



House of Commons  
Committee on  
Standards and Privileges

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**Review of the  
Code of Conduct**

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**Fourth Report of Session 2004–05**

*Report and Appendices,  
together with formal minutes*

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## Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

### Current membership

Rt Hon Sir George Young Bt MP (*Conservative, North West Hampshire*) (Chairman)  
Mrs Angela Browning MP (*Conservative, Tiverton and Honiton*)  
Mr Wayne David MP (*Labour, Caerphilly*)  
Mr Andrew Dismore MP (*Labour, Hendon*)  
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Mr Kevin McNamara MP (*Labour, Hull North*)  
Mr Stephen Pound MP (*Labour, Ealing North*)  
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### Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: [www.parliament.uk/sandp](http://www.parliament.uk/sandp). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Dr Christopher Ward (Clerk), Miss Jenny McCullough (Second Clerk) and Lisa Hasell (Secretary).

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# Review of the Code of Conduct

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## Introduction

1. In November 2002, in its Eighth Report,<sup>1</sup> the Committee on Standards in Public Life recommended that, in each Parliament, the Parliamentary Commissioner for Standards should initiate a review of the Code of Conduct and Guide to the Rules. In our Second Report of Session 2002–03,<sup>2</sup> we accepted that it would be sensible for the Code of Conduct and Guide to the Rules to be reviewed once in each Parliament. This report was debated by the House on 26 June 2003.

2. The House approved the original Code of Conduct and Guide to the Rules on 24 July 1996. In our Ninth Report of Session 2001–02,<sup>3</sup> we proposed a new Code of Conduct and Guide to the Rules, building on work done in the previous Parliament. This was approved by the House on 14 May 2002. A number of significant changes were made to the Guide, but no change was made to the substance of the Code, the only amendment being the addition of a provision clarifying that, while it applied to all aspects of Members' public lives, the Code did not seek to regulate what they did in their 'purely private and personal lives'.

## The consultation exercise

3. Having regard both to the recommendation of the Committee on Standards in Public Life and to the fact that the Code had remained essentially unaltered in substance for some eight years, we welcomed the proposal last year by the Parliamentary Commissioner for Standards that he should initiate a review.

4. The Commissioner has now reported to us on the outcome of the consultation exercise on revision of the Code which he initiated in July 2004, and made a number of recommendations. His memorandum to the Committee is reproduced at Appendix 1. We are grateful to him for undertaking this thorough review, and to all those who responded to the consultation exercise. The Commissioner has listed them at the end of his memorandum.

5. It is clear from the responses received by the Commissioner that there is no general feeling, either inside or outside the House, that the Code needs major revision. We welcome this as a demonstration that the Code continues to achieve the objectives for which it was created in the first place.

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1 Cm 5663.

2 HC 403 (2002–03).

3 HC 763 (2001–02).

## The Commissioner's proposals

6. The Commissioner has, however, proposed a number of specific changes, some reflecting recommendations of the Committee on Standards in Public Life and others being refinements building on experience of operating the existing Code over the last eight years. He has also taken the opportunity to present the provisions of the Code in a more accessible way. In particular, the source of many of the obligations is now made clearer through references to the relevant Resolutions of the House. A draft of the Commissioner's proposed revision of the Code is attached to his memorandum.<sup>4</sup>

7. The principal changes proposed by the Commissioner are:

- i) addition of provisions to make clearer the purpose and scope of the Code;
- ii) new statements of Members' duties in respect of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges, implementing recommendations made by the Committee on Standards in Public Life; and
- iii) extension of the existing provisions regarding misuse of Parliamentary allowances to misuse of facilities and services provided by the House.

**8. We agree with the Commissioner in all the changes to the Code which he has recommended.**

## A non-discrimination provision

9. We would also like to propose one further modification to the draft Code the Commissioner has produced, relating to the inclusion of an explicit commitment to equality. Such a provision is commonly included in professional codes of practice, and we believe that the House should do likewise.

10. The Commissioner, having carefully weighed the issues in his memorandum, concluded that the balance of advantage lay with making no change to the existing Code on this point.<sup>5</sup> However, he has also, at our request, prepared a further note, reproduced at Appendix 2,<sup>6</sup> in which he summarises the principal arguments for and against inclusion of such a provision, and suggests possible ways of incorporating a commitment to equality in the Code.

11. We recognise, as did the Commissioner, that the arguments for and against the inclusion of such a provision are finely balanced. We consider, though, that inclusion of a provision committing Members to upholding their legal obligations in relation to equality would, at the least, be of considerable symbolic significance in reaffirming to all citizens the commitment of this House to ensuring that they are treated equally under the law. It would also reflect current best practice.

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4 Appendix 1, pp 40–43.

5 Appendix 1, pp 28–29, paras 54 to 56.

6 Appendix 2, pp 44–46.

12. We have therefore amended the Commissioner’s draft by adding to the principle about the public duty of Members to uphold the law (a duty which has always been in the Code) the words, “including the general law against discrimination”. We are satisfied that, in the terms in which we have expressed this commitment to equality, it should neither impose additional burdens on Members, nor draw the Commissioner into areas where it will be difficult to demonstrate objectively the truth or otherwise of complaints.

### Misuse of facilities and services

13. Implementation of the proposal to bring misuse of facilities and services within the Code raises, as the Commissioner recognises in Recommendation 13(b),<sup>7</sup> a practical issue, namely, how to avoid the risk of the Commissioner being swamped by a large number of complaints relating to minor allegations of misuse of services. It also highlights, as Recommendation 13(c) recognises,<sup>8</sup> an issue of principle which already arises in relation to the different handling of cases of misuse of allowances depending on whether they arise by way of complaint to the Commissioner, or otherwise come to the direct attention of the House authorities. The issue here is whether there should in future be a level playing field. We deal with each in turn below.

### *Avoiding overloading the Commissioner*

14. As complaints about the misuse of facilities and services will henceforth fall within the responsibilities of the Commissioner if the House agrees to the new Code, the present arrangements whereby they are received and disposed of by the Serjeant at Arms and other House officials will no longer be appropriate other than in respect of evidence of misuse which they uncover themselves. However, the present arrangements for investigating such matters appear to work well and to command general confidence. It would therefore be sensible to build on them, while ensuring that overall control of the investigation is in the hands of the Commissioner. This would also help reduce the additional burden on the Commissioner from bringing misuse of facilities and services within the Code.

**15. We recommend that all complaints received by the Commissioner relating to alleged misuse of facilities and services should be referred by him to the appropriate House authorities for investigation of the facts. When they have reported back, he would decide whether to dismiss the complaint; investigate it further and report to the Committee on Standards and Privileges; or to request the authority concerned to secure appropriate financial reimbursement.**

16. At present, there is no mechanism whereby the Commissioner can refer complaints alleging misuse of allowances to the Director of Finance and Administration for investigation. Any such complaint, however minor, is subject to the Commissioner’s full investigative procedure, in the course of which the Commissioner must necessarily draw heavily on factual material provided by the Department of Finance and Administration.

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<sup>7</sup> Appendix 1, p 31.

<sup>8</sup> Appendix 1, p 31.

We consider that there would be advantage if, in future, complaints alleging misuse of allowances were initially dealt with in a manner similar to that which we have recommended in respect of complaints alleging misuse of facilities and services.

**17. We therefore recommend that all such complaints be referred by the Commissioner to the Department of Finance and Administration for investigation of the facts. The Department would report back to him and he would then decide whether to dismiss the complaint; investigate it further and report to the Committee on Standards and Privileges; or to request the Department to secure appropriate finance reimbursement.**

18. As we have already said, proceeding in this way should help to keep down the Commissioner's workload in relation to complaints alleging abuse of allowances, services and facilities, while continuing to leave him in overall charge of the investigation of all complaints. It would also have a beneficial effect in that in all instances of possible misuse, regardless of whether they come to the attention of the Commissioner through a complaint, or otherwise come to the attention of the House authorities, the facts would be established in the same way.

### **A level playing field**

19. At present, complaints accepted for investigation by the Commissioner, whatever their nature and the sums or issues involved, attract the full panoply of the Code, an investigation by the Commissioner and (unless they fall within the limited category of complaints for which the rectification procedure is appropriate) the prospect of a public adjudication by the Committee and action against the Member by the House. On the other hand, any case of misuse of facilities or allowances coming to the attention of the House authorities direct is resolved privately by negotiation between the relevant House officials and the Member concerned, the only sanction in practice being repayment of sums inappropriately claimed or reimbursement of the cost of resources improperly used.

20. The Commissioner has recommended that the House should consider whether the Director of Finance and Administration, the Serjeant at Arms and other relevant House authorities should henceforth have an obligation to refer to the Commissioner for investigation under the Code the more significant instances of misuse, particularly those where there is *prima facie* evidence of deliberate abuse, which come independently to their attention. **In the interests of equity between Members, and of maintaining public confidence, we support his recommendation.**

21. We recognize that introduction of a mechanism whereby departments of the House took the initiative in referring matters to the Commissioner might have implications for Members' relationships with these departments. Very clear guidelines would need to be laid down for the exercise of such a function. **If the House approves this proposal in principle, the Committee would expect, before implementation, to submit draft guidelines for its approval.**

### **The new Code of Conduct**

**22. We attach as an Annex a draft of the revised Code of Conduct in the terms in which we commend it to the House for approval. We recommend that it be considered by the**



**House in time for the new Code to come into effect at the start of the next Parliamentary Session. In the event that a Dissolution of Parliament intervenes before it can do so, we recommend that our proposals be considered by the House within three months of the meeting of the new Parliament.**

23. Our recommendation in paragraph 20 is free-standing and could, if the House wished, be considered independently. **We nonetheless recommend that the House take a decision in principle on it when it considers the proposed new Code.**

# Annex: New Code of Conduct for Members

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## As recommended by the Committee on Standards and Privileges

*Prepared pursuant to the Resolution of the House of 19th July 1995*

### I. Purpose of the Code

1. The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by:
  - a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing
  - b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties.

### II. Scope of the Code

2. The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.
3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.

### III. Public Duties of Members

4. By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.
5. Members have a duty to uphold the law, including the general law against discrimination, and to act on all occasions in accordance with the public trust placed in them.
6. Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

### IV. General Principles of Conduct

7. In carrying out their parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office.<sup>1</sup> These

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<sup>1</sup> Cm 2850-I, p 14.

principles will be taken into consideration when any complaint is received of breaches of the provisions in other sections of the Code.

### *“Selflessness*

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### *Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### *Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### *Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### *Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

Holders of public office should promote and support these principles by leadership and example.”

## **V. Rules of Conduct**

8. Members are expected in particular to observe the following rules and associated Resolutions of the House.

9. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

10. No Member shall act as a paid advocate in any proceeding of the House.<sup>2</sup>

11. The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.<sup>3</sup>

12. In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

13. Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

14. Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.

15. Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

## **VI. Registration and Declaration of Interests**

16. Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.<sup>4</sup>

## **VII. Duties in respect of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges**

17. The application of this Code shall be a matter for the House of Commons, and for the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards acting in accordance with Standing Orders Nos 149 and 150 respectively.

18. Members shall cooperate, at all stages, with any investigation into their conduct by or under the authority of the House.

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2 Resolution of 6 November 1995.

3 Resolutions of 2 May 1695, 22 June 1858, and 15 July 1947 as amended on 6 November 1995 and 14 May 2002.

4 Resolutions of the House of 22 May 1974, 12 June 1975 as amended on 19 July 1995, 12 June 1975, 17 December 1985, 6 November 1995 as amended on 14 May 2002, and 13 July 1992.

19. No Member shall lobby a member of the Committee on Standards and Privileges in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.

# Appendix 1: Memorandum from the Parliamentary Commissioner for Standards

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# Review of the Code of Conduct for Members: Results of the Consultation Exercise and Proposals for Change

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## Introduction

1. The Committee on Standards and Privileges will recall that, in responding to the Eighth Report of the Committee on Standards in Public Life (Cm 5663), it agreed that it would be sensible for the Code of Conduct for Members to be reviewed once in each Parliament. The Guide to the Rules on the Conduct of Members having been revised by the House in May 2002, the Committee agreed that I should initiate a review of the Code before the end of the present Parliament, consulting interested parties before making recommendations on possible changes to the Code. The text of the present Code is reproduced at Appendix 1 to this memorandum.

2. In order to invite views, I published in July 2004 a consultation paper<sup>1</sup> identifying the key issues to be considered and raising—on the basis of experience both at Westminster and in other jurisdictions—some possibilities for the revision of the Code as a starting point for discussion. Copies of the consultation paper were sent under cover of a personal paper to all Members of the House and to 24 organisations and individuals either outside or inside the House known to have a particular interest in these matters. The appearance of the consultation paper was also publicised through a press release and the text was made available on the parliamentary web-site with a general invitation to the public to comment. 27 responses were received: a list of those who responded is at Appendix 2.

3. Publication of the consultation paper was welcomed by respondents. In particular, the Committee on Standards in Public Life commented:

*“... the Committee would like to welcome the fact you are conducting this review with interested parties with a view to securing the House’s agreement to a revision of the Code to come into effect at the beginning of the next Parliament. This is completely in line with recommendation 1 contained in the Committee’s Eighth Report. The Code is an important statement of principle as well as a practical tool to help Members. It is right and proper that in order to maintain high standards of conduct, the structure, style and presentation of the Code should be subject to regular and vigorous scrutiny.”*

## General approach

4. I noted in the consultation paper that:

*“... experience of operating the Code of Conduct for MPs over the last 8 years does not suggest that it is markedly deficient in either content or presentation.”*

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<sup>1</sup> Available on the Parliamentary website at [www.parliament.uk/documents/upload/PCFSConsultationPaper.pdf](http://www.parliament.uk/documents/upload/PCFSConsultationPaper.pdf).

This assessment has been generally endorsed in responses to the paper. The limited number of responses does not suggest that there is widespread dissatisfaction with the Code in its present form. Several Members commented that the Code had served its purpose well and that change should not be made simply for change's sake. As one Member put it:

*"... unless there are clear and blatant defects, surely it is in everyone's interest that the existing Code beds in so that Members of Parliament know and comply with it."* [Tony Baldry].

5. On this basis, what is required is a modest revision of the Code, which achieves the updating necessary whilst retaining the broad shape and content of the present provisions. As I suggested in the consultation paper, the aim of any changes should be to enhance the Code's clarity, prominence and persuasiveness, with both Members of the House and the public.

6. In approaching the task of revision, the Committee and the House will also wish to have in mind the recommendation of the Select Committee on Standards in Public Life (HC 637, Session 1994–95, paragraph 46) that the Code should consist of:

*"... a series of broad and readily understood principles defining acceptable standards of conduct, rather than a detailed set of rules designed to cater for every possible eventuality."*

Or as another Member [Sir Patrick Cormack] put it in his response:

*"The more I reflect on the matter the more I believe it is essential that the Code should be clearly comprehensible to all, but should not go into minute detail."*

7. The Consultation Paper posed 14 questions about possible changes to the Code's structure, content and presentation. In the sections which follow I identify the responses received to each of these questions and suggest possible alterations to the Code, bearing in mind the general approach identified in this section.

**Question 1: Is the present statement of the Code's purpose adequate or should it be augmented in any way, for example along the lines of the Canadian or House of Lords examples?**

8. The Code currently describes its purpose as being:

*"... to assist Members in the discharge of their obligations to the House, their constituents and the public at large."*

As I noted in paragraph 18 of the consultation paper, other Codes, such as those of the Canadian House of Commons or the House of Lords, have a more extensive description of their purpose.

9. Responses to the consultation paper on this point diverged. The majority who commented felt, like the Government Chief Whip, that the present statement was adequate and had the benefit of brevity. Some, however, felt that a fuller statement of purpose—



along the lines perhaps of that in the Canadian Code—giving more prominence to the maintenance of public confidence in the integrity of Members and the House as an institution, would be preferable. The Committee on Standards in Public Life suggested that:

*“... inclusion of a statement along the lines of that provided by the Canadian example in your paper would be a very welcome amendment and be beneficial in raising the prominence [of the Code] and expectations of the public and in delivering public confidence.”*

A Member [Hugh Bayley] said:

*“I particularly approve of [the Canadian] emphasis on maintaining public trust in the integrity of Members (and would like to add maintaining trust in the institution of the House of Commons) and on placing the public interest ahead of private interests.”*

10. The divergence in comments on this point seems to reflect a difference of view about who the Code is primarily aimed at. So the Member quoted in the preceding paragraph felt that “the current description of the purpose of the Code is of more use to Members than the public.” On the other hand, the Clerk of the House pointed out that historically the Code had indeed developed primarily as a means of assisting Members to know what the House expected of them. He commented:

*“I agree ... that the present statement [of purpose] is no longer adequate. But of the two alternative examples put forward in the consultation paper, I prefer the House of Lords’ version to that of the Canadian House of Commons, in that it gives priority to the purpose of the Code as being to give clear guidance to Members about the standards of conduct that they are expected to observe and makes ‘public confidence’ secondary to that.”*

He continued:

*“The danger of making the maintenance of public confidence the Code’s primary purpose is that this can create (or reinforce) the impression among Members that these rules are largely for show—the perception that ‘of course we all know how to behave, but we have got to be able to demonstrate to the voters that we do’. So ... I generally prefer the order and concision of the Lords’ statement of purpose.”*

The Standards Board for England similarly favoured revision on the lines of the House of Lords Code.

11. I respectfully agree with the Clerk that the primary purpose of the Code is to assist Members in the maintenance of appropriate standards of conduct. Public confidence comes partly through the knowledge that the House has set itself and its Members high standards but even more through the knowledge that Members are in practice meeting the standards expected, and where they are not that these standards are being enforced effectively. However, the present description of the purpose of the Code is too narrowly focussed on Members and could, I suggest, be helpfully widened to include reference to the Code’s value in relation to the maintenance of public confidence in the House and its

Members (though at less length than in the Canadian example). Such a revised statement of the Code's purpose might read:

*“The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by:*

*(a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing*

*(b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties.”.*

### **Recommendation 1**

*I recommend that the statement of the purpose of the Code be widened to read;*

*“The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by:*

*(a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing*

*(b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties.”*

### **Question 2: Is the present statement of the scope of the Code satisfactory?**

12. The present Code applies to Members in all aspects of their public life but not their purely private and personal lives. Although one Member [the Revd Martin Smyth] described the modern distinction between public and private morality as largely unwelcome, most respondents accepted the present definition of the Code's scope in this respect as appropriate. The Committee on Standards in Public Life commented that the present statement “gives clarity to the proper area of focus of a code of conduct for a public office-holder”. The Standards Board for England said:

*“The Code is not one of ethics but of conduct and specifically conduct by Members of the House.”.*

Given that the public/private distinction has not caused practical difficulties in applying the Parliamentary Code and that the Standards Board has encountered some problems in applying the somewhat wider provisions of the Code of Conduct for Councillors, the Board concluded:<sup>2</sup>

*“... the present statement of the scope of the Code appears satisfactory.”*

<sup>2</sup> See the discussion of this in paras 3.88–3.94 and recommendation 25 of the Tenth Report of the Committee on Standards in Public Life (Cm 6407).

13. A number of respondents suggested, however, that certain exclusions from the scope of the Code should be made clear in the Code itself. In paragraph 25 of the consultation paper I listed those types of complaint which are excluded from the Commissioner’s remit. These include:

- a) Policy matters
- b) A Member of Parliament’s decision on how to handle a constituent’s case
- c) A Member of Parliament’s views or opinions
- d) The funding of political parties
- e) Breaches of the Ministerial Code of Conduct
- f) Anonymous complaints and complaints where no substantive evidence is provided.

The Government Chief Whip favoured making explicit the fact that a separate Ministerial Code governs the activities of Ministers in their ministerial capacity and the exclusion of anonymous complaints and complaints where no evidence is provided.

14. I have reservations about incorporating a list of excluded categories of complaints into the Code on the grounds that it could over-accentuate the negative and cause an imbalance in the document as a whole. It would seem more sensible to list the excluded categories in a strengthened enforcement section in the Guide to the Rules which accompanies the Code.

### *Recommendation 2*

*A list of the type of complaints which are outside the Commissioner’s remit should be included in a revised enforcement section of the Guide to the Rules.*

15. There is, however, a good case—as the Government Chief Whip, the Clerk of the House and other respondents noted—for making clear that the Code is not an exhaustive statement of Members’ obligations. All Members also have obligations arising from the procedural rules of the House and the rulings of the Chair (the latter being matters ultimately for the Speaker) and those who are Ministers and Parliamentary Private Secretaries also have obligations under the Ministerial Code (the application of which is a matter for the Prime Minister). It would be possible to add a sentence to the Code which, under the heading ‘Scope of the Code’ would make this point:

*“The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code”.*

### *Recommendation 3*

*A sentence making clear the complementary nature of the Code should be added to the definition of its scope, which would read:*

*“The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and*

*the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code”.*

16. As regards the appropriateness of the exclusions listed in paragraph 13 above, one Member [Revd Martin Smyth] said:

*“I question whether the funding of political parties and breaches of the Ministerial Code of Conduct should be excluded”* [from the Commissioner’s remit].

At present these matters fall within the respective responsibilities of the Electoral Commission and the Prime Minister. Any change would require decisions by Government and Parliament.

17. A submission from the Congleton Labour Party described the current Code as “too limited in its definition and scope”, in that it lacks any reference to the avoidance of discrimination and “does not specify in sufficient detail what is expected of an MP in terms of their duty to represent all their constituents.” I return to the discrimination point later.<sup>3</sup> As regards the issue of representation, the submission proposed the addition to the Code of the following statement:

*“Members shall seek to communicate with and represent all their constituents, by making themselves and their services as widely available as possible to the public, principally through the advertising and holding of regular surgeries throughout their constituency.”.*

18. I understand the concern that Members should be accessible to those they represent. I have reservations, however, about anyone other than a Member deciding how that Member can best achieve this objective. In my view, the electorate, through the ballot box, are the appropriate judges of whether or not a Member’s approach to these matters is correct. I am strengthened in this view by the experience of the Scottish Parliamentary Standards Commissioner of the difficulty of assessing “level of service” complaints.<sup>4</sup> I do not therefore recommend the inclusion in the Code of a sentence as proposed by the Congleton Labour Party.

**Question 3: Is any amendment or elaboration desirable of the statements of public duty in the Westminster Code? If so, why and in what respect? Should the Code make clearer their aspirational status?**

19. The Code includes a statement of three public duties falling on Members of the House. In summary form, these are:

- a) By virtue of the oath, or affirmation, to be faithful and bear true allegiance to Her Majesty The Queen, her heirs and successors, according to law.
- b) To uphold the law, and act always in accordance with the public trust placed in them.

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<sup>3</sup> Paras 54 to 56.

<sup>4</sup> Scottish Parliamentary Standards Commissioner; Annual Report, 2003–04.

c) To act in the interests of the nation as a whole, and particularly of their constituents.

20. As I noted in the consultation paper, these statements are at a high level of generality. It is difficult to see how they could easily be made justiciable in practice. However, they may be relevant secondary tests when considering complaints under other provisions of the Code.

21. Opinion among respondents was divided about whether to leave these statements broadly as they are or to elaborate them on the lines of the fuller statements from the Scottish Code set out in paragraphs 30–32 of the consultation paper. The Committee on Standards in Public Life suggested retaining the first duty and altering the remainder by adopting a suitably amended version of the introduction to the Scottish Code, along the following lines:

*“The United Kingdom Parliament exists to serve the people of the United Kingdom and is accountable to them.*

*The electorate of the United Kingdom has a high expectation of Members of Parliament and the way in which they should act in their relationship with their constituents and in Parliament. Members must meet those expectations by ensuring that their conduct is above reproach and worthy of the trust of the electorate.*

*Members’ primary duty is to act in the interests of the citizens of the United Kingdom and their Parliament. In doing so, members have a duty to uphold the law and to act in conformity with the rules of Parliament.*

*Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.*

*In representing people’s interests, members have a duty to respect individual privacy, unless there are overwhelming reasons in the wider public interest for disclosure to be made to a relevant authority, for example where a member is made aware of criminal activity.”.*

22. The Standards Board for England commented:

*“The Code should make clearer the aspirational status of the three public duties and, following the Scottish Code, should augment the public duty principles with provisions setting out Members’ specific duties.”.*

23. Some respondents focussed on particular provisions in the existing 3 statements of public duty. One Member [Julia Drown] favoured the removal of the first duty on the grounds that a republican should be able to stand for Parliament. Another Member [Hugh Bayley] noted that Members’ general duty to act in the interests of the nation as a whole could sometimes conflict with their special duty to their constituents and suggested that some re-drafting of the third of the public duties was necessary.

24. Other respondents were more cautious. As one Member [the Revd Martin Smyth] put it:

*“... the focus should remain on specific types of behaviour rather than generalised statements of ethical principles.”.*

The Government Chief Whip suggested that no elaboration of the statements of public duty was desirable, although they could be presented more clearly. The Clerk of the House commented:

*“The purpose of the Code is to give guidance to Members about resolving conflicts between their private interests and public duties and about the types of conduct which the House is likely to consider worthy of censure or punishment. It is not the purpose of the Code to instruct Members how to carry out the job of an MP or how to interpret their duties as a constituency representative. The judgement on this aspect of their performance, as on such matters as their attendance in the House or participation in debate, is given by the electorate through the ballot box, not by the House through the application of the Code of Conduct. I therefore do not favour copying those aspects of the Code of Conduct of the Scottish Parliament which are highlighted in paragraphs 30–32 of the Consultation Paper, and my general answer to Question 3 would be no.”.*

25. I have practical reservations, as well as reservations of principle, about importing into the Code provisions on the accessibility of Members to constituents. To judge from some of the correspondence I receive, some constituents will not easily ever be satisfied that their Member is sufficiently accessible to them. Defining what is a reasonable expectation in this respect, or what represents the conscientious representation of constituents, will inevitably involve difficult judgements, which by their very nature are bound to be subjective.

26. On respect for individual privacy, I note that there is already provision in the Code that information which Members received in confidence in the course of their parliamentary duties should be used only in connection with those duties. Beyond that, a Member’s obligation in respect of the privacy of constituents seems appropriately a matter for the general law rather than for the Code.

27. More generally, as already indicated in paragraph 18, I think the House and—even more so an unelected Commissioner—should be wary of intruding into the relationship between individual Members and their constituents. I am also very wary of including too much general exhortation, as opposed to clear rules of guidance, in the Code. The elaboration of the purpose and scope of the Code which I have already recommended would make clear Members’ twin obligations to the House and to those they represent. Bearing in mind the approach set out in paragraphs 4–6 above—that is to make changes only where the case for doing so is clear and to avoid over-elaboration—I would therefore leave the substance of the present statements of public duty unchanged. I return later to their presentation.

#### **Recommendation 4**

*The substance of the present 3 statements of public duty in the Code should be left unchanged.*

**Question 4: Should the statement of seven principles of public conduct in the Westminster Code be recast in any way to apply it more clearly to the role and responsibilities of an MP? If so, how might this best be done?**

28. The third section of the present Code begins with a requirement that Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life as applying to all holders of public office.<sup>5</sup> These seven principles of public life—selflessness, integrity, objectivity, accountability, openness, honesty and leadership—are then enumerated in the same broad terms as described by that Committee. The Scottish Code on the other hand includes the principles but in an amended form which relates them more directly to a parliamentary context.

29. In its response to the consultation paper, the Committee on Standards in Public Life noted that the appeal of the seven principles appears to lie in their simplicity and clarity and their adaptability to many institutions’ needs. The Committee intends to re-examine the definition attached to the seven principles in the light of research it has recently published on public attitudes towards conduct in public life. Its submission continued:

*“We therefore consider that the House should adopt principles which it considers best fit the purpose. This may (or may not) mean adopting the seven principles in adapted form.”.*

30. One respondent suggested a radical revision which would define the seven principles by reference to the eight remaining rules of personal conduct embodied in the Code of Conduct. This would have the advantage of earthing the seven principles in practical guidelines which are both justiciable and appropriate in a parliamentary setting. Most respondents, however, favoured leaving the seven principles as they are. The Clerk of the House commented:

*“It would not be conducive to public confidence if the House were to substitute its own set of principles for those laid down by the independent Committee on Standards in Public Life.”.*

The Standards Board for England noted:

*“The principles are, of their nature, general and were established by the Committee on Standards in Public Life as generic principles applying to persons in public life. The principles have provided an important interpretive base for the code of conduct for councillors.”.*

It continued:

*“Recasting and contextualising the principles to apply to the roles and responsibilities of Members may ... limit their scope and applicability, in that the Code cannot provide for every situation in which the principles may apply to a Member. The principles should be retained and Members’ further obligations specifically outlined in the Code.”.*

31. Three responses touched on particular aspects of the seven principles. The Government Chief Whip saw benefit in amending the accountability principle so that it referred to accountability to the electorate. Another Member [Hugh Bayley] suggested adding an eighth principle of accessibility to the public: I would not favour this, for the reasons given in paragraphs 25 and 27 above. The Congleton Labour Party was concerned that the Code should make clear that discriminatory behaviour by Members would not be tolerated and suggested adding an eighth principle along these lines:

*“Impartiality—Holders of public office should not discriminate on the grounds of an individual’s race, colour, religion, sex, sexual orientation or any physical or mental illness or disability.”*

Members are, of course, already subject to the general law on discrimination.

32. Given the preponderant view among respondents that there is value in a consistent statement of the seven principles across all areas of public life, I recommend that the seven principles should remain in the Code in their present form. The question whether they should be restated should be taken up again as part of the next review of the Code, once the outcome of the Committee on Standards in Public Life’s own reassessment of the principles is known. The proposal by the Congleton Labour Party for an eighth principle of ‘Impartiality’ is best addressed by that Committee in the context of its wider assessment of the principles as a whole.

### *Recommendation 5*

*There should be no change in the statement of the seven principles of public life in the Code.*

**Question 5: Do any of the eight remaining principles of personal conduct set out in the present Code require amendment or omission? If so, why and in what respects?**

33. Following its incorporation of the seven principles of public life, the existing Code lists eight other principles or rules—many derived from Resolutions of the House—setting out expectations as to how Members will conduct their public life. These vary in their degree of specificity.

34. No respondents suggested abandoning any of these eight rules, nor were many suggestions offered for their amendment. The Government Chief Whip and the Standards Board for England suggested the possible consolidation of the existing rules on paid advocacy and the acceptance of bribes. One Member [Revd Martin Smyth] found the rules on favouring the public over private interest and on paid advocacy too vague. The Clerk of the House did not suggest amending the present rules but thought that:

*“... their separate status should be made clear by some introductory words and ... where the authority for any of the principles is a specific resolution of the House, this should be stated ...”*

35. In the light of responses to the consultation paper I see little merit in tinkering with the wording of the present rules. Although some could no doubt be given greater precision,



this would not be easy to achieve within the modest compass of the Code. Detailed interpretation of the provisions is best left to be made known through the reports and advice notes for Members from time to time approved by the Committee on Standards and Privileges.

### *Recommendation 6*

*The substance of the eight principles or rules of personal conduct should remain as at present. Their presentation should be revised as in the draft revised Code at Appendix 3.*

## **Possible extensions to the Code**

**Question 6: How best might the 2 recommendations by the Committee on Standards in Public Life relating to aspects of the process for enforcing the Code be reflected in its provisions?**

36. In its Eighth Report, the Committee on Standards in Public Life recommended the inclusion in the Code of provisions explicitly requiring Members to cooperate with an investigation by the Commissioner at all stages, and to refrain from lobbying any member of the Committee on Standards and Privileges with the intention of influencing their view of a case. The Committee on Standards and Privileges undertook to consider both matters in the course of the present review.

37. There was unanimous support for these proposals in responses to this review. The Committee on Standards in Public Life favoured the suggestion floated in the consultation paper that they be included in a brief new enforcement section of the Code. The Clerk of the House also favoured their inclusion in a new distinct section of the Code.

### *Recommendation 7*

*Provisions relating to Members' duty to cooperate with an investigation and to refrain from lobbying members of the Committee on Standards and Privileges should be included in a new distinct section of the Code.*

**Question 7: Are new arrangements needed to tackle the selective leaking of evidence given or to be given to an inquiry by the Commissioner and, if so, what should they be?**

38. As discussed in paragraphs 41–46 of the consultation paper, experience in a particular case raised the issue of whether there should be some remedy for the selective leaking to the media of evidence to be given or which had been given to an inquiry by the Commissioner. At present material put into the public domain prior to a complaint being received and investigated by the Commissioner can be the subject of defamation or libel proceedings. Information submitted to the Commissioner thereafter is protected by parliamentary privilege. However, the unauthorised disclosure of any such information would be punishable by the House as a contempt.

39. The consultation paper floated the question whether material placed in the public domain before a complaint was made should be inadmissible in any subsequent inquiry, and whether the Committee on Standards and Privileges should be empowered to pursue any apparent breach of privilege through the leaking of evidence given to an inquiry without having to wait to have the matter referred to it by the House. Respondents to the paper were cautious about either the desirability or practicability of any changes of this sort. Although one Member [Sir Patrick Cormack] suggested that the deliberate leaking by those presenting evidence of that evidence should invalidate it, others, whilst deploring the leaking of evidence, were doubtful about introducing fresh remedies (of possibly dubious utility) in addition to those already available. As another Member [Revd Martin Smyth] put it, “I would tread carefully”. The Government Chief Whip said:

*“I agree that tackling the leaking of evidence presents considerable difficulties. I would not favour a change in the normal convention of issues of privilege going firstly before the Speaker, but if there are other workable remedies that could be considered I would welcome them.”*

40. The Committee on Standards in Public Life was also cautious about making changes in this area:

*“The Committee treats with grave concern any selective leaking of evidence given or to be given to an inquiry which is to be investigated by you as Commissioner. However, we concur with the views and reservations contained in your paper. The House already has procedures in place for dealing with such cases if they involve a Member. We do not therefore consider the introduction of any additional remedies would assist in this matter.”*

The Committee suggested that it might be helpful to refer to the procedures already in place in any new section of the Code on enforcement.

41. I continue to have reservations about adding a provision that might prevent me, and consequently the Committee on Standards and Privileges, from drawing on material simply because there had been prior or unauthorised disclosure. Such a provision might on occasion act to the disadvantage of the Member complained against, or to the interests of the House. There is already reference to some aspects of disclosure in the procedural guidance notes issued to those who complain, those who are the subject of complaints and witnesses. The better course, I suggest, rather than lengthening the Code, might be to see if these references can be strengthened.

### **Recommendation 8**

*No additional remedies should be introduced to prevent the leaking of evidence but the procedural guidance notes issued at the start of an inquiry should be reviewed to see if strengthened reference should be made to the remedies already available in this respect.*

**Question 8: Should the Code be amended to bring complaints that a Member has lied to or seriously misled the House within its scope (and if so, how) or should the regulation of such matters continue to be left as at present? How should the Code be amended to make its scope in this respect clearer?**

42. Paragraphs 47–53 of the consultation paper discussed the suggestion that it should be possible for the Commissioner to examine complaints which allege that a Member has lied to or seriously misled the House in the course of proceedings in the House or in Committee or has spoken words defamatory of a third party. Such behaviour would arguably constitute an abuse of the privilege of freedom of speech in proceedings in the House.

43. One Member [Quentin Davies] argued strongly that to fail to make such complaints capable of investigation by the Commissioner “would be nothing less than an abdication.” Few things, he maintained, could be more destructive of public confidence in Parliament than the idea that Members could get away with telling lies. The Speaker could either investigate himself or refer the matter to the Committee on Standards and Privileges which could ask the Commissioner to do so, or the Commissioner should be able to investigate at his own discretion on receipt of a complaint from elsewhere.

44. Other respondents, whether inside or outside the House, were much more cautious. The Government Chief Whip said:

*“I would be opposed—as I am sure would most Members on all sides of the House—to bringing within the scope of the Code any suggestion that a Member has misled the House.”*

An Opposition Member [Andrew Robathan] commented:

*“I do not really think that bringing complaints about a Member misleading the House before the Committee would be helpful. Very often, these things are subjective”*.

The Father of the House believed that deliberate lying to the House was offensive. A Member should be able to accuse another of doing this where he or she had good grounds for doing so. However, the handling of these matters should continue to rest with the Chair.

45. The Clerk of the House said on this question:

*“I share the perception, articulated in paragraphs 47–51 of the consultation paper, that it was not the intention of the House that allegations of lying to or deliberately misleading the House should be possible subjects of complaint to or investigation by the Parliamentary Commissioner for Standards (unless, of course, the alleged lie related to an issue of personal conduct which might itself be the subject of complaint.) I also share the concerns expressed in paragraphs 52 and 53 about the difficulties and risks inherent in bringing such allegations within the Commissioner’s purview. My answer to Question 8 is therefore no.”*

46. Finally the Committee on Standards in Public Life commented:

*“The Committee believes that the House already has adequate ways of dealing with cases which involve privilege matters. We are aware of the risks if the Code were to be extended to cover explicitly such matters as misleading the House which would inevitably create an overlapping jurisdiction between the Commissioner and the Chair. We firmly believe that it must be for the House itself to decide if a Member has abused its privilege.”*

The Committee went on to note that its research into public attitudes had shown that the public place a high priority on a definition of ‘honesty’ which goes beyond the current, rather narrow description in the seven principles of public life. It was therefore possible that a wider definition of honesty could emerge from the Committee’s planned review of the seven principles.

### *Recommendation 9*

*No change should be made in the present arrangements for handling these matters.*

**Question 9: Should any other aspects of the conduct of Members in the Chamber of the House of Commons or in Committee be included in the Code or should such matters continue to be left to be regulated as at present?**

47. I noted in the consultation paper that the Code of Conduct of the Scottish Parliament includes a number of provisions relating to other aspects of Members’ conduct within the chamber or in committee. In the Westminster Parliament, such matters are currently regulated informally or by the Chair.

48. It was the unanimous view of those who responded to Question 9 that these matters should continue to be regulated by the Chair. A number commented that bringing relatively minor aspects of behaviour within the ambit of the Code could risk trivialising it and lead to a large increase in the number of minor cases before the Commissioner and the Committee on Standards and Privileges.

### *Recommendation 10*

*Members’ conduct in the Chamber and in Committee should continue to be exclusively regulated by the Chair.*

**Question 10: Should the Code be amended to bring within its scope an alleged serious failure by a Member to observe the security requirements of the House?**

49. Following an incident in the Chamber on 19 May 2004, Mr Speaker said that Members sponsoring guests who misbehaved in the gallery would have to apologise to the House and the House would then decide if further action was appropriate.<sup>6</sup> The consultation paper noted that the primary responsibility for investigating alleged breaches of security rests

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<sup>6</sup> *Official Report*, 19 May 2004, Speaker’s statement, col 976.

with the Serjeant at Arms and proposed that this continue to be the practice. It raised the question, however, whether in very serious cases it should be possible for the House (or Mr Speaker) to instruct the Commissioner to investigate such matters formally, as a means of ensuring that the procedures for investigation and adjudication developed in respect of complaints under the Code, with the safeguards they provide accused Members, were deployed in such cases.

50. The majority of respondents were cautious about any innovation of this sort. The Government Chief Whip suggested that the issue was one to be considered in the light of the outcome of the review of security then underway and the Clerk of the House commented “it would be premature at this stage to decide that the existing mechanisms of discipline ... were inadequate.”

51. The then Serjeant at Arms responded, however:

*“I support the contention in Paragraph 56 that it is probably sensible for most alleged security breaches to continue to be dealt with informally by the Serjeant. However my only sanction is to report my findings to the Speaker should serious allegations be made, for example, that a Member had been complicit in a demonstration that disrupted the proceedings of the House. This might lead to formal investigation procedures. I therefore consider it would be helpful if the Code were amended to bring within its scope an alleged serious failure by a Member to observe the security requirements of the House.”*

The House’s Director of Finance and Administration raised a somewhat wider point:

*“There is ... a more general issue—the responsibility of Members for the conduct of their staff, employees, visitors and so on. One possibility would be to add a general clause in the Code saying that Members are responsible for the conduct of their staff (paid or unpaid) and of any visitors they sponsor to come on to the Estate. Such a clause would cover all aspects of their conduct, not just security.”*

52. A step such as the Director proposes would have the effect of widening the Commissioner’s jurisdiction very considerably and could sweep all manner of matters within the ambit of the Code which are at present resolved informally or by the appropriate officer or Committee of the House under the ultimate authority of Mr Speaker. I am hesitant about recommending such a step without clear evidence of a real problem to which it would provide a suitable remedy. On the particular issue of breaches of security, there is a question the House may have at some point to face about how a Member accused of facilitating a serious breach would be dealt with in a manner which ensured some form of due process. This does not, of course, only apply in the case of serious breaches of the House’s rules on security but of serious alleged breaches of its rules on other matters too.

53. However, I do not believe it would be sensible to single out serious breaches of security for particular treatment in this way. Rather I would prefer to handle it as part of a more general change, which would involve giving Mr Speaker the discretion to refer serious breaches of any of the House’s rules to the Committee on Standards and Privileges, and through it for investigation by the Commissioner, in any case in which he judged that the normal manner of handling these matters would be inadequate and that such a reference

would be in the best interests of the House as a whole. I return to this suggestion at paragraphs 78 and 79 below.

### *Recommendation 11*

*The Code should not be amended to bring within its scope an alleged serious failure by a Member to observe the security requirements of the House.*

**Question 11: Should any provision relating to general aspects of conduct be included in the Code (and, if so, which one and in what way) or in so far as such matters need to be regulated should this be left to the obligations falling on Members under the general law?**

54. Paragraph 57 of the consultation paper noted that some codes of conduct explicitly embrace aspects of general conduct, such as a requirement that Members observe equal opportunity principles, do not harass staff or other Members and so on. Two respondents suggested, in reply to Question 11, that the Code should include additional provisions of this sort. As already noted (paragraphs 31–32), the Congleton Labour Party proposed the addition to the Code of a provision requiring Members to act impartially. The Standards Board for England suggested inclusion of a provision on the lines of paragraph 2 of the code of conduct for councillors, which reads:

*“2. a member must—*

- a. promote equality by not discriminating unlawfully against any person*
- b. treat others with respect”.*

The Board commented:

*“Equal opportunities principles are widely accepted contemporary good practice in the private and public sectors and should be included in the Code.”.*

It conceded, however, that:

*“... the majority of the specific accountabilities of Members should continue to fall on Members under general law.”.*

55. Other respondents who commented on this question saw no advantage in duplicating requirements under the general law. The Government Chief Whip said:

*“I see no advantage in making more explicit requirements about general conduct.”.*

The Clerk of the House observed:

*“In practice the distinction between infringements of the Code and breaches of the law may not always be clear cut ... However, I believe that it is right to maintain the distinction as far as is feasible; and reference in the Code to particular provisions of the law which are especially relevant to the day to day activities of Members would inevitably tend to blur the distinction even more ... the general reference in the second public duty to the requirement on Members to “uphold the law” is all that needs to be said on the subject.”.*

56. The question whether the House would wish to include an equal opportunities provision in the Code on the lines proposed by the Standards Board for England is, I suggest, a matter for the judgement of Members, largely as to whether such a provision would have a symbolic significance which would justify its inclusion. Should discrimination be picked out for particular treatment in this way? I doubt whether it would make any difference in practice in terms either of the expectations on Members or of their behaviour, since they are already required to avoid discrimination under the general law. Like the Clerk of the House, I am wary of blurring the line of responsibility for enforcing these matters, which at present rests clearly on the courts. On balance, I would therefore make no change on this point.

### *Recommendation 12*

*No provisions relating to general aspects of conduct, such as equal opportunities matters, should be added to the Code.*

<p><b>Question 12: Should complaints about the alleged abuse of publicly provided facilities by Members be brought clearly within the scope of the Code? If so, how?</b></p>
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57. The consultation paper noted an apparent anomaly in the Code in that while it prohibits improper use of allowances, it does not say the same in relation to other facilities provided by the House authorities, such as free office and computer equipment and free stationery and postage. At present such matters are governed by rules laid down by the Speaker and administered by the Serjeant at Arms, and I forward complaints about them to the Serjeant for investigation. The normal outcome, where abuse of this sort is proved, is that the Member is required to repay the value of eg the stationery or pre-paid envelopes they have misused. This could mean that a Member who misuses a financial allowance is dealt with under the full panoply of the Code whereas one found to have committed a more flagrant abuse of a facility (which might involve the misuse of resources of far greater monetary value) is not. The anomaly can also lead to complications in handling a complaint where, for example, the complaint involves allegations both of abuse of an allowance and of misuse of a facility.

58. I noted in the consultation paper that, while it would seem desirable to rectify this anomaly, it would not be sensible to do so at the expense of involving the Committee on Standards and Privileges and the Commissioner in a mass of relatively trivial complaints relating to the alleged abuse of minor amounts of postage or stationery. I suggested that one way forward might be to bring the principle of abuse of facilities within the scope of the Code, but for the majority of such complaints to continue to be dealt with by the Serjeant, who would then draw any sizable and flagrant abuses of the rules, or abuses which raised important questions of principle, to the attention of the Commissioner for investigation.

59. Two Members, including the Government Chief Whip, did not favour this proposal. The Chief Whip said:

*“I think there would be a problem of definition for the Serjeant at Arms in deciding whether to draw abuses of rules to the attention of the Commissioner. I would not on balance be in favour of bringing such matters into the scope of the Code.”*

60. All other respondents favoured removing the anomaly by bringing abuse of publicly provided facilities within the Code, provided that only major abuses were handled by the Commissioner and minor matters continued to be handled, as now, by the Serjeant. The then Serjeant commented:

*“Here again it would be useful if major abuses or abuses involving important principles could also be brought to the attention of the Commissioner for investigation. I therefore think these complaints should be brought within the scope of the Code but am not clear precisely how this can be done.”*

The Serjeant expected to consult before any decision by him to refer a matter to the Commissioner.

61. The Director of Finance and Administration suggested that one approach would be to draw a distinction not between payments and services but between abuse (ie something major and/or deliberate) and misuse (i.e. something minor, and/or unwitting). He continued:

*“The same principles should apply regardless of whether the alleged impropriety is in relation to money or services. The way forward you suggest in paragraph 60 [of the consultation paper] strikes me as sensible, provided that the same principles are applied both to Members’ use of Parliamentary money and their use of facilities or services.”*

62. The Director’s comment draws attention to a related issue of some importance—the question of establishing a level playing field. At present, misuse of allowances may be detected by the Department of Finance and Administration as it administers and monitors the payments made. When this occurs, the Department will draw the matter to the attention of the Member concerned and require repayment of the sum involved. The matter will not come to my attention unless it is independently the subject of a complaint to me. So a Member who is the subject of a complaint to me for having misused a financial allowance will be subject to the full panoply of the Code, including the punishment to which it may lead, but one who may have committed far greater abuse but is not complained of may only have to repay the sum involved. To put the point differently, if misuse of facilities is to be subject to a two tier approach, with lesser matters being dealt with by the Serjeant, should purely financial matters be similarly treated?

63. Bearing in mind all the preceding points, I suggest that it would be sensible to address this issue in the following way. First, abuse of publicly provided facilities should be clearly brought within the scope of the Code by an appropriate amendment to the penultimate general principle of conduct. Secondly, in respect of complaints falling under this amended principle (which would embrace both financial and facilities or services issues) the Commissioner should be given discretion to remit minor complaints of misuse to the Serjeant at Arms (in respect of facilities) or the Director of Finance (in respect of financial allowances) for them to investigate and resolve. There is a precedent for giving the



Commissioner discretion of this sort in relation to a particular category of complaint in the provision embodied in Standing Order No. 150 (3) which reads:

*“No report shall be made by the Commissioner if, in any case where the Member concerned has agreed that he has failed to register or declare an interest, it is the Commissioner’s opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose.”*

The Commissioner would similarly exercise any discretion he was given in respect of financial or facilities misuse cases within a published framework laid down by the Committee, which would include a financial threshold below which such complaints would be formally referred to the Serjeant or Director of Finance, as appropriate, for disposal.

64. This leaves the question whether there should be any reverse obligation on the Serjeant and Director to refer to the Commissioner matters which come to their attention independent of a reference from the Commissioner, where there is evidence of deliberate abuse or the sums involved fall above whatever financial threshold is laid down by the Committee. In favour of this, it would mean that all Members in respect of whom deliberate misuse of financial allowances or facilities above a certain level is alleged would be dealt with in a similar manner (the level playing field) and that their treatment would not vary depending on whether or not the Commissioner had received a formal complaint. On the other hand, it would be an innovation if the Commissioner were to investigate other than on the basis of a specific authorisation from the Committee on Standards and Privileges in a case in which a complaint had not been lodged. The question would also need to be asked whether such a development would strengthen or weaken the ability of the Serjeant at Arms and the Director to apply the House’s rules in their respective areas effectively.

### *Recommendation 13*

*(a) The misuse of facilities should be brought within the scope of the Code.*

*(b) The Commissioner should be given discretion to refer, within boundaries to be laid down by the Committee on Standards and Privileges, complaints which in his opinion relate to minor or inadvertent instances of misuse of financial allowances or facilities to the Director of Finance and the Serjeant at Arms respectively for appropriate disposal.*

*(c) The House should consider whether to place a reverse obligation on the Director and the Serjeant to refer more significant instances of deliberate misuse which come independently to their attention to the Commissioner for action under the Code.*

These recommendations are also capable of being considered, and if appropriate implemented, independently of one another.

**Question 13: Are there any other respects in which the content of the Code should be strengthened or clarified?**

65. This question elicited only a few positive responses as follows.

66. One Member [George Foulkes] commented that procedures for the way the Commissioner deals with complaints should be spelled out. This has already been done in the form of the procedural notes approved by the Committee. It is not, I suggest, a matter for inclusion in the Code itself.

67. Another Member [Hugh Bayley] suggested that the lodging of trivial or vexatious complaints by a Member should be seen as a breach of the Code “because it brings public confidence in a Member or in the Commons as a whole into disrepute.” The Committee on Standards and Privileges has already indicated (in Procedural Note 6<sup>7</sup>) how it intends to approach such cases. If necessary, in serious cases they could be dealt with under the ‘disrepute’ provision of the Code. I doubt therefore that it is necessary to spell out the making of trivial or vexatious complaints as a separate category of offence under the Code. A fresh look could be taken at this if the steps already taken, which have yet to be tested, prove ineffective.

68. Two members of the public writing from Scotland [Mr Graham Sutherland and Mr Andrew Rosie] suggested that there should be stricter guidelines for MPs as to how involved they should get in matters devolved to the Scottish Parliament, and that since MPs in Scotland no longer had such a wide remit as hitherto the amount of office and support expenses they received could usefully be curtailed. These are not, I suggest, matters appropriately addressed by amendment of the Code of Conduct.

69. Finally, the Director of Finance suggested that the penultimate clause of the existing Code—which provides that “No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.”—should be turned into a more positive obligation on Members to ensure that their use of allowances or services provided by the House is appropriate and above reproach. He proposed a revised provision on the following lines:

*“Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is appropriate and above reproach; and that they observe any limits placed by the House on the use of such expenses, allowances and facilities.”.*

The reference to facilities and services is of course dependent on the outcome of the Committee’s consideration of question 12.

70. I sympathise with the aim behind this suggestion, of turning the negative character of a prohibition into a positive obligation. I wonder, however, whether the phrase “is

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7 Available on the Parliamentary website at [www.parliament.uk/documents/upload/PCFSProcedNote6.pdf](http://www.parliament.uk/documents/upload/PCFSProcedNote6.pdf).

appropriate and above reproach” is rather too general and leaves too much to the judgement of both Members and the Commissioner. Would not a specific reference to the rules laid down by the House in respect of these matters provide Members with a surer point of reference? This would mean replacing the phrase I have mentioned with one along the lines of “is strictly in accordance with the Rules laid down on these matters.” I put this forward for consideration by the Committee, but would not press the change if there were thought to be value in preserving the familiarity of the present wording.

#### *Recommendation 14*

*Consideration should be given to replacing the penultimate provision in the present Code with one more positively expressed, along the lines of:*

*“Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters; and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.”.*

**Question 14: To what extent is a restructuring and re-presentation of the content of the Code necessary or desirable in order to increase its helpfulness to Members and the public? What form should any such re-structuring take?**

71. In paragraph 64 of the consultation paper, I suggested that the Code might be restructured with a view to making it more readily understood by Members, whilst retaining much of the existing content in order to preserve familiarity with its provisions. Most respondents to the review favoured a change along these lines. The Committee on Standards in Public Life commented:

*“We consider the format in paragraph 64 of the consultation paper to be an appropriate way to restructure the Code and thus make it readily intelligible to both Members and the public.”.*

The Government Chief Whip said:

*“The suggested revision under Point 64 would seem to me to be helpful.”.*

72. I also raised the question whether the Code should contain reference to relevant resolutions of the House. The few who commented on this tended not to wish to clutter up the Code in this way, but the Clerk of the House suggested that where the authority for any of the principles of personal conduct set out in the Code is a specific resolution of the House, “this should be stated, perhaps by way of a cross reference to the full text of the resolutions set out in the green section of the Code”, ie the text of resolutions relating to the conduct of Members currently printed as an appendix to the Guide to the Rules.

73. The submission by the Congleton Labour Party commented that the Code uses archaic language at present which many members of the public would find alien. It also argued that the existence and content of the Code should be more widely publicised. On the first point, the formality of the Code’s language reflects the fact that much of it is bedded in various resolutions passed by the House. As it is a document with a formal purpose, some

complexity of language is perhaps inevitable. Given that the primary target audience for the Code is Members and that some continuing familiarity by them with its language is desirable, I am wary about undertaking a complete plain man's revision. I hope, however, that the revision I have suggested will make the text more approachable for all who read it.

74. On the second point, the existence of the Code is already widely known and it is readily available to the public on the web<sup>8</sup> and in hard copy form.<sup>9</sup> Once the House has considered its revision, the Committee may wish to reflect on how it might be more widely publicised.

75. I have prepared a draft of a revised Code, taking into account all the recommendations in this paper, which is attached at Appendix 3 for the Committee's consideration.

### **Recommendation 15**

*The Code should be re-presented along the lines of the revised text at Appendix 3 to this paper.*

## **Political lobbying**

76. I should mention a submission from the Association of Professional Political Consultants (APPC). The APPC did not think it appropriate for the industry they (along with others) represent to comment or advise on the House's internal rules on the behaviour of Members, in as much as their own code of conduct requires political consultants who are members of the Association to observe the rules and traditions of the House. They wished to point out, however, that the APPC code states that "In the view of APPC, it is inappropriate for a person to be both a legislator and a political consultant." The code went on to prohibit APPC members from employing an MP or peer or from making any payment of money or in kind to them, including equity in a member firm. They suggested that it would be helpful for the Code of Conduct for Members to mention this principle.

77. The House's resolution of 15 July 1947 (as amended on 6 November 1995 and 14 May 2002) bans lobbying by Members for reward or consideration. Extensive guidance on the application of this resolution and on related provisions about the registration and declaration of interests is given in the Guide to the Rules on the Conduct of Members approved by the House. There is no evidence that it is necessary to add to what the House has already said on this point. However, it is reassuring to know of the provision in the APPC code, and by means of this paper to be able to draw attention to it.

## **Discretion for Mr Speaker to refer matters to the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards**

78. In paragraph 53 above (in the context of a discussion about alleged breaches of the House's rules on security by Members) I suggested that it might be helpful for Mr Speaker

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8 See [www.publications.parliament.uk/pa/cm200102/cmselect/cmstand/841/84101.htm](http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstand/841/84101.htm).

9 The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members, HC 841 (2001–02).

to have discretion to refer alleged serious breaches of the House's rules on matters other than the Code for investigation by the Commissioner and adjudication and report to the House by the Committee on Standards and Privileges where he judged such a reference to be in the House's best interest. I envisage that such a discretion would only be exercised in exceptional circumstances and in serious cases.

79. I make this suggestion not out of any desire to widen the reach of the Committee and the Commissioner but because it is possible to conceive of circumstances in which serious breaches of the House's rules which quite properly would not fall within the ambit of the Code could nonetheless best be addressed by deploying the investigatory and adjudicatory expertise accumulated by, respectively, the office of the Commissioner and the Committee, with all the safeguards the procedures agreed by the House for investigations under the Code provide for an accused Member. A development of this sort would not require amendment of the Code. If agreed to, it might be considered sensible to amend Standing Orders Nos 149 and 150 so as to include such references by the Speaker formally in the duties of the Committee and the Commissioner.

#### *Recommendation 16*

*Mr Speaker should have discretion to refer any serious breach of the House's rules falling outside the Code to the Commissioner and the Committee on Standards and Privileges for investigation and adjudication, if he thinks this would be in the best interests of the House.*

### **Conclusion**

80. It remains only for me to thank those who contributed to the review by their responses to the consultation paper. The overwhelming thrust of the responses was to confirm the view that the Code has so far generally withstood the test of time; to favour modest change where there was a clear need; and otherwise to wish to maintain the relative brevity and language of the existing Code while improving its presentation. I hope that the recommendations in this paper, taken as a whole, adequately reflect just such an approach, and I commend them for consideration by the Committee and, if it thinks fit, by the House.

*10 February 2005*

*Sir Philip Mawer*

# Appendices to Appendix 1

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## Appendix 1: The Code of Conduct as approved on 14 May 2002

*Prepared pursuant to the Resolution of the House of 19 July 1995*

### I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

\*

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

### II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

\*

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

\*

Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

### III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life as applying to holders of public office:<sup>1</sup>

#### *“Selflessness*

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

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<sup>1</sup> Cm 2850, p 14.

*Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

*Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

*Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

*Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

*Leadership*

Holders of public office should promote and support these principles by leadership and example.”

\*

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

\*

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

\*

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

\*

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members’ Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

\*

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

\*

No Member shall act as a paid advocate in any proceeding of the House.

\*

No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

\*

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.



## Appendix 2: List of respondents to the Commissioner's Consultation Paper

### *Members of the House of Commons*

Hilary Armstrong MP	<i>Government Chief Whip</i>
Tony Baldry MP	
Hugh Bayley MP	
Des Browne MP	
Sir Patrick Cormack FSA MP	
Tam Dalyell MP	<i>Father of the House</i>
Quentin Davies MP	
Julia Drown MP	
Rt Hon George Foulkes MP	
Andrew Robathan MP	
Rev Martin Smyth MP	
Ann Winterton MP	

### *Other respondents*

Roger Creedon	<i>Chief Executive, The Electoral Commission</i>
Sir Michael Cummins	<i>Serjeant at Arms, House of Commons</i>
Dr J A T Dyer	<i>Scottish Parliamentary Standards Commissioner</i>
Robert Eyre	
Sir Alistair Graham	<i>Chairman, Committee on Standards in Public Life</i>
Sir Anthony Holland	<i>Chairman, The Standards Board for England</i>
Nicholas Milton	<i>Labour Prospective Candidate for Congleton</i>
Andrew Rosie	
Alan Sandall	<i>Former Clerk of the Committee on Standards and Privileges</i>
Roger Sands	<i>Clerk of the House of Commons</i>
Lord Satchi	<i>Joint Chairman, Conservative Party</i>
Bernard Shapiro	<i>Canadian Ethics Commissioner</i>
Warwick Smith	<i>Chairman, Association of Professional Political Consultants</i>
Graham Sutherland	
Andrew Walker	<i>Director of Finance and Administration, House of Commons</i>

## Appendix 3: Draft revised Code of Conduct

### I. Purpose of the Code

1. The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by:

- a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing
- b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties.

### II. Scope of the Code

2. The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.

### III. Public Duties of Members

4. By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

5. Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

6. Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

### IV. General Principles of Conduct

7. In carrying out their parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office.<sup>1</sup> These principles will be taken into consideration when any complaint is received of breaches of the provisions in other sections of the Code.

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<sup>1</sup> Cm 2850-I, p 14.

*“Selflessness*

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

*Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

*Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

*Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

*Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

*Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

*Leadership*

Holders of public office should promote and support these principles by leadership and example.”

## **V. Rules of Conduct**

8. Members are expected in particular to observe the following rules and associated Resolutions of the House.

9. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

10. No Member shall act as a paid advocate in any proceeding of the House.<sup>2</sup>

11. The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.<sup>3</sup>

12. In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

13. Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

14. Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.

15. Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

## **VI. Registration and Declaration of Interests**

16. Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.<sup>4</sup>

## **VII. Duties in respect of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges**

17. The application of this Code shall be a matter for the House of Commons, and for the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards acting in accordance with Standing Orders Nos 149 and 150 respectively.

18. Members shall cooperate, at all stages, with any investigation into their conduct by or under the authority of the House.

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2 Resolution of 6 November 1995.

3 Resolutions of 2 May 1695, 22 June 1858, and 15 July 1947 as amended on 6 November 1995 and 14 May 2002.

4 Resolutions of the House of 22 May 1974, 12 June 1975 as amended on 19 July 1995, 12 June 1975, 17 December 1985, 6 November 1995 as amended on 14 May 2002, and 13 July 1992.

19. No Member shall lobby a member of the Committee on Standards and Privileges in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.

## Appendix 2: Note from the Parliamentary Commissioner for Standards

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### Review of the Code of Conduct: Possible Provision on Members' Commitment to Equality

1. At the Committee's last meeting it was suggested that the revised Code of Conduct should include a statement on Members' commitment to equality. At the moment Members are shielded from complaints alleging discrimination, for two reasons. First I am advised that it is doubtful whether in dealing with his or her constituents a Member is within the scope of the discrimination legislation. Secondly, there is no explicit provision in the Code. If, however, an explicit provision were included, that situation could alter. I was asked to offer reflections to inform a resumed discussion in the Committee.
2. The Committee may first want to consider the balance of argument in favour of the inclusion of an equal opportunities or anti-discrimination provision. On the one hand, no one would, I believe, question the importance of the principle such a provision would enshrine. Including it would send a powerful signal of Members' commitment to this principle.
3. On the other hand, a range of anti-discrimination and equal opportunities provisions are already included in the law. The Code recognises the obligation on Members to uphold the law. Would adding an anti-discrimination provision to the Code add anything in practice to the obligations already on Members in this respect and to the remedies open to those alleging discrimination?
4. Members' duty to obey the law derives from the law itself, not from the Code. Making compliance with one area of the general law an explicit duty under the code might be thought to undermine that principle. And some may ask why this particular aspect of the legal obligations on Members merits being picked out over and above all the other obligations. What reply would the Committee wish to offer to such a question?
5. If, on the other hand, there is a wish that higher standards should apply to Members than the general law requires, it would be necessary to spell the intentions out explicitly in the Code. Before embarking on this route, the Committee will wish to consider what these higher standards might be, and the justification for seeking to impose them.
6. It is for Members to weigh these conflicting arguments of principle. I have some questions at the practical level which I invite the Committee to consider. These revolve, first, around the possibility that introducing an explicit anti-discrimination provision into the Code would open the door to a stream of 'level of service' complaints from disgruntled constituents alleging that their Member's failure to deliver what they want is a reflection of some discriminatory attitude or behaviour on the Member's part. I note in paragraph 18 of

my memorandum on the review of the Code<sup>1</sup> the difficulty experienced by the Scottish Parliamentary Standards Commissioner in assessing “level of service” complaints.

7. Another area that might be opened up is complaints of discrimination from Members’ staff. Insertion of an explicit provision in the Code would provide an additional, and potentially confusing, avenue of redress to that already provided in law.

8. My final practical question is about the potential difficulty of investigating and adjudicating on such complaints. We would be dealing here with an area in which perceptions as well as facts are important and in which finding evidence which would objectively demonstrate the truth or otherwise of complaints could be difficult. I am not saying this would be impossible but it would pose a new challenge for Commissioner and Committee.

9. If, having weighed the arguments of principle and practice, the Committee wishes to proceed with inclusion of an anti-discrimination provision, how might it be framed? At the Committee’s last meeting, Members were inclined to favour adding something to the statements of public duty in section II of the present Code (section III of the revised draft Code at Appendix 3 of my memorandum<sup>2</sup>). Favourable reference was made in discussion to the proposal by the Standards Board for England that a provision on the lines of paragraph 2 of the Code of Conduct for councillors might be included. This reads:

“2. A Member must—

- a. promote equality by not discriminating unlawfully against any person;
- b. treat others with respect.”

It was suggested that some suitable words might be quarried from this.

10. I have identified 2 possible options. First it would be possible to add some words to the principle about the public duty of Members to uphold the law already in section II of the present Code. For example, this could be amended to read (additional words in italics):

“Members have a duty to uphold the law, *including the general law against discrimination*, and to act on all occasions in accordance with the public trust placed in them.”

This would have the advantage of making clear that the Code was not seeking to impose on Members obligations other than those they already carry under the general law, although placing the additional words in this provision would emphasise the fact that this particular aspect of the law was being highlighted above all other aspects.

11. A possible alternative would be to add something to the “disrepute” provision in section III of the present Code (section V of the revised Code) so that this might read (again, additional words in italics):

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1 Appendix 1, p 18.

2 Appendix 1, p 40.

“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of Parliament and shall not unlawfully discriminate. They shall never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.”

12. Of these two alternatives, I am inclined to favour the former.

13. I invite the Committee to decide:

- a) Whether it wishes to recommend the inclusion of an equal opportunities/anti-discrimination provision in the revised Code;
- b) If it does, which of the possible alternative options for achieving this it prefers.

*16 March 2005*

*Sir Philip Mawer*



# Formal minutes

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**Thursday 17 March 2005**

Members present:

Sir George Young, in the Chair

Mrs Angela Browning  
Mr Wayne David  
Mr Andrew Dismore

Mr Andrew Mackay  
Mr Kevin McNamara  
Mr Stephen Pound

The Committee deliberated.

Draft Report [Review of the Code of Conduct], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Annex agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Appendices to the Report be reported to the House.—(*The Chairman.*)

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[Adjourned till Tuesday 5 April at 9.30 am

## Reports from the Committee on Standards and Privileges in the current Parliament

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### Session 2004–05

First Report	Conduct of Mr Anthony Steen	HC 71
Second Report	Conduct of Mr David Blunkett	HC 189
Third Report	Conduct of Mr Jonathan Sayeed	HC 233
Fourth Report	Review of the Code of Conduct	HC 472
Fifth Report	Conduct of Mr Jonathan Sayeed: Further Report	HC 473

### Session 2003–04

First Report	Conduct of Mr George Galloway	HC 73
Second Report	Conduct of Ms Diane Abbott	HC 285
Third Report	Conduct of Mr John Spellar	HC 339
Fourth Report	Conduct of Mr Iain Duncan Smith	HC 476 I–III
Fifth Report	Privilege: Protection of a Witness	HC 447
Sixth Report	Privilege: Protection of a Witness (Government Response)	HC 1055

### Session 2002–03

First Special Report	Standards of Conduct: Letters from the Committee on Standards in Public Life	HC 516
First Report	Complaint against Mr Nigel Griffiths	HC 195
Second Report	Eighth Report of the Committee on Standards in Public Life: "Standards of Conduct in the House of Commons"	HC 403
Third Report	Complaints against Mr Michael Trend	HC 435
Fourth Report	Complaints against Mr Henry McLeish	HC 946
Fifth Report	Complaints against Mr Clive Betts	HC 947
Sixth Report	Pay for Select Committee Chairmen	HC 1150
Seventh Report	Guidance for Chairmen and Members of Select Committees	HC 1292

### Session 2001–02

First Report	Complaint against Mr Geoffrey Robinson: Supplementary Report	HC 297
Second Report	Complaint against Mr Roy Beggs	HC 319
Third Report	Complaint against Mr John Maxton	HC 320
Fourth Report	Restrictions on the Initiation of Parliamentary Proceedings: A Consultation Paper	HC 478
Fifth Report	Complaints against Mr Keith Vaz	HC 605 I–II

Sixth Report	Registration of Interests by Members who have not taken their seat	HC 624
Seventh Report	Complaints against Mr Nigel Griffiths	HC 625
Eighth Report	Complaints against Mr Archy Kirkwood	HC 755
Ninth Report	A new Code of Conduct and Guide to the Rules	HC 763
Tenth Report	Complaint against Mr Peter Brooke	HC 1147