



House of Commons
Committee on
Standards and Privileges

**Power of the
Parliamentary
Commissioner for
Standards to initiate
investigations**

Seventh Report of Session 2010–11

Report together with formal minutes

*Ordered by The House of Commons
to be printed 2 November 2010*

The 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 Kevin Barron MP (*Labour, Rother Valley*) (Chair)
Sir Paul Beresford MP (*Conservative, Mole Valley*)
Annette Brooke MP (*Liberal Democrat, Mid Dorset and North Poole*)
Rt hon Tom Clarke MP (*Labour, Coatbridge, Chryston and Bellshill*)
Mr Geoffrey Cox MP (*Conservative, Torridge and West Devon*)
Mr Jim Cunningham MP (*Labour, Coventry South*)
Matthew Hancock MP (*Conservative, West Suffolk*)
Mr Oliver Heald MP (*Conservative, North East Hertfordshire*)
Heather Wheeler MP (*Conservative, South Derbyshire*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

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.

Committee staff

The current staff of the Committee are Mr Steve Priestley (Clerk), Miss Rhiannon Hollis (Second Clerk) and Ms Jane Cooper (Committee Assistant).

Contacts

All correspondence should be addressed to The Clerk of the Committee on Standards and Privileges, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615.

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Power of the Parliamentary Commissioner for Standards to initiate investigations

Background

1. In its Twelfth Report, published in November 2009, the Committee on Standards in Public Life (CSPL) recommended that the Parliamentary Commissioner for Standards should have power to initiate an investigation into whether a Member may have breached the rules of the House or the Code of Conduct, without receiving a complaint.¹ At present, the Commissioner may investigate a matter only after receiving a formal complaint or, in exceptional circumstances and with the agreement of this Committee, at the request of the Member concerned.² Both the House of Lords Commissioner for Standards and the Independent Parliamentary Standards Authority (IPSA) Compliance Officer have the power to investigate a matter without receiving a formal complaint.

The case for a new power

2. The CSPL argued that “it would be sensible to increase the powers of the Parliamentary Commissioner for Standards by allowing him or her to conduct investigations proactively without waiting for a formal complaint.”³ It did not elaborate on why the change would be “sensible”, but our predecessor Committee did not dissent from this view and neither do we.⁴ There would appear to be no logic in the House of Commons’ Commissioner having fewer powers to initiate investigations than are possessed by his counterparts.

3. In addition, it is necessary in our view that the Commissioner should be able to carry out an inquiry pursuant to a finding by the Compliance Officer that a Member has breached the current House of Commons Allowances Scheme. Under the Parliamentary Standards Act 2009 as amended, the Compliance Officer has power to require reimbursement by a Member of sums that have wrongly been paid to him. The Compliance Officer also has limited powers to recover costs, although neither the Compliance Officer nor IPSA have power to impose a Parliamentary sanction on a Member, such as suspension of salary or suspension from the service of the House. Neither may they require a Member to apologise in person, on the floor of the House. Only the House may impose such a sanction. It does so following a recommendation to that effect by this Committee.

4. We therefore see a need for the Commissioner, who is independent of the Committee, to be able to form a view, if necessary following an investigation, as to whether a case reported on by the Compliance Officer may have involved a breach of the rules of the House or of the Code of Conduct. We anticipate that the Compliance Officer will wish to refer to the Commissioner any case which in his judgment raises issues which the House should be

¹ CSPL, 12th Report, *MPs’ allowances and expenses*, Cm 7724, recommendation 50

² See Standing Order No 150(2)(e) and paragraph 5, below

³ CSPL, 12th Report, paragraph 13.66

⁴ See the Committee’s Second Report, Session 2009–10, *Implementing the Twelfth Report from the Committee on Standards in Public Life*

invited to consider. However, the decision whether to carry out an investigation into a possible breach should be for the Commissioner, who should base his decision, as he bases his decisions in relation to complaints, on whether there is sufficient evidence to justify taking the matter further. Where he finds that there has been a breach of the rules of the House or of the Code of Conduct, he will be able to make a report to this Committee, so that we may decide what if any Parliamentary sanction to recommend to the House.

5. The change we are proposing to the Standing Order would also bring the Standing Order into line with the procedure approved by the House in the Guide to the Rules, which allows the Commissioner in exceptional circumstances to accept, with the agreement of the Committee, a request by a Member for an investigation into an allegation against him or her in the absence of a complaint.⁵ If the proposed change is made, the Commissioner will be able, if he sees fit, to accept a Member's request as providing sufficient evidence to justify taking the matter further. Nonetheless, we suggest that the Commissioner should still seek the agreement of the Committee before he accepts a Member's self-referral request. Investigations into matters referred by the Member concerned should continue to be undertaken in exceptional circumstances only, which would normally relate to the seriousness of the allegation against the Member. We do not wish the Commissioner's resources to be monopolised by Members seeking to clear their names against allegations that may lack substance.

Possible adverse consequences and how to avoid them

6. Our predecessor Committee drew attention to the possibility that providing the Commissioner with a power to initiate investigations in the absence of a complaint might require a significant increase in the resources available to him.⁶ We agree that there is a risk that the creation of a power for the Commissioner to initiate investigations might encourage public expectations that each and every media report alleging impropriety by a Member will be fully investigated or that the Commissioner will go on fishing expeditions for evidence of breaches. The resource implications of this would, indeed, be potentially enormous. There is also a risk that the effectiveness of the Commissioner's operations would be damaged. We are concerned to avoid such a situation arising.

7. Our predecessors recognised this danger by observing that it would be particularly important for there to be a firm evidential basis for any decision by the Commissioner to carry out an investigation in the absence of a complaint. We agree, and our proposed amendment to the Standing Order takes full account of this important requirement. Nonetheless, we trust that the House will continue to provide the Commissioner with the resources he needs to discharge fully the responsibilities placed upon him and we would expect him to inform us immediately were he to feel that necessary resources were lacking.

⁵ The Code of Conduct together with the Guide to the Rules relating to the conduct of Members, 2009, paragraph 104. See also the Fifth Report from the Committee, Session 2002–03.

⁶ Second Report, Session 2009–10, paragraph 14

Recommendation

8. We recommend that Standing Order No 150 be amended, by leaving out paragraph (1)(e) and inserting in its place:

(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards and Privileges or to an appropriate sub-committee thereof unless the provisions of paragraph (3) apply.

(2A) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.

Formal minutes

Tuesday 2 November 2010

Members present:

Mr Kevin Barron, in the Chair

Sir Paul Beresford

Mr Oliver Heald

Annette Brooke

Heather Wheeler

Mr Tom Clarke

Dr Alan Whitehead

Matthew Hancock

Draft Report (Power of the Parliamentary Commissioner for Standards to initiate investigations), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 8 read and agreed to.

Resolved, That the Report, as amended, be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 16 November at 9.30 am