Office would require relevant staff there to be aware that papers should not be issued directly to a particular Member at Vote Office outlets.

The House Service would not proactively publish information about such sanctions unless the House or a suitably mandated committee of the House decided otherwise.

It is perhaps though sadly inevitable that in some cases the fact of a sanction having been imposed would leak to the media.

- 3. What steps would be necessary to create sanctions including compulsory training, deprivation of services/facilities, a ban on appointment to committees/ overseas delegations, or reimbursement of the costs of the investigation?*

The House could provide for a new sanctions regime by resolution, setting out a “tariff” of sanctions for different levels of breaches of the Behaviour Code, and making clear who was authorised to impose sanctions (e.g. the Commissioner, the Speaker, the Clerk of the House) and what appeal mechanisms were available. This could build on the table provided by the Parliamentary Commissioner for Standards to your predecessor Committee in May 2019.⁴

I envisage such a resolution would arise from a report from the Standards Committee. The Committee should be aware that there are some very complex issues to be worked through here, including the point I noted in response to question 1 about the need to distinguish between sanctions which relate to the core representative functions of Members and those which do not. For instance, preventing a Member from taking part in a select committee visit, which had been agreed on by a formal resolution of the committee, could be seen as interfering with a proceeding in parliament and not something that should be permitted except by explicit authority of the House expressed in a resolution. (Committees meeting outside Westminster can of course take formal evidence, which would make the non-participation of a Member more problematic.) As noted above, it is also important to

⁴ <https://www.parliament.uk/documents/commons-committees/Standards-Committee/KS-to-KG-Sanctions-letter-RA-OPCS.pdf>

distinguish between immediate action taken on the basis of the employer's duty of care, and sanctions imposed following an investigation.

Otherwise, so long as the sanction itself is clear and implementable then the House authorities would take action as required, and the main step required is early consultation to ensure that what may sound like a simple sanction is implementable in practice.

4. Insofar as the House authorities would be involved, how easy would it be to enforce these new forms of sanction?

The clearer the regime, the easier it would be to enforce the sanctions. Where discretion was permitted – e.g. to the Speaker – the extent of that discretion should also be made clear. Difficulties would arise when Members willfully ignored a sanction – for instance, they refused to take part in a training course, or demanded to be served at a catering outlet from which they were barred. This means that any sanctions regime would need to make clear what the further sanction (escalation) would be in such circumstances. As noted above, non-compliance with a sanction would be a breach of the Code of Conduct. It could also be made a breach of the Behaviour Code.

The House Service does not immediately see any logistical barriers to withdrawing certain services as a response to behaviour that is detrimental to staff well-being, but work is ongoing to develop processes for this. Some decisions, it is envisaged, would be quite straightforward to implement. For example, Members have been banned from bars in the past as a response to behaviour which has adversely affected others. Other decisions will be more complicated, and work is ongoing to develop processes around the taking of those decisions. I consider this further in response to questions 6 and 7 below.

5. Would it be possible to create a regime under which sanctions could be imposed by the House of Commons on Members of the House of Lords who had been found to have breached either Code when Members of the Commons? What would be the procedural and practical implications of doing this? (I understand that the Lords Conduct Committee is discussing how ex-MPs who are members of the Lords may be investigated and sanctioned for behaviour during their time as an MP; you may therefore wish to consult the Lords authorities on this matter.)

The House of Commons and House of Lords have different processes in place for sanctioning or reacting to behaviour that adversely affects staff and further thought will need to be given about how these respective processes interact and reinforce each other. In particular, it would be desirable for teams across Parliament who deliver services to Members of both Houses to have access to processes which are as consistent as possible between both Houses. This is also relevant in the case of behaviour towards staff who work for bicameral services such as the Parliamentary Digital Service. I have engaged my colleagues in the House of Lords when preparing this response, and I know these issues are also being worked on there, but further collaboration will be required.

Behaviour that breaches the Behaviour Code – which applies to all those who work in Parliament - is

the same in both the House of Commons and the House of Lords. It is therefore, in my view, proper, fair and reasonable for the respective House authorities to agree to respect and uphold restrictions imposed by staff of either House on one of their own members. For example, if a Member of the House of Commons was banned from all bars in the Houses of Commons that ban should also be enforced in the House of Lords bars.

In recent weeks the Commissioners for Standards in the two Houses have been meeting to discuss a possible protocol, which would be agreed by the two Houses, covering mutual recognition and enforcement of sanctions regimes, and I am aware you have discussed this idea with your Lords counterpart. I would welcome such a move, as it would give clarity and certainty to everyone in the parliamentary community.

6. How can effective sanctions be imposed on Members without disadvantaging constituents or Members' own staff?

As I have already noted, it is important that no sanction is imposed without the authorisation of the House that prevents a Member from representing their constituents across the range of Parliamentary proceedings.

It would be possible, however, to envisage a sanction which still allowed a Member to exercise their core parliamentary functions but in a less convenient way. For instance, where a Member had behaved unacceptably to staff in the Table Office, they could be required to table questions only via the online system and any discussions about the orderliness of their questions would have to be done via email. If a Member is persistently rude and unpleasant to select committee staff, it might, for example, be inappropriate for staff to continue to meet them in person outside formal Committee meetings, and to insist on all communication being in writing. In this context, the Committee Office last year introduced Standards of Service which set out what Members can expect of committee teams. These have been shared with the Liaison Committee and I would be happy to provide a copy to your Committee.

Many of the services the House Service provides have nothing to do with parliamentary proceedings (such as catering) and these could be withdrawn altogether, although withdrawal of some of those services (such as HR advice) might be counter-productive in the context and inadvertently impact on others. Staff working for or with Members who are subject to restrictions in their use of services should not be (or feel they are) penalised due to actions taken against a Member and communication and HR support will need to be provided.

7. Are new arrangements needed to enable appropriate management action in cases where no complaint has been made, or a complaint has not yet been resolved? I am thinking especially of cases where quick action is needed, for instance where there has been misbehaviour in a canteen, or in other circumstances where staff members need to be immediately safeguarded against a repetition of bad behaviour.

As I have already stated the House authorities currently exercise their judgement to respond to inappropriate behaviour that breaches the Behaviour Code when required. As head of the House Service I consider the ability to take rapid management action when circumstances demand it to be an inherent requirement in fulfilling my duty of care to staff, which includes providing them with a safe, professional environment in which to work.

These management responses are applied in instances which require a swift reaction but are not so grave as to require a formal process of sanctioning (at least not in the first instance). It is understood that particularly serious breaches should be raised through appropriate formal mechanisms, although this raises the question of what happens if management is aware of a serious breach but the individual affected is not prepared to make a formal complaint, given that third party reporting is not currently permissible under the ICGS.

Decisions relating to an alteration of service will involve different levels of complexity to enforce and implement. Any process that is developed will have to be flexible enough to account for a range of behaviours and responses. The more inconvenient a decision to withdraw or alter a service is for the Member and the longer the withdrawal continues, the more important it is that there is a process in place (however informal) to allow the Member to make their case for having the service restored, including clarity on who has authority to hear an appeal. This will depend on context and may be as simple as refusing service until the Member apologises to the member of staff affected.

Any process for withdrawal of service will require clarity for all involved - staff, management and the Member affected - at all stages. Staff making decisions to withdraw or restrict a service will need to know they have the authority and support of management when they act, and Members will also need to know that the person making that decision is authorised and empowered to do so. We are working on guidance to staff to clarify what they should do in circumstances where alteration of service is warranted.

The sanctions regime might need to make clear that willful disregard of informal management actions will be regarded as a breach of the Code of Conduct.

8. *It would also be helpful for the new Committee to receive an update on progress in relation to Dame Laura Cox's recommendation about the independence of the ICGS standards system. I am sure the new Committee will wish to assist the House by giving its views on the desirability and likely effectiveness of any options put forward to take forward Dame Laura's recommendation.*

Work is well underway on devising a process which will be fair to all parties and command the confidence of the parliamentary community. The House of Commons Commission has backed the creation of an independent expert panel for determining bullying or sexual harassment complaints against MPs and has invited comments as part of a public consultation. Such a panel would have the power to determine cases and decide on sanctions. If introduced, the measure would implement the third and final recommendation of Dame Laura Cox QC on the determination of complaints against Members under the Independent Complaints and Grievance Scheme (ICGS) without Member involvement. The consultation will benefit from input by the Committee on Standards.

Finally, although it is not raised in your questions, I would like to conclude by noting that were there to be a case where there was a complaint about the behaviour of a member of House staff towards a

Member, or a member of their staff, the House authorities would take this very seriously and (if the complaint was upheld) would impose effective and proportionate sanctions under our authority as employers.

I look forward to further discussions on these important matters.

11 March 2020