House of Commons
Procedure Committee

Lay membership of the Committee on Standards and Privileges

Sixth Report of Session 2010–12

Report, together with Appendix, formal minutes, oral and written evidence

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The Procedure Committee

The Procedure Committee is appointed by the House of Commons to consider the practice and procedure of the House in the conduct of public business, and to make recommendations.

Membership during the Session

Rt Hon Greg Knight MP (Conservative, Yorkshire East) (Chair)
Karen Bradley (Conservative, Staffordshire Moorlands)
Mrs Jenny Chapman (Labour, Darlington)
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John Hemming (Liberal Democrat, Birmingham Yardley)
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The following Members were also members of the Committee during the Parliament:
Andrew Percy (Conservative, Brigg and Goole)
Bridget Phillipson (Labour, Houghton and Sunderland South)
Angela Smith (Labour, Penistone and Stocksbridge)
Sir Peter Soulsby (Labour, Leicester South)
Mike Wood (Labour, Batley and Spen)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 147. These are available on the Internet via www.parliament.uk.

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 http://www.parliament.uk/proccom.

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Summary

On 2 December 2010 the House of Commons resolved:

That this House agrees with the principle as set out in the Twelfth Report from the Committee on Standards in Public Life that lay members should sit on the Committee on Standards and Privileges; and invites the Procedure Committee to bring forward proposals to implement it.

This Report is the result of our consideration of the privilege implications and practical considerations of lay membership of the Committee on Standards and Privileges. Mindful that the House has agreed to the principle of lay membership of that Committee and asked us only to bring forward proposals to implement it, we have not sought to make the arguments against the addition of lay members. Nevertheless, it may well be that, having considered the examination of the practical and privilege implications as set out in our report, the House may wish to reconsider its view of the principle. We recommend that the motions put to the House in relation to this report be preceded by an opportunity for the House to restate its acceptance of the principle behind the CSPL proposal that lay members be added to the Committee on Standards and Privileges.

We consider that the participation of lay members should extend only to standards issues, and not matters relating to privilege. We therefore recommend that the Committee on Standards and Privileges be divided into two separate committees and that lay members be included only in the committee responsible for standards.

We have considered a number of examples, from this House and from elsewhere in the Commonwealth, of the participation in committee proceedings of persons who were not elected Members of the House. We have also considered very carefully the issues of privilege arising, specifically whether addition of lay members to a committee would alter its character to such an extent as to cast doubt on whether its proceedings were actually proceedings in Parliament protected by Parliamentary privilege. And we have considered the arguments for the participation of lay members with full voting rights, or without such rights but with other safeguards to their contribution to the work of the Committee. Following these considerations, we invite the House to study with care the arguments made for the inclusion of lay members with or without voting rights and to decide whether lay members should be appointed to the Committee on Standards with full voting rights or whether they should be appointed with more limited rights protected by rules on quorum and publication of their opinion or advice. In the case that the advantages in terms of credibility and the increased contribution suitably qualified lay members could make are deemed sufficient to justify full membership of the committee, we recommend that the Government bring forward legislation to put beyond reasonable doubt any question of whether parliamentary privilege applies to the Committee on Standards where it has an element of lay membership.

If the House re-affirms that it wishes to see lay members appointed, we recommend that initially two lay members be appointed to the Committee on Standards but that the position be kept under review in case experience proves that three lay members would
enhance the efficiency and effectiveness of the committee. The quorum of that Committee should be five elected Members plus one non-elected member for all business of the committee; and the Committee should continue to be chaired by an elected Member drawn from the Opposition side of the House.

We consider that the process used for the recruitment of the external members of the Speaker’s Committee on the IPSA provides an appropriate model for the recruitment of the lay members of the Committee on Standards. We agree with those who argue that the process needs to be transparently independent of the Committee itself but accept that it would be beneficial to the process if the Chair or another member of that Committee were to be represented on the interviewing panel. Lay members should be appointed to and dismissed from the Committee on Standards only by resolution of the House; and should serve a single non-renewable term of five years.
1 Introduction and background

1. In November 2009 the Committee on Standards in Public Life (CSPL), chaired by Sir Christopher Kelly, recommended that there should be at least two lay members who have never been parliamentarians on the Standards and Privileges Committee of the House of Commons.1 This recommendation emanated from evidence from the then Chair of the Standards and Privileges Committee, Sir George Young, to the effect that “we would be very happy to consider having outside members sitting on the Standards and Privileges Committee, not least to allay the concerns that you mentioned earlier, [...] about how we might recalibrate our disposals to conform with public expectations”.2 The CPSL proposals were endorsed by the Committee on Standards and Privileges, then under the chairmanship of David Curry MP, later in November 2009 in a report on Implementing the Twelfth Report from the Committee on Standards in Public Life.3 The Committee’s report also made suggestions for how the appointment of lay members to the Committee could work in practice.

2. Some time after the General Election, on 2 December 2010 the House of Commons debated the principle of lay membership and resolved:

That this House agrees with the principle as set out in the Twelfth Report from the Committee on Standards in Public Life that lay members should sit on the Committee on Standards and Privileges; and invites the Procedure Committee to bring forward proposals to implement it.4

In the debate the Deputy Leader of the House, David Heath, expressed the support of the Government for the proposal that “the Standards and Privileges Committee should be strengthened by the presence of lay members” on the grounds that “the presence of members from outside Parliament will help build people’s confidence in our system of compliance”.5 Helen Jones, speaking for the Official Opposition, also commended the motion, raising concerns only about matters of implementation and not about the principle or rationale.6 This was true of all those who participated in the debate.

3. In response we announced an inquiry with the following terms of reference:

To inquire into the privilege implications and practical considerations of lay membership of the Committee on Standards and Privileges, including the structure of the Committee, the participation of non-Members in select committee meetings and decisions, the number of lay members and the quorum, the appointments process for lay members and other relevant matters; and to make recommendations.

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1 Twelfth Report, MPs’ expenses and allowances (Cm 7724, November 2009) (hereafter “CSPL report”)
2 CSPL report, para 13.67
3 Second Report of Session 2009–10, HC 67
4 Votes and Proceedings, 2 December 2010, p.502
5 HC Deb, 2 December 2010, c1002
6 Ibid., c1005-8
We are grateful to those who responded to our request for written evidence and to Sir Malcolm Jack, the then Clerk of the House, Sir Christopher Kelly, the Chair of CSPL, Kevin Barron, Chair of the Committee on Standards and Privileges, and Bernard Jenkin, Chair of the Public Administration Select Committee, for giving oral evidence.

4. In this report we examine the principle behind appointing lay members to the Committee on Standards and Privileges, relevant precedents, privilege concerns arising from the proposal and practical considerations relating to matters such as the quorum and the appointments process. We use the terms “lay members” and “external members” interchangeably, as do our witnesses, to mean people who are not elected Members of the House of Commons.

2 Principle

The CSPL recommendation

5. The CSPL recommendation relating to lay members was made in the context of a programme of proposals for reform of MPs’ expenses and allowances and for strengthening regulation and enforcement. Recommendation 51 in full reads that:

There should be at least two lay members who have never been parliamentarians on the Standards and Privileges Committee. Their appointment should be made in the same way as that of the lay members of the Speaker’s Committee of the independent regulator [ie chosen through the official public appointments process and formally approved by the House].

6. Linked to this was the question of the status of lay members on the Committee on Standards and Privileges. In recommendation 52 the CSPL stated that:

The external members of both the Standards and Privileges Committee and the Speaker’s Committee of the independent regulator should have full voting rights. If the House authorities are of the opinion that clarifying the question of parliamentary privilege in that regard requires an amendment to the Parliamentary Standards Act, the Government should facilitate this.

The CSPL considered that full voting rights were necessary if external members were to carry any credibility. The reference to the “House authorities” was a recognition of the concern registered by the Clerk of the House that it was not clear to him that the participation of external members in decision-making by voting is in fact covered by parliamentary privilege.

7. The CPSL did not define what it meant by “full voting rights” but the Committee on Standards and Privileges interpreted it as meaning that “lay members will be able to vote
on any matter relating to a standards case that is before the Committee—including proceedings on a draft Report—and on any matter that relates to standards in general”. The Committee’s interpretation has not been questioned, and we therefore have used the term in this sense throughout our inquiry and report.

8. The CSPL had previously touched upon the subject of external members in its Eighth Report on *Standards of Conduct in the House of Commons* (Cm 5663, published November 2002). At that time, evidence from Lord Nicholls, the Bar Council and Robert Kaye of the LSE supported the case that the Commons should follow the example of professional bodies such as the GMC and the Bar Council in having lay involvement in its disciplinary processes. The Bar Council argued at that time that “The presence of lay members provides a safeguard both to the public and to the professionals”. On the other hand, the CPSL found that “there are significant hesitations in the House about the acceptance of lay members in even an advisory capacity on the Committee on Standards and Privileges.” It concluded that “While we recognise that a strong case can be made for some lay membership of the Committee on Standards and Privileges, we do not think it necessary to recommend it at this stage”. The CSPL instead recommended a package of other measures to strengthen the existing system (for example, relating to the quorum, membership of the Committee and the independence of the Commissioner), most of which were subsequently adopted by the House.

**Rationale for adding lay members to the Committee**

9. The rationale given by the CPSL for the addition of lay members to the Committee on Standards and Privileges was that it would be “one step towards enhancing public acceptance of the robustness and independence of the disciplinary process for Members of Parliament”. The Chair of the CPSL, Sir Christopher Kelly, expanded on this in evidence to us when asked for reasons for believing that the presence of lay members would increase public confidence in the system:

One is because I think it is almost certainly likely to be the case that having an independent viewpoint injected into the deliberation of any body of this kind is likely to add to the quality of decision making; it is nothing about the integrity of other people on whatever the committee, it is simply the notion that it is almost always helpful to have independent insight. The second is because I think some of the decisions that the committee takes—or indeed, that other disciplinary bodies take—are often complex and misunderstood, and some of the reaction to decisions that may look a bit odd is often because people have not understood the full range of circumstances that have been taken into account when the decision was taken. In those circumstances, I think it is helpful for people to know that there has been some independent input and it is not

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10 Committee on Standards and Privileges, Second Report of Session 2009–10, HC 67, para 5
11 Cm 5663, para 7.11
12 Cm 5663, para 7.12
13 Cm 5663, para 7.13
14 CSPL report, para 13.67
simply peers judging peers, with a suspicion that that might mean that they are looking after their own.\textsuperscript{15}

Sir Christopher saw it as a question of “the House of Commons showing leadership in maintaining its own credibility in an area in which almost every other profession has already moved”\textsuperscript{16} and argued that it would deflect criticism of decisions by the Committee by providing the defence that “This is not just the view of MPs judging their peers or even allowing party political considerations to play a part, because there were these fine, upstanding lay members who also played a part in the committee.”\textsuperscript{17}

10. The CPSL position found some support amongst other submissions to our inquiry. For example, Chris Mullin, former Member for Sunderland South, considered that “much of the criticism [of reports from the Committee on Standards and Privileges in the previous Parliament] was unfair and often based on a misunderstanding, wilful or otherwise” but he also accepted that “There is, however, an issue of perception that, in the light of recent events, needs urgently to be addressed. It has to be recognised that the days are over when professions—whether they be lawyers, doctors, policemen or even journalists—can be entirely self-regulating and hope to retain the respect of the public.”\textsuperscript{18} He believed that “the time has come to add lay members to the committee”.\textsuperscript{19} Another supporter, the former Parliamentary Commissioner for Standards, Sir Philip Mawer, pointed out that in addition to the part lay members would play in considering individual cases, “they will have an equally important role in bringing an external perspective to bear on the operation of the House’s disciplinary arrangements as a whole, and in helping the Committee on Standards and Privileges determine how, on the basis of the advice it receives from the Commissioner, it should in turn advise the House on the modification or improvement of these arrangements”.\textsuperscript{20}

11. Within the House, the strongest support has come from the Committee itself. Kevin Barron, the current Chair of the Committee, stressed that it was not the case that the Committee on Standards and Privileges “have to have” lay members; rather they “have asked for them”.\textsuperscript{21} He himself remained “very much in favour of this happening”.\textsuperscript{22} He considered that “lay members could have a very good role to play as a full member of the Committee, hopefully giving some assurance that what we are doing, and the decisions we are coming to with fellow professionals in here, is something that the public can have more confidence in.”\textsuperscript{23}

12. Other witnesses to our inquiry, including those with experience of the Committee, did not accept this rationale. Sir Malcolm Rifkind, former Chair of the Committee, for

\begin{footnotes}
\item[15] Q65
\item[16] Q84
\item[17] Q90
\item[18] Ev 22
\item[19] Ibid.
\item[20] Ev 29–30
\item[21] Q 31
\item[22] Q 31
\item[23] Q 32
\end{footnotes}
example, was “unconvinced as to the need for lay membership” and “doubtful as to any added value it would provide”. We are aware that Sir Malcolm’s views are shared by an unknown but significant number of other Members of the House. The Chair of the Public Administration Select Committee, Bernard Jenkin, described the proposal as part of “a fashion” and “a strong public perception” that “somehow people outside politics are more objective in giving opinions and making judgements about people in politics than people in politics themselves”. He believed that “some of the resistance that we instinctively feel for this is extremely justified” but he accepted that “we have to accommodate the public perceptions and respond to the public concerns that I think Sir Christopher was expressing”.

Endorsement of the principle by the House

13. We fully recognise that the events of recent years have had a devastating impact on public confidence in standards in the House and it is understandable that opening up the disciplinary system of the Commons in the same way as other professional bodies might be regarded as a necessary and positive step towards rebuilding the relationship between Parliament and the public. The debate on 2 December 2010 reflected this background.

14. In the light of this, we have conducted our inquiry mindful that the House has agreed to the principle and asked us only to bring forward proposals to implement it. We have approached our task on that basis and have not sought to make the arguments against the addition of lay members. Nevertheless, having taken evidence as we have been invited to do and having explored the issues in greater depth than perhaps was possible at the time of the 2010 debate, we feel that it is right to register our concern at the level of unease felt by many Members about the House’s decision of 2 December. It may well be that, having considered the examination of the practical and privilege implications as set out in our report, the House may wish to reconsider its view of the principle of adding lay members to the Committee on Standards and Privileges. We recommend that the motions put to the House in relation to this report be preceded by an opportunity for the House to restate its acceptance of the principle behind the CSPL proposal that lay members be added to the Committee on Standards and Privileges.

Lay members and privilege matters before the Committee

15. The Committee on Standards and Privileges as currently constituted has two areas of responsibility. In taking forward our inquiry into how lay members could be added to the Committee to investigate standards issues, we have not lost sight of the Committee’s role in investigating specific matters relating to privileges. We are firmly of the view that lay members could have no proper part to play in Committee proceedings on privilege matters and we note that this view is widely shared by those who have voiced their opinions, including in the debate of 2 December 2010. We understand that this is in keeping with the spirit of the CSPL recommendation since the Committee on Standards and Privileges has
been given to understand from the CSPL that “there was never any intention on the part of the CSPL to suggest that lay members should be able to participate in or vote on matters relating to privilege”.27

16. The question therefore is how to divide these two aspects of the Committee’s work. The solution proposed by the Committee on Standards and Privileges in the last Parliament was to suggest that the Committee be given power to establish a sub-committee of ten (elected) members. This would allow it to appoint a Privileges sub-committee consisting of the ten elected Members of the main Committee.28 In written evidence to us, the current Chair accepted that such an arrangement would not entirely resolve the issue since the sub-committee would still have to report to the House through the main committee on which the lay members were represented.29 It is also a general rule of the House that any member of a full committee may attend a meeting of a sub-committee of that committee.30 An alternative would be to appoint lay members to a Standards sub-committee of the main Committee but this would leave the full committee in a position where it could amend or reject a sub-committee report.31

17. A third solution, now supported by the Committee itself, would be to separate the Committee on Standards and Privileges into its two component parts. This would leave a Privileges Committee, as in the past, to investigate issues relating to parliamentary privilege, and a Standards Committee responsible for disciplining members for financial and other breaches of the code. The Clerk of the House made a similar proposal for “a distinct, separate and senior Committee of Privileges” which should comprise only elected Members.32 We agree that this is the correct approach.

18. **We recommend that it be a prerequisite of adding lay members that the Committee on Standards and Privileges be divided into two separate committees and that lay members be included only in the committee responsible for standards.** We discuss further below some of the practical implications of such a division (see paras 62–63 below).

3 Precedents

Introduction

19. As a starting point for considering how lay members might be appointed to the Committee on Standards and Privileges, we have examined precedents for the involvement of lay members in select committees more generally, both in this country and in other comparable legislatures. Because of the importance placed by the CSPL on “full voting rights”, we have looked separately at the issue of the participation of lay members in decision-making.
Participation of non-members in select committee meetings

20. Non-parliamentarians regularly participate in select committee meetings as witnesses and as advisers. In both cases, these activities have no adverse impact on the application of privilege since select committee meetings are regarded as proceedings in Parliament and privilege covers both evidence supplied to the committee (orally or in writing) and advice received. Advisers receive all relevant internal committee papers, including draft reports, and guide the committee in a way that would be regarded as an attempt to interfere with proceedings if undertaken by anyone else outside the committee members and attached House staff. This has never been questioned and clearly illustrates how closely external individuals can work with committee members in parliamentary proceedings.

21. There are also precedents, if rare, for non-parliamentarians to participate more fully in committee proceedings, for example by asking questions during hearings. In April 1933 a select committee was appointed to join with the Lords, “with power to call into consultation representatives of the Indian States and of British India, to consider the future government of India”. 33 The committee itself was controversial but the inclusion of these representatives was not: the House did not divide over their inclusion, nor did it seek to specify their number or who they might be. The representatives sat with the Committee and put questions to witnesses, nominally through the Chairman, although in fact directly albeit “subject to the direction of the Chairman”. 34

22. In 1976 power was granted to the select committee on the practice and procedure of the House “to invite such persons as they may select to attend any of their meetings or meetings of Sub-committees, and to take part in the deliberations of the Committee and their Sub-committees”. 35 In the event, this power was not used.

23. In 1999 the Procedure Committee used the precedent of the Government of India Committee to suggest that Commons select committees might be permitted to hold joint meetings with committees of the new devolved legislatures, subject to the need to obtain a resolution of the House to authorise the relevant committee to “call into consultation” its counterpart. 36 The Procedure Committee pointed out that whilst informal joint meetings were possible, the differences in powers to send for persons, papers and records between Westminster and the devolved legislatures could lead to “questions about the legal position of Members of the Committee from the United Kingdom Parliament and [that] the status of the meeting as "proceedings in Parliament" could be called into question”. 37

24. In 2004 the Procedure Committee re-examined this subject as a result of a recommendation from the Welsh Affairs Committee that they be granted powers for joint formal meetings with committees of the National Assembly for Wales (NAW). 38 On this

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33 CJ (1932–33) 137
35 CJ, 1975–76, p371
36 Ibid., para 44–45
37 Ibid., para 43
38 Third Report from the Procedure Committee, Session 2003–04, Joint activities with the National Assembly for Wales, HC 582.
occasion the Committee concluded that “the House could alter its rules to allow members of the National Assembly to take part in its proceedings and the National Assembly could make reciprocal arrangements”, subject to members from Westminster being “comfortable in speaking in the marginally less protective arena of the National Assembly”.  

Advice from the Counsel to Assembly Committees in Wales in 2004 suggested that MPs taking part in such an “enlarged” plenary or committee session would be covered by section 77 of the Government of Wales Act 1998 on the basis that “they would be making a statement for the purposes of etc proceedings of the Assembly”.  

**Participation of non-members in decision-making and voting in select committees**

25. Although there are committees within the Commons which have members from outside the House, these are either statutory committees or informal sub-committees (as in the case of the Members Estimate Audit Committee). In the precedent cited above, the Procedure Committee in 2004 emphasised that the Welsh Affairs Committee should be authorised to invite members from the NAW to “attend and participate in its proceedings (but not to vote)”. This is reflected in the wording of Standing Order No. 137A(3). Similarly, in the case of the Government of India committee, those called into consultation did not take part in the formal decision-making process.

26. There is a precedent from 1918 of the granting of additional power to the National Expenditure Committee (set up the previous year) “to appoint from outside its own body such additional persons as it may think fit to serve on any Sub-Committee which it may appoint with the view to the preparation of such recommendations [in regard to the form of Public Accounts etc]”. The main committee used this power to add four additional persons to the sub-committee, described in the subsequent report from the main committee as “a civil servant of long experience and three gentlemen with expert knowledge of commercial systems of accounting”. The report based on the sub-committee’s work was published as the Seventh Report of the Select Committee on National Expenditure. The non-parliamentarians on the sub-committee took no part in the decision process by which the report was agreed by the main committee and reported to the House.

27. Going further back to the 19th century, the question of adding non-Members with full voting rights was discussed by two committees of the House. In 1836 the Select Committee on Controverted Elections considered how an Assessor could be included on committees examining election petitions. The Committee accepted that there would be advantages in every such committee having the assistance in its deliberations of “a person selected for the purpose on account of his legal skill and learning”. It considered that objections could be

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39 Third Report from the Procedure Committee, Session 2003–04, Joint activities with the National Assembly for Wales, HC 582, para 8
40 Ibid., p16. 777 gives absolute privilege for Assembly Members or anyone else taking part in Assembly proceedings as far as defamation, and defamation only, is concerned.
41 Ibid., para 7
42 CJ (1918), 13
43 Reports from the Select Committee on National Expenditure, Session 1918
44 HC 496, 1836, Report from the Select Committee on Controverted Elections, p5
raised “against the giving a vote in a Committee to any person not a Member of The House”, stating that “Your Committee does not feel inclined to propose so extensive an alteration in what may almost be called a constitutional principle”. Furthermore, the Committee argued:

Nor does it seem necessary, in order to secure all the advantages of the second plan [to include a lay Assessor on the committee], that the Assessor should actually vote. What is wanted is, that his opinion should carry such weight on questions both of law and of fact as in effect to give him far greater influence in the decision of both than a mere vote could possibly confer on him. It is proposed, therefore, that the Assessor should have no vote on any question, but the power of expressing his opinion on all matters, which are subjects of discussion in the Committee.46

28. The Committee recommended that the Assessor should act as Chairman and thereby “exercise that kind of tacitly admitted authority over matters of routine and minor importance which naturally falls into the hands of a Chairman” and that, in order that he should “stand responsible for his acts in the Committee”, it should be provided that “a public expression of his opinion, and the reasons of that opinion, shall be given in those cases, in which the other Members of the Committee shall vote”.47

29. An even more pertinent case arose in 1876 when a select committee was appointed “to inquire and report on the position of the Referees of the House on Private Bills, and particularly as to the legality and expediency of allowing Referees the same power of voting on a Private Bill Committee as a Member of Parliament regularly elected by a constituency”.48

30. The controversy arose when a Member of the House, Mr Anderson, who disagreed with the decision of a Private Bill Committee on two local Bills, discovered that the decision had been taken on the vote of a Referee (an officer of the House). He objected strongly to the fact that “the actual decision [on the bills in question] had been given by one who could not come into this House to explain or justify what he had done”.49 He further argued that because the House hardly ever overturned the decision of its Committee on Private Bills, “a most unjust Bill had been passed through this House, nominally by the House itself, but really and practically by the vote of an outsider elected by no constituency, responsible to no constituency, not even responsible to this House”.50 He drew a striking analogy with a Committee of the whole House considering a Bill: “that also only reports to the House, yet I hardly think any hon. Member would be found to maintain that it would be open to the House, if it chose, to bring in outsiders to walk through our Division Lobbies, and give votes on the clauses of a Bill on an equal footing with ourselves merely on the pretence that the stage was not final, and would still come under review of the House.”

45 HC 496, 1836, Report from the Select Committee on Controverted Elections, p5
46 Ibid.
47 Ibid., p6
48 CJ 1876, p51
49 Hansard, 18 February 1876, vol 227, c485
50 Ibid.
31. In moving for a committee to examine the matter, Mr Anderson explained that he had previously not been “aware that any one not an actual Member of this House had a vote in any stage of our legislation” and that he had “asked several old Members, but they knew nothing of it; in fact did not believe it could be so at all”. Mr Anderson had then discovered from his copy of Erskine May that “the power of a Referee to sit on a Committee had been conferred by a simple Resolution of this House only in 1868”. Later in his speech, he objected to this method of proceeding, arguing that “if the House claims a right to confer a legislative vote on anyone outside the House by any other means than by Act of Parliament, it is assuming to itself a new prerogative, and one for which there is no precedent”. Quoting the resolution of 1704 that “neither House of Parliament hath any power, by any Vote, or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament”, he suggested that “It is for those who defend the resolution of 1868 to show that it is not a new privilege to confer legislative votes on men not elected by any constituency, not responsible to any one, and who cannot appear in the House to justify their vote”.

32. One or two Members spoke against Mr Anderson in the debate which followed but most supported both his argument and his proposal for an investigation by a committee, and the motion was carried without division. A committee of 21 Members was therefore nominated on 6 March 1876. It reported on 17 March.

33. The Committee’s report concentrated on the circumstances by which the Referees on private bills had been appointed and had come to exercise voting rights on committees examining bills. Having established these facts, the select committee identified the crucial question which they had to answer as whether the position of a Referee when serving on a Committee should be “the position of a Member of the House, or that of an assessor, who can aid the Committee in all its proceedings without the power of voting”. The select committee’s answer to this was clear: “Your Committee are of the opinion, that it is inconsistent with ancient parliamentary usage, and opposed to constitutional principle, to give to Referees on committees on Private Bills the right of voting”.

34. The committee offered no evidence or argument in support of its contention but it is clear that the members were much persuaded by their questioning of the then Clerk of the House, Sir Thomas Erskine May. He told the Committee firmly that the House “is a High Court, with various powers for the regulation of its own proceedings, and that it is entitled to alter its established customs and its own internal proceedings”. He cited as example the power of the House to appoint Committees on which the House had appointed certain Members with the power to take part in all proceedings but not to vote, despite the unquestioned right of every Member of the House to vote. He considered, however, that the resolution of 1868 to refer bills to Referees with regard to their subject-matter went beyond this power:

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51 Hansard, 18 February 1876, vol 227, c485
52 HC 108, 1876, Report from the Select Committee on Referees on Private Bills
53 Ibid., para 6
54 Ibid., Q55
According to Parliamentary usage, a Committee consists of Members only, and here a foreign element was, for the first time, introduced into a Committee. This was a distinct departure from Parliamentary usage; that cannot be questioned; it gives a vote in a Parliamentary Committee to a person not qualified, by the law and the Constitution to vote as a Member of the House.\(^{55}\)

Erskine May contended that this was not an illegal act and it did not invalidate the decisions taken by such committees since 1868 but “it appears to be a departure from Parliamentary usage, and opposed to constitutional principle”.\(^{56}\) If it were to be done, then it should have been provided for by Act of Parliament, rather than a resolution.\(^{57}\)

35. Very shortly after the publication of the report, on 27 March 1876 the House resolved that “it be an Instruction to Committees on Private Bills, that referees, appointed to such Committees, may take part in all the proceedings thereof, but without the power of voting”.\(^{58}\) In keeping with this precedent, until at least the 19th edition (1976), Erskine May’s Parliamentary Practice described the appointment to select committees of persons not being members of the House as having “been regarded as constitutionally objectionable”.\(^{59}\)

**Overseas precedents**

36. From our inquiries of comparable legislatures in Canada, Australia and New Zealand, we received just one example of lay members being appointed to committees with full rights. The New South Wales Legislative Assembly appointed lay members to their Standing Ethics Committee from 1995 to 2003 under an amendment to the Independent Commission Against Corruption Act 1988. The practice ended in 2003 when the Act was amended to remove the reference to a Standing Ethics Committee and to refer instead to a “designated committee” with power to appoint lay members if it so chooses. The designated committee has not used this power.\(^{60}\)

37. In the Canadian House of Commons some committees have allowed people who were neither Members of the House nor Senators to participate in certain committee studies but these have been isolated incidents and have not represented the adoption of an established practice by the House of Commons. These individuals, who represented groups specifically targeted by the studies, were permitted to put questions to witnesses and participate in deliberations and the drafting of reports. They were not permitted to move motions or vote, nor could they be counted for purposes of a quorum.\(^{61}\)
4 Privilege

What is privilege and why it matters to select committees

38. Privilege is a difficult term in modern society but in a parliamentary context it has a very particular meaning and purpose. The Joint Committee on Parliamentary Privilege which reported in 1999 explained that:

Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary business effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.62

39. Parliamentary privilege is confirmed and protected by Article IX of the Bill of Rights which states that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament". This statutory provision ensures that Members of Parliament are not fettered in their freedom of speech by fear of intervention by any court and that Parliament has exclusive cognisance over its own proceedings. This has important implications for the work of select committees, including the Committee on Standards and Privileges.

40. First, privilege protects the Committee’s proceedings from challenge in the courts, whether this be for defamation or application for judicial review over the fairness of the Committee’s processes or decisions.

41. Secondly, it protects the Committee’s proceedings from being used for other purposes, for example as evidence in a court case relating to a matter which had been the subject of a committee inquiry. This could be important in the case of a standards inquiry where evidence presented to the Committee is currently protected against possible use in criminal proceedings against an individual who may have been cleared by a Committee investigation.163 Privilege also prevents action being taken against witnesses to the Committee by others because of the evidence they have given, either orally or in writing. An attempt to discipline a witness for his or her evidence would be a contempt.

42. Thirdly, parliamentary privilege offers protection against the compulsory release of Committee papers under Freedom of Information legislation since there is a statutory exemption allowed where it is required to avoid infringing the privilege of either House of Parliament, which allows for example committees to deliberate in private.

43. If the proceedings of a Committee were not privileged, Article IX protection would not apply to the Committee in terms of freedom of speech nor in terms of exclusive cognisance whereby the House alone may determine the lawfulness of its own proceedings. The findings of the Committee and the action of the House taken in consequence of those

63 Ev 27
findings could be challenged in the court, Committee members could not rely upon the confidentiality of their private proceedings being protected and evidence taken before the Committee would not enjoy the protection which it currently does.

**Issues and arguments**

44. The precedents outlined in the last chapter usefully show how concerns over parliamentary privilege are invoked by the proposal to add lay members to the Committee on Standards and Privilege. The examples also demonstrate that a distinction needs to be drawn between lay members participating in select committee meetings as assessors or advisers and their participation as decision-makers. The former case is so firmly established that it is safe to say that adding lay members as advisers would not affect the status of the Committee. The latter, as the precedent of 1876 well illustrates, raises serious doubts about whether parliamentary privilege would apply to a Committee which included lay members with voting rights. The Clerk of the House warned that “There is a risk that the addition of lay members to a committee would alter its character to such an extent as to cast doubt on whether its proceedings were actually proceedings in Parliament protected by Parliamentary privilege”.  

45. It may be thought that the answer to these difficulties would be for the House simply to extend privilege to the work of a mixed committee of elected and non-elected members but it is a fundamental part of the constitution that neither House of Parliament has the power to create a new privilege. This dates back to the resolution of 1704 as quoted in the previous chapter. Furthermore, it is questionable whether the House has the power to make provision for a subsidiary body to do something—in this case, appoint external, unelected members with full voting rights—which it could not do for itself. As the memorandum from the Clerk of the House notes, “the House surely lacks the power to decide by a majority to co-opt unelected Members with full voting rights”65; by that principle, the advice given by Sir Thomas Erskine May in 1876 suggests that giving voting rights to non-elected members on select committees would go beyond established parliamentary usage and so could be regarded as being outwith the House’s power to grant.

46. In cases where the application of privilege is doubtful, it is a matter for the courts to decide. In the circumstances under discussion, if the House decided to adopt a novel form of membership for one of its committees and continued to act as if privilege applied to the activities of that committee, a challenge might be brought against the House. The legal expert Professor Bradley explained that this could take two forms:

(1) that the House’s resolution to include additional members in the committee would amount to an attempt by the House, acting unilaterally, to create a new privilege that adversely affected the rights of persons outside the House; and that the change could properly be authorised only by Act of Parliament; and

64 P103, para 4
65 P103, para 8
(2) that the resolution would in effect extend the scope of Article 9 of the Bill of Rights by widening the meaning of ‘proceedings in Parliament’; and again that this could be done only by Act of Parliament.  

47. We are concerned that the nature of the work of the Committee on Standards and Privilege in dealing with high profile, politically-charged disciplinary cases makes legal challenge a real possibility. This would inevitably have a negative impact on the confidence with which the Committee conducted its work and its overall effectiveness.

48. There are experts who take issue with the view that the addition of lay members would call the extension of privilege to the Committee on Standards and Privileges into doubt. Professor Bradley ultimately concluded that if a challenge were to be brought on the grounds he identified, a court "would be likely to refuse judicial review and would hold that the House had not attempted to create a new privilege or extend the scope of privilege".  

66 Ev 24–5
67 Ev 25
68 Ev 25, para 9
69 Ev 25
70 See for example Q 67 and Ev 2

Disciplinary bodies in other professions

49. During this inquiry, we have heard comparisons made between the Committee on Standards and Privileges and other disciplinary bodies, such as the Bar Council, the General Medical Council and the Press Standards Commission.  

66 Ev 24–5
67 Ev 25
68 Ev 25, para 9
69 Ev 25
70 See for example Q 67 and Ev 2

In each case, these bodies have a significant non-professional element, sometimes consisting wholly of lay members. We accept that it is often wise to learn from best practice in similar professional bodies. The nature of Parliament, however, and the privilege issues we have just outlined mean that in crucial respects the situation of the Committee on Standards and Privileges is different from other bodies mentioned to us. In addition, the Bar Council and the General Medical Council adjudicate on complaints relating to "fitness to practice" of trained professionals in a specific field. We are not convinced that the analogy with the role played by the Committee on Standards and Privileges is an accurate one. For these reasons, we do not consider that the arrangements made for these other bodies can be duplicated in the context of the House of Commons without significant additional safeguards.
Possible solutions

50. Bearing in mind the arguments presented earlier in this chapter, we have identified four solutions which would enable the House to appoint lay members to the Committee on Standards and Privileges. These are:

a) The House appoints lay members to the Committee with full voting rights by resolution, relying on the advice from Lord Nicholls and Professor Bradley that the courts would resist any challenge to the House’s authority in doing so. This has the advantage of speed and superficial simplicity. There is a strong element of risk in this option which could lead to conflict between the House and the courts and might have a chilling effect on how the Committee conducts its work even before such a challenge emerged.

b) The House appoints lay members with full voting rights, following legislation which asserts the principle that parliamentary proceedings should be taken to cover select committees to which the House has appointed lay members. This solution was proposed in several submissions, including those by the former Clerk of the House, Sir William McKay and Professor Bradley. It is also the path followed in New South Wales which appointed lay members to the Legislative Assembly Standing Ethics Committee between 1995 and 2003 under the Independent Commission Against Corruption Act 1988. This option involves waiting for a convenient opportunity for legislation but the UK Government has set out plans for a draft Parliamentary Privileges bill this session which would provide such an opening. Legislation offers greater protection to the Committee than option (a). Although it does not remove the possibility of legal challenge completely because it would be open to the courts, if invited to do so, to examine whether any particular case fell within the provisions of the relevant statute, the risk would be much less.

c) The House appoints lay members without full voting rights, albeit with protections such as ensuring that no decision of the Committee may be taken unless a quorum of lay members is present and that any report to the House should include a statement of the opinion of each of the lay persons present on the Committee’s conclusions. This option was favoured by the Clerk of the House. A variant was put forward by Bernard Jenkin that the laypersons should not be members of the committee but advisers, albeit with “special privileges attached” to such advisers “such that the committee can’t meet without publishing their advice, so that they would act as a check and a regulator on the way the committee performs, but improving the competence of the committee”.

71 Ev 27
72 Ev 25
73 P103, para 9
74 Q9
75 Q8
76 Q 95
d) Legislation is brought forward for a statutory committee, meaning an end to self-regulation. This possibility was raised by witnesses but found no support amongst them at this time.\textsuperscript{77}

51. The question of the rights and responsibilities of lay members, should the House resolve to appoint them, is a crucial one, not just because of the need to maintain certainty with regard to the privilege position of the Committee’s proceedings but also to ensure that the new system commands public confidence and does not deter suitable candidates from applying to be lay members.\textsuperscript{78} There is a difficult balance to be achieved between these competing principles. Solutions that fall short of appointing lay members as the equals of Members of Parliament on the Committee answer the difficulties over parliamentary privilege. They could be seen as creating “second-class” members on the Committee\textsuperscript{79} and do not meet the principle set out by the CSPL that the lay members should have full voting rights. Although the judgment of the lay members would be influential, it would not be decisive. The Chair of the Committee on Standards and Privileges told us that “it would be wholly wrong to have people on there who did not have the vote, even if it was identified that they were unhappy”.\textsuperscript{80} Sir Christopher Kelly considered that “it would be a great shame to create first and second class members of the committee, and I am not sure that that would serve the purpose, which is to improve the credibility of the disciplinary process in the House.”\textsuperscript{81} On the other hand, the right for a lay member to have his or her views published, independent of committee collective responsibility, could be perceived as a more powerful position than full voting rights since any dissent from the Committee’s view would be glaringly obvious. Bernard Jenkin suggested that “If they flatly contradicted the opinion of the committee [...] it would be a time bomb. It would blow the credibility of the committee out of the water”.\textsuperscript{82}

52. It may be that it is not an all or nothing choice between privilege and the effective participation of lay members. From the evidence that we have seen, there is willingness to compromise on both sides. Sir Christopher Kelly, while strongly advocating full voting rights for lay members, was adamant that “it would be better to have lay members with the additional conditions suggested by the Clerk than no lay members at all”.\textsuperscript{83} This view was shared by Kevin Barron who told us “I would never say it is not worth having members even if they don’t have a vote”.\textsuperscript{84} In his speech to the House on 2 December he suggested that “we have to recognise that any decision of the Committee that was not supported by the lay members present would lack public credibility. It may be that lay members will not need to have a formal vote to have a decisive influence”.\textsuperscript{85} Those who are in principle

\begin{itemize}
\item \textsuperscript{77} Eg Ev 22, Q96
\item \textsuperscript{78} Ev 30, para 15
\item \textsuperscript{79} Q 33
\item \textsuperscript{80} Q 36
\item \textsuperscript{81} Q70
\item \textsuperscript{82} Q96
\item \textsuperscript{83} Q 71.
\item \textsuperscript{84} Q35
\item \textsuperscript{85} HC Deb, 2 December, col 999
\end{itemize}
against adding lay members at all are likely to be more willing to accept the presence of such appointees as advisers than as voting members.

53. We invite the House to study with care the arguments made for the inclusion of lay members with or without voting rights on the Committee on Standards and Privileges as set out in this report and to decide whether lay members should be appointed to the Committee on Standards with full voting rights or whether they should be appointed with more limited rights protected by rules on quorum and publication of their opinion or advice. It would of course be open to the House to reject both options. In the case that the advantages in terms of credibility and the increased contribution suitably qualified lay members could make are deemed sufficient to justify full membership of the committee, we recommend that the Government bring forward legislation to put beyond reasonable doubt any question of whether parliamentary privilege applies to the Committee on Standards where it has an element of lay membership.

5 Practicalities

54. As invited by the House, we have examined the practical considerations of lay membership, including the number of lay members and the quorum. Sir Christopher Kelly told us that “It would be wrong of me to pretend that my committee had spent a lot of time debating these issues of practice”. Nevertheless, we have taken the CSPL report as our starting point in determining recommendations to the House on such questions. We have framed our recommendations in the context of the House’s deciding to accept the fundamental principle that it should appoint lay members to a new Committee on Standards only.

Number of lay members

55. The CPSL report called for the addition of “at least two” lay members to the Committee on Standards and Privileges. Sir Christopher Kelly explained that this was “because we thought one wasn’t enough, in the sense that if there is only one, that person can be isolated, bullied.” Picking up from evidence to us from Sir Philip Mawer that there should be three such members and from Chris Mullin that there should be “no more than three at this stage”, Sir Christopher told us that “Three in some ways is a better number than two”. Sir Philip Mawer explained that this was because of “Considerations to do with ensuring public confidence in the new arrangements and an adequate attendance of lay members at meetings”. The Committee on Standards and Privileges in 2009 recommended two lay members to be added to the existing committee of ten elected Members. In his written evidence, Mr Barron argued that “Although we would not object
in principle to having more than two lay members, the implications of this would need careful consideration”. In oral evidence he raised the possibility, without endorsing it, that there could be parity in terms of numbers between parliamentarians and external members but he stressed that “I don’t think it is numerical [...] it is to give the public some confidence” in the disciplinary system of the House.

56. **We recommend that initially two lay members be appointed to the Committee on Standards but that the position be kept under review in case experience proves that three lay members would enhance the efficiency and effectiveness of the committee.**

**Quorum**

57. The current quorum for the Committee on Standards and Privileges is considerably higher than that of most select committees, being half of its ten members. The current Chair considered that there was no need to change those arrangements and that the “lay members should be additional to the elected membership”. He suggested that “the quorum of the Committee should be amended, to require at least one of the lay members to be present when any business relating to standards is considered”. This latter suggestion was accepted by all witnesses including Sir Christopher Kelly and was strongly advocated by those who argued in favour of lay members as observers rather than with full voting rights. On the basis for calculating the quorum, the Clerk of the House suggested that the quorum could be double the number of lay members, plus one (that is, five) or one greater than the number of lay members (that is, three) in order that lay members could not constitute a quorum by themselves or otherwise dominate proceedings. In oral evidence, he stressed that “The majority should still rest with members of the House” and that the quorum should be arranged to facilitate that.

58. The quorum question clearly matters more if the lay members have full voting rights. Working on that basis, the Committee on Standards and Privileges in its 2009 report proposed that its quorum be adjusted to consist of five elected members and one lay member in order to ensure that “no decision on a standards matter could be taken without direct input from one of the lay members” but that “at least two elected Members would be required to support a proposition in order for it to be carried against opposition from the other elected Members present”. The Committee’s objective was that “the outcome of proceedings in a Committee of the House should be in the hands of those who are directly accountable to the electorate”. In fact, since the Chair counts as part of the quorum and

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93 Ev 27, para 1  
94 Q 42  
95 Q 43  
96 Ev 27  
97 Ev 27  
98 Q 73  
99 Q95; Q17  
100 Ev 35  
101 Q17  
102 HC 67, para 6  
103 Ibid., para 7
votes only in case of a tie, where two lay members supported by two elected members supported a motion and two elected members opposed it, the motion would be carried by the deciding votes of the lay members.

59. We believe that the most effective arrangement would be simply to add a quorum requirement for lay members to the existing requirement for elected Members. This would ensure that no business could be proceeded with at a meeting unless a lay member was present, while maintaining the majority of elected Members in all committee proceedings. It would be too onerous to expect both of the proposed lay members to be present at every meeting. Such a restriction would be bound to lead to difficulties in attendance and enforced cancellations. Allowing alternates would be one solution to this but would be difficult to arrange and would not encourage cohesiveness amongst the committee. If the House re-affirms that it wishes to see lay members appointed, we recommend that the quorum of the Committee on Standards as newly constituted consist of five elected Members plus one non-elected member for all business of the committee.

**Chair of the Committee**

60. At present, as a result of previous CSPL recommendations, the Committee on Standards and Privileges is always chaired by a Member drawn from one of the Opposition parties. This post is not one which is subject to election by the whole House. Instead its holder is elected in the traditional way by the members appointed to the committee from amongst their own number. A former Member of the Committee, Chris Mullin, suggested that "Consideration should perhaps also be given to designating that the chairmanship should always be held by a lay member".104 A precedent for this can be found in the 1836 report on the role of an Assessor on a committee examining election petitions (see para 27 above).

61. Mr Mullin’s suggestion found at best lukewarm support from amongst witnesses. Sir Christopher Kelly accepted that “it would help to put the matter of independence [...] beyond doubt” but he did not think that “it is necessary in order to achieve the objective”.105 Although the current Chair was “quite open” to the suggestion that the Chair should be a lay member,106 he was concerned about the difficulties in having a Chair who could not answer for his Committee’s report on the Floor of the House.107 Should the House appoint lay members without voting rights, there would be further difficulties, as identified by the Clerk of the House, in having a Chair who could not take part in decisions in Committee.108 These difficulties would not be insuperable109 but given that so little has been said in favour of the proposal, we conclude that the time is not right to take such a large step away from established practice and precedent. We recommend that the Committee on Standards continue to be chaired by an elected Member drawn from the Opposition side of the House.
Relationship between the Committee on Privileges and the Committee on Standards

62. We recommended earlier that the Committee on Standards and Privileges be divided into its two parts to ensure that the responsibilities of the lay members are clear-cut and that there is no question of their involvement in privilege matters. The Chair of the current Committee suggested that "It would of course be open to the House to appoint the same Members to both committees". Although the Committee was quick to point out that it was not proposing a common membership, other witnesses such as Sir Philip Mawer considered that there would be benefit in these two committees having the same membership.

63. We do not consider that a case has been made that there is sufficient common ground between the work which would be taken by the two Committees acting independently to justify a stipulation that the membership should be same. A far more important consideration for us is that the membership should include adequate knowledge of the House and that senior Members of the House should be involved in inquiring into privilege matters, in particular. Such people might be deterred from offering their services by the prospect of taking on the workload of two committees. While we would be happy to see Members choosing to sit on both committees, we do not therefore regard it as essential. The Chair of the Committee on Standards and Privileges entered the caveat that "the splitting of the Committee should not lead to extra costs". He suggested that the two committees could share a secretariat and that "the Chair of the Committee of Privileges, which would be likely to meet less frequently than most committees, should not receive an additional salary by virtue of holding that post". We agree with those considerations. We recommend that no additional salary be payable to the Chair of the Committee on Privileges for his or her duties in connection with that post.

Speaker’s Committee on the IPSA

64. The Chair of the Committee on Standards and Privileges is ex officio a member of the Speaker’s Committee on the Independent Parliamentary Standards Authority (IPSA). A further consequence of splitting the Committee on Privileges from the Committee on Standards would be that the Speaker would need to determine who should take on this responsibility. We consider that this would fall more neatly into the remit of the Chair of the Committee on Standards. We recommend that the Chair of the Standards Committee replace the Chair of the Committee on Standards and Privileges as an ex officio member of the Speaker’s Committee on the Independent Parliamentary Standards Authority.

110 Ev 28
111 Ev 29
112 Ev 28
113 Ibid.
114 Ev 34
6 Appointments process

Qualities of candidates

65. In the debate of 2 December, Helen Jones, speaking for the Opposition, said that:

    I hope that we do not get another round of the same, small coterie of the great and the good being appointed. There is a quangocracy out there, and I personally would like members of the public who have not previously been involved to be appointed.\textsuperscript{115}

The Chair of the Committee on Standards and Privileges agreed that “We have no desire to create new opportunities for ‘the great and the good’”.\textsuperscript{116} He gave us a description of desirable qualities for candidates:

those appointed will need to exercise judgment and discretion in a challenging environment. They will need to be at ease in that environment, while maintaining a degree of separation from it. Although they will, in a sense, be representatives of the public, they will need to bring their independent judgment to bear on some complex questions and they will need to be sufficiently resilient to deal with pressure both from the media and, indeed, from members of the political classes.\textsuperscript{117}

A similar list was drawn up by the former Commissioner for Standards, Sir Philip Mawer:

a) An understanding, and appreciation of the value of the role undertaken by elected Members and of the particular context in which they work (although candidates should not formerly have been Members of the House);

b) The capacity to sift complex evidence and to reach a reasoned judgement on it, not being swayed by press comment or by other pressure;

c) Resilience;

d) A readiness to work with others and accept the disciplines of working as a member of a Parliamentary committee;

e) Availability—an ability to respond quickly as the needs of the Committee and the House may require.

In addition, knowledge of disciplinary arrangements in other walks of life may also be desirable.\textsuperscript{118}

66. We also considered whether any particular skills or background would be of benefit to the Committee. Sir Christopher Kelly suggested that “there is a range of backgrounds that might be valuable, because there are a range of ways that the necessary qualities and
experience can have been gained.” A different approach was advocated by Bernard Jenkin who suggested that lay members could bring technical skills to the committee, such as those gained from working in human resources or dealing with making judgments about complex financial information. Mr Jenkin singled out as especially desirable the possible appointment of a retired judge, arguing that “that it would greatly assist the functioning of the Committee to receive more legal advice, so that it could interpret the byzantine rules and regulations and be navigated through difficult, contentious issues of evidence and fairness.” This view was challenged by other witnesses with direct experience of the Committee on Standards and Privileges. Sir Philip Mawer cautioned against “taking any steps which might judicialise the proceedings in the Committee or make them overly legalistic in character”. The current Chair of the Committee argued that “judicial matters are for the Metropolitan police”, adding that “I don’t see in any way that we would need a lawyer, or for that matter anybody of any great talent, beyond somebody who has a common-sense view of life and can look at things in an open way”.

67. We believe that the desirable qualities identified by the former Commissioner and the Committee on Standards and Privileges provide a useful starting point for the recruitment process. Whether the candidates should be required to demonstrate particular experience depends on the view that is taken of their purpose on the committee. If they are seen as advisers, then it would be right to seek specific technical competences or backgrounds. On the other hand, if they are there to increase the transparency of the process, then the range of suitable experience of possible candidates is much broader. Concentrating on qualities rather than specific technical skills would also help the recruitment process to look beyond the great and the good. On the particular question of legal experience, we are not convinced that this is necessary or suitable for candidates for these posts. There may even be doubts over whether it is constitutionally proper for lay members to be or have been judges. We would therefore seek to keep the appointments process as open as possible.

68. One caveat to this is that would-be candidates should have no conflict of interest through previous roles or party links. The CSPL recommended that the lay members should be people “who have never been parliamentarians”. This should include peers and members of devolved assemblies as well as those who have held party positions at national level.

**Recruitment process**

69. The CSPL’s recommendation was that the lay members should be chosen through “the official public appointments process”. This phrase is somewhat unclear but appears to raise the question of whether the recruitment process should be run from the House or by Whitehall. Since the report was published, the House has had the experience of appointing external members to the Speaker’s Committee on IPSA. This exercise was conducted by a
board chaired by the Clerk Assistant of the House of Commons which had independent members appointed to it and which was assisted by a specialist recruitment agency. The four candidates recommended by the board were interviewed by the Speaker who selected three names to go forward to the House for approval. This process has the advantage of the House controlling its own recruitment but with external and expert assistance. We note that the appointment of the Parliamentary Commissioner for Standards is made through a similar process but with the involvement of the Chair of the Committee on Standards and Privileges and of the Office of the Commissioner for Public Appointments before final confirmation by the House. In the circumstances under consideration, the Committee on Standards and Privileges has expressed the view that while it would not be appropriate for the Committee to administer the recruitment process, there would be benefits to enabling the Committee to be represented on the panel in terms of allowing both applicants and fellow board members to have direct access to the Committee’s experience and expertise.

70. We consider that the process used for the recruitment of the external members of the Speaker’s Committee on the IPSA provides an appropriate model for the recruitment of the lay members of the Committee on Standards. We agree that the process needs to be transparently independent of the Committee itself but accept that it would be beneficial to the process if the Chair or another member of that Committee were to be represented on the panel.

Appointment and dismissal

71. Other similar appointments to the offices of the House, such as the external members of the Speaker’s Committee, are made by means of approval of a motion on the Floor of the House. This enables the House to register its view of the candidates and the process and importantly provides assurance that it is the House itself which is making the appointments. We conclude that this would be a suitable procedure in the case of lay members to the Committee on Standards.

72. The question also arises of how such lay members could be dismissed before the expiration of their term of office. There may be various reasons why this course of action is considered necessary, including non-attendance and non-acceptable conduct. The former Commissioner for Standards suggested that “The premature termination of an appointment should only be possible by a resolution of the whole House, on a report from the House of Commons Commission, following advice from the Committee on Standards and Privileges, and a motion moved by a member of the Commission”. This has the advantage of keeping the dismissal process at arm’s-length from the Committee on Standards. It is also a process of sufficient gravity that it would not be undertaken for trivial or party political reasons. A recent change has been made to require a member appointed to a select committee to attend at least 60% of meetings in a session. We believe this attendance rule should also apply to lay members and that it should be the responsibility of

125 Ev 31
126 Ev 28
127 Ev 31
128 CJ (2009–10) 293
the Chair of the Committee on Standards to write to the Commission to trigger the dismissal process where a lay member has failed to meet this requirement without adequate explanation. **We recommend that lay members be appointed to and dismissed from the Committee on Standards only by resolution of the House.**

**Terms of office**

73. The lay members of the Speaker’s Committee on IPSA have been appointed for staggered terms in order to ensure continuity, with one person nominated for five years, another for four years and a third for three years. We believe that a similar arrangement of staggered retirement dates would also be suitable for lay members to the Committee on Standards. Two further questions arise of what the maximum length of term should be and whether the lay members should be eligible for reappointment to extend their term of office. The Clerk of the House advised that a single non-renewable term would be desirable “to make quite clear that the lay members had no interest in currying favour or cultivating the support of anybody—and, equally, to demonstrate that they had nothing to fear from incurring the odium of unpopularity from any quarter”. This was supported by the Committee itself. The Clerk also suggested that the term should be in the range of three to seven years to reflect the move towards fixed-term parliaments of five years. This raises the issue of whether the House may make appointments in one parliament to a committee which will cease to exist at the dissolution of that parliament and will be established anew in the next. It may be necessary for the appointment to be confirmed, without extending the duration of the term of office.

74. **We recommend that the two lay members of the Committee on Standards be appointed for a single non-renewable term of five years and that in the case of the first such appointments the candidate placed first by the board be appointed for five years and that placed second be appointed for three years in order to stagger retirement dates.**

75. Lay members of the Speaker’s Committee on the IPSA are paid £300 a day plus reasonable travel and subsistence expenses. This is broadly comparable with the current top rate for specialist advisers to select committees, which is £280 a day. The Committee on Standards and Privileges recommended that the lay members should receive the same as such advisers, noting that select committee specialist advisers may also claim for time spent preparing for meetings, including reading committee papers. We consider that the analogy with the lay members appointed as members of the Speaker’s Committee on the IPSA is closer than that with select committee advisers. **We therefore recommend that the pay rate for lay members on the Committee on Standards be set in line with that for the lay members of the Speaker’s Committee on the IPSA.**

129 Ev 34
130 Ev 28
131 Ibid.
132 Ev 35
133 Ev 29
76. We draw the attention of the House to the evidence supplied by the Clerk that there will be costs involved in recruiting the lay members, and no doubt incidental costs over and above the daily rate and reasonable expenses. We agree with the Clerk that the lay members should not require office space on the estate nor parliamentary IT equipment which would otherwise have cost implications. They would require full photo-passes with access to facilities as determined by the Speaker.

**Confidentiality of proceedings**

77. In his evidence the Clerk stressed the importance of making clear to lay members that “any premature or unauthorised disclosure of committee proceedings may be found to be a contempt of Parliament.” It would also fundamentally alter the nature of committee proceedings if private deliberations were disclosed to the press or others. The Committee on Standards and Privileges agreed that it was “vitally important that lay members should be bound by the same duty of confidentiality as applies to all members and staff of select committees”. We concur, and we recommend that the duty of confidentiality be emphasised to candidates for these positions during the recruitment process and induction process. Unauthorised disclosure of proceedings should be grounds for dismissal as well as the basis of a contempt investigation.

7 Conclusion

78. Our report contains a range of recommendations which clearly illustrates how the question of adding lay members to a parliamentary committee has both far-reaching implications for parliamentary privilege and a much less weighty but still significant impact on parliamentary expenditure and facilities. We consider that it is essential that the House take this path only in full awareness of the arguments set out in our report. Only once the House has weighed those arguments can an informed decision be taken on whether to appoint lay members to the Committee responsible for disciplining Members of Parliament for breaches of the Code of Conduct and what safeguards need to be put in place if such appointments are to be made to ensure that the Committee can continue to work confident in the protection of parliamentary privilege. The House has an important decision to take. We hope that our report will help ensure that it takes that decision in an informed way.

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134 Ev 35
135 Ev 35
136 Ibid.
Conclusions and recommendations

Principle

1. We recommend that the motions put to the House in relation to this report be preceded by an opportunity for the House to restate its acceptance of the principle behind the CSPL proposal that lay members be added to the Committee on Standards and Privileges. (Paragraph 14)

2. We recommend that it be a prerequisite of adding lay members that the Committee on Standards and Privileges be divided into two separate committees and that lay members be included only in the committee responsible for standards. (Paragraph 18)

Privilege

3. We invite the House to study with care the arguments made for the inclusion of lay members with or without voting rights on the Committee on Standards and Privileges as set out in this report and to decide whether lay members should be appointed to the Committee on Standards with full voting rights or whether they should be appointed with more limited rights protected by rules on quorum and publication of their opinion or advice. It would of course be open to the House to reject both options. In the case that the advantages in terms of credibility and the increased contribution suitably qualified lay members could make are deemed sufficient to justify full membership of the committee, we recommend that the Government bring forward legislation to put beyond reasonable doubt any question of whether parliamentary privilege applies to the Committee on Standards where it has an element of lay membership. (Paragraph 53)

Practicalities

4. We recommend that initially two lay members be appointed to the Committee on Standards but that the position be kept under review in case experience proves that three lay members would enhance the efficiency and effectiveness of the committee. (Paragraph 56)

5. We recommend that the quorum of the Committee on Standards as newly constituted consist of five elected Members plus one non-elected member for all business of the committee. (Paragraph 59)

6. We recommend that the Committee on Standards continue to be chaired by an elected Member drawn from the Opposition side of the House. (Paragraph 61)

7. We recommend that no additional salary be payable to the Chair of the Committee on Privileges for his or her duties in connection with that post. (Paragraph 63)

8. We recommend that the Chair of the Standards Committee replace the Chair of the Committee on Standards and Privileges as an ex officio member of the Speaker’s Committee on the Independent Parliamentary Standards Authority. (Paragraph 64)
Appointment process

9. We recommend that lay members be appointed to and dismissed from the Committee on Standards only by resolution of the House. (Paragraph 72)

10. We recommend that the two lay members of the Committee on Standards be appointed for a single non-renewable term of five years and that in the case of the first such appointments the candidate placed first by the board be appointed for five years and that placed second be appointed for three years in order to stagger retirement dates. (Paragraph 74)

11. We therefore recommend that the pay rate for lay members on the Committee on Standards be set in line with that for the lay members of the Speaker’s Committee on the IPSA. (Paragraph 75)

12. We recommend that the duty of confidentiality be emphasised to candidates for these positions during the recruitment process and induction process. Unauthorised disclosure of proceedings should be grounds for dismissal as well as the basis of a contempt investigation. (Paragraph 77)
Appendix: Lay members of committees: experience in other Commonwealth countries

The Overseas Office of the House of Commons sent a request to parliaments within Canada, Australia and New Zealand requesting information on two questions:

1. Whether any parliament has experience of appointing lay members to parliamentary committees. If so, how concerns about privilege were overcome and what arrangements were made for the selection and appointment of lay members.

2. What process has been adopted for investigating complaints against Members for breaches of the Code of Conduct and how open is this process to scrutiny by the public. The following responses were received.

Response from the Legislative Assembly of Alberta, Canada

Alberta has no experience with appointing non-Members to committees of the Assembly.

Robert Reynolds QC  
Law Clerk and Director of Interparliamentary Relations

Response from the Australian House of Representatives

No lay members have been appointed to the House Committee of Privileges and Members’ Interests and so there is no experience to refer to.

Currently there is no Code of Conduct for members and so there is no comment to make. The Committee of Privileges and Members’ Interests currently is considering the development of a Code of Conduct for members and appropriate processes to enforce the code.

Response from the Australian Senate

1. The Australian Senate appoints only senators to its committees. Similarly, joint committees of the Commonwealth Parliament comprise only senators and members. The appointment of lay members has never been authorised.

Committees may, where so authorised by the Senate, engage specialist advisers to assist them in their work. This is the case with the Senate’s two legislative scrutiny committees and has occasionally been provided for in resolutions appointing select committees.
Such advisers are not members of committee. They exercise none of the powers of committee members and have no voting rights.

Their main role is to provide expert, background information to assist committee members in their deliberations. The manner in which this role is undertaken will vary from committee to committee, but it may involve the adviser providing written reports or addressing private meetings of the committee. In these functions, the protections afforded the adviser are essentially those afforded members of secretariat staff.

Occasionally an adviser may be invited by the committee to contribute to evidence given in a public hearing, for instance where a committee is undertaking roundtable discussions. In this case, the adviser is for all intents and purposes a witness before the inquiry.

In each case, the adviser's contributions are "proceedings in parliament" as understood for Article 9 purposes and as declared under s. 16 of the Commonwealth *Parliamentary Privileges Act 1987*.

2. There is no applicable “Code of Conduct”. Question 2 does not apply.

Rosemary Laing  
Clerk of the Senate  

**Response from the Legislative Assembly of British Columbia**

1. The British Columbia Legislative Assembly does not appoint lay members to its Parliamentary Committees.

2. The British Columbia Legislative Assembly does not have a code of conduct for its Members. The Members' Conflict of Interest Act defines standards of official conduct for Members, specifically in terms of potential conflicts of interest, reconciling private pecuniary and private matters of members with public duties.

**Response from the Canadian House of Commons**

1. Although, in the past, some committees have allowed people who were neither Members of the House nor Senators to participate in certain committee studies these have been isolated incidents and have not represented the adoption of an established practice by the House of Commons. These individuals, who represented groups specifically targeted by the studies, were permitted to put questions to witnesses and participate in deliberations and the drafting of reports. They were not permitted to move motions or vote, nor could they be counted for purposes of a quorum.

These individuals have been variously known as lay members, liaison members and *ex officio* members. Since they are members of the committee, not witnesses, and yet they
are not Members of Parliament, it may not be immediately obvious whether they are covered by the same parliamentary privileges as MPs and witnesses. On this question, Maingot’s *Parliamentary Privilege in Canada* indicates that lay members would indeed be sheltered by privilege (see *Parliamentary Privilege in Canada*, 2nd ed., (Montreal-Toronto: McGill-Queen’s University Press, 1997), p. 36), reasoning that lay members are protected by the same privileges that would shield any other person associated with the committee:

> The *Bill of Rights, 1689* is not restricted to Members; whatever protection is afforded the Member is equally afforded to the non-Member under the same circumstances. Accordingly, witness, petitioner, counsel, and others whose assistance the House considers necessary for conducting its proceedings are protected by “the rule of Parliament being that no evidence given in either House can be used against the witness in any other place without the permission of the House”.

With regard to the range of Parliamentary privilege and the need to swear-in individuals, the understanding is that privilege extends to witnesses and others whether or not they are sworn-in on the basis that they are participating in a proceeding of Parliament.


These Committees invited representatives of various national organizations representing Aboriginal peoples to participate in its proceedings, giving them the title of “ex officio members” or “liaison members”. In a report, the members of the Special Committee on Indian Self-Government explained that they had asked these individuals to participate because there were no Aboriginal Members of Parliament and they wanted to make sure that they were fully aware of the concerns and perspectives of Aboriginal people *(Minutes of Proceedings and Evidence*, October 12, 1983, October 20, 1983, Issue No. 40, pp. 4, 199).

In 1990, the Standing Committee on the Environment proposed to involve representatives of nongovernmental organizations in the drafting of a report on the environment in Canada. The Committee did not however act on this idea *(Minutes of Proceedings and Evidence*, December 13, 1990, Issue No. 63, p. 3).

In 2004, the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources adopted a motion providing for participation by at least one representative of the group(s) affected by any First Nations legislation that might be sent
to the Committee. The Committee did not have an opportunity to follow through on this decision before Parliament was dissolved (Minutes of Proceedings, March 23, 2004, Meeting No. 5).

79. Although there is no statute which dictates a code of conduct for parliamentarians at the federal level, some provisions regarding the conduct of Members and conflict of interest matters exist in the Standing Orders of the House (including the Conflict of Interest Code for Members of the House of Commons), the Parliament of Canada Act and the Criminal Code. Also in place is the Conflict of Interest Act which governs the ethical conduct of public office holders, including Cabinet Ministers and Parliamentary Secretaries.

There exists a mechanism for inquiries regarding potential breaches of the Conflict of Interest Code for Members of Parliament which is conducted by the Conflict of Interest and Ethics Commissioner. There are three ways for an inquiry to be initiated:

(a) A Member may ask the Commissioner to conduct an inquiry regarding the non-compliance of another Member. The request must be made in writing, indicate the alleged breach and set out the reasonable grounds for the belief that the code has not been complied.
(b) The House may adopt a motion directing the Commissioner to conduct an inquiry to determine a Member’s compliance.
(c) The Commissioner may initiate an inquiry if he or she had reasonable grounds to believe that a Member is not in compliance.

The Commissioner, upon completion of the inquiry, presents his or her report to the Speaker who then tables it in the House. At this point, the report is also made available to the public. Within 10 sitting days of the tabling of the report, the Member who is the subject of such a report may make a statement in the House. Should the Commissioner report that a Member is not in compliance with the Code, the matter is dealt with in the House under a specific set of procedures (see House of Commons Procedure and Practice, Second Edition, O’Brien and Bosc, pp. 223–5).

Response from the Canadian Senate

1. The Senate has no experience appointing members of the public to parliamentary committees.

A report by the Standing Committee on Standing Rules and Orders, now the Standing Committee on Rules, Procedures and the Rights of Parliament, reported as follows on June 29, 1987:

It has been brought to your Committee’s attention that certain committees of the Senate have been allowing legal counsel, research assistants and other persons who are not members of the committees to direct questions to witnesses appearing before those committees.
This practice is inconsistent with Senate practice and is in contravention of Rule [96(7)] of the Rules of the Senate.

Your Committee urges all committee chairmen to conduct committee meetings in conformity with the Rules of the Senate, and to ensure that the questioning of witnesses is conducted by Senators only.

This report was considered by the Senate but not adopted.

2. The Senate has a Senate Ethics Officer who is responsible for administering, interpreting, and applying the Conflict of Interest Code for Senators. The Senate Ethics Officer is appointed by the Governor in Council after consultation with the leader of each recognized party in the Senate and after the approval of the appointment by the Senate. The first Senate Ethics Officer was appointed in 2005.

The Senate adopted a Conflict of Interest Code for Senators on May 18, 2005. It is available on the Senate Ethics Officer’s website at http://sen.parl.gc.ca/seo-cse. On this site you may also see an outline of key obligations of Senators under the code.

Section 35 of the code outlines the establishment of a committee of the Senate at the beginning of each session of Parliament. This committee, called the Standing Committee on Conflict of Interest for Senators, is established for the purposes of the code. It is authorized, on its own initiative, to exercise general direction over the Senate Ethics Officer; and to be responsible for all matters relating to the Conflict of Interest Code for Senators (Rules of the Senate, rule 86(1)(t)). During a prorogation or dissolution of Parliament, the code provides for the creation of an intersessional authority, with the same membership and general authority as the Standing Committee on Conflict of Interest for Senators, to handle any issues that might arise between sessions or Parliaments.

The Code provides for the Senate Ethics Officer and the Standing Committee on Conflict of Interest for Senators to look into complaints initiated by a senator or by the committee itself. Should there be a complaint against a senator, the process outlined in sections 44 to 49 of the code is followed.

Meetings of the Standing Committee on Conflict of Interest for Senators are conducted in camera (rule 92(2.1)). So are the meetings between the Senate Ethics Officer and senators. An investigation would only be made public in two circumstances:

1) When the Committee on Conflict of Interest for Senators has requested a full report from the Senate Ethics Officer on an inquiry into a senator’s possible conflict of interest. In this case the committee would submit a report to the Senate, which must be voted on by the senators within 20 sitting days. “In its report to the Senate, the Committee shall report the fact of the inquiry and give its findings with respect thereto, its
recommendations if any, and its reasons and the supporting documentation for any findings or recommendations.” (section 46(6) of the code).

2) If a senator who is the subject of an investigation requests it, meetings of the committee concerning the investigation may be held in public (section 36(2) of the code).

Response from the Manitoba Legislative Assembly

1. Technically our standing committees have not had lay membership; however in the case of the hiring of Independent Officers of the Legislature, most recently a panel of outside experts was appointed to assist the sub-committee dealing with the hiring of the Independent Officers. The panel of outside experts screened resumes and conducted interviews, and reported their recommendations and findings back to the sub-committee. The panel members were appointed after discussions held between the political parties represented on the committee. Concerns relating to parliamentary privilege were not raised.

2. There is no Code of Conduct for Members in Manitoba. There is conflict of interest legislation that applies to Members which requires the completion of disclosure statements of assets and interests whenever a new legislative session is resumed, or if a Member has revised information to disclose. In addition, the legislation requires Members to declare conflicts of interest and refrain from participating in debate and voting on issues where a Member has direct or indirect pecuniary interests. All statements and disclosures are available to the public for public inspection. In addition, any voter may file an affidavit showing details of an alleged violation of this Act by a Member or Minister to the Court of Queen’s Bench to have a hearing to see if the Conflict of Interest Act has been violated. If a judge deems that a violation has taken place, a Member could be disqualified from office, fined, suspended or ordered to make restitution.

Patricia Chaychuk
Clerk of the Manitoba Legislative Assembly

Response from New Brunswick

1. To date a non-Member has never been appointed to a legislative committee. However, during the September 2010 election campaign, David Alward made a commitment to allow unelected third parties to have “a voice through committee participation”. Following the election, Premier Alward invited representatives from New Brunswick’s three unelected political parties to participate in a process to make the Legislature more open and collaborative. A political science professor was retained to propose new methods for the participation of unelected third parties in the legislative process. His proposal will be presented to the Speaker and referred to our Standing Committee on Procedure for consideration. Link to government press release:
2. There is no Code of Conduct for Members in New Brunswick. As in other provinces, there is a Members’ Conflict of Interest Act. Link to Act below. Public Interest Disclosure Statements and Reports of Investigations under the Act are public documents. http://www.gnb.ca/0062/PDF-acts/m-07-01.pdf

Shayne Davies
Clerk Assistant

Response from the New South Wales Legislative Assembly

1. Lay members were appointed to the Standing Committee on Ethics between 1995 and 2003. The Committee was established by an amendment to the Independent Commission Against Corruption Act 1988 (the ICAC Act) in 1995. It was charged with preparing a draft code of conduct for members of the Legislative Assembly and with reviewing the code every two years.

The amendment Act set out the process for advertising (in a major metropolitan newspaper) for expressions of interest from people who were not members of the Legislative Assembly or members of any political party to be considered as members of the committee.

The committee interviewed selected candidates and formally confirmed the appointment of three lay members by resolution. The initial three appointees consisted of an experienced long-term (retired) mayor experienced in local government, who also sat on the Racing Board, an experienced barrister, and a woman representative who had been active in a local progress association in a regional area. The full committee held inquiries and heard witnesses about the development of a code of conduct, and the committee tabled four reports. In the following Parliament a reconstituted committee advertised again, and appointed a university administrator experienced in organisational development and business studies, a retired senior public servant who was an engineer and represented a regional area, and a local government administrator from a rural local council. This committee reviewed the code, and developed a draft training and awareness program for members.

By virtue of the Act, the lay members enjoyed the full powers of standard committee members for the purposes of the inquiry, including voting rights and the right to question witnesses. No issues of privilege were raised.

Extracts of the minutes of committee meetings where the lay members were appointed are attached.

In December 2003, the ICAC Act was amended to remove the reference to a Standing Ethics Committee and to require a “designated committee” to review the Code of Conduct.
Conduct once every Parliament (i.e. every four years). The legislation also removed the mandatory requirement to appoint lay members to the committee. The Act continues to provide for the appointment of lay ‘community’ members but only if the designated committee chooses to appoint them to assist with its functions in relation to a code of conduct.

Another example, was in 1992 when the Joint Select Committee upon Waste Management appointed two reference groups of primary stakeholders to consult with the Committee, one representing the interests of local government, and one representing the interests of the “wider community”, comprised of conservationists, waste recyclers and the packaging industry. Members of the reference groups did not attend all meetings, nor did they fully participate in hearings due to concerns that they may not be protected by parliamentary privilege. However, they were able to comment on the committee’s report and recommendations and attend site inspections.

1. Under the provisions of the Independent Commission Against Corruption Act any breach of the Code of Conduct can be investigated by the Commission if it constitutes corrupt conduct. The Commission may initiate an investigation into an alleged breach of the code following a reference from either House of Parliament or it may initiate its own investigation after receiving information from a member of the public or a public official. The Commission can hold public inquiries which are advertised in major newspapers and relevant local newspapers to advise when the inquiry will be held and the scope and purpose of the investigation.

The Legislative Assembly has not referred any alleged breach of the code of conduct to the Commission for investigation. However, the Commission has undertaken a number of investigations into alleged misuse of entitlements by members of the Legislative Assembly. This misuse of entitlements constitutes a breach of the code of conduct.

In April 2010, the Commission commenced an investigation into the misuse of entitlements by a member following allegations that were raised by a member of staff of the member. The Commission found that the member had acted corruptly by falsifying claims for entitlements. The Commission has recommended that the Director of Public Prosecutions consider prosecuting the member for the common law offence of misconduct in public office, offences for obtaining a valuable thing for herself and obtaining money for her staff contrary to the Crimes Act 1900 (NSW), and offences of giving false or misleading evidence to the Commission.

In December 2010, the Commission found that a second member had also falsified claims for entitlements and the same recommendations for prosecution were made.

Accordingly, any alleged breach of the code of conduct can result in the Independent Commission Against Corruption holding a public inquiry, which provides for scrutiny by the public.
Russell Grove asked me to send you some information about the two instances, now some years ago, of appointment of citizens to parliamentary committees. Neither committee involved privilege.

The committee which directly appointed members was the Standing Ethics Committee, which was a statutory committee charged with preparing a draft code of conduct for members of the Legislative Assembly, and with reviewing the code every two years. The Standing Ethics Committee was established by amendment to the Independent Commission Against Corruption Act in 1995. The Code of Conduct confirmed the jurisdiction of the ICAC over members of Parliament.

The Act set out the process for advertising (in a major metropolitan newspaper) for expressions of interest from people who were not members of the Legislative Assembly, to be considered as members of the Committee. The Committee interviewed selected candidates, and formally confirmed the appointment of 3 lay members by resolution. The initial 3 appointees consisted of an experienced long-term (retired) mayor experienced in local government, who also sat on the Racing Board, an experienced barrister, and a woman representative who had been active in a local progress association in a regional area. The full committee held inquiries and heard witnesses about development of a code of conduct, and the committee tabled four reports. In the following Parliament a reconstituted committee advertised again, and appointed a university administrator experienced in organisational development and business studies, a retired senior public servant who was an engineer and represented a regional area, and a local government administrator from a rural local council. This committee reviewed the code, and developed a draft training and awareness program for members.

In December 2003, the ICAC Act was amended to remove the reference to a Standing Ethics Committee, requiring only a "designated committee" to review the Code of Conduct once every Parliament (i.e. every four years). The Legislative Assembly, by resolution, established a Standing Committee on Parliamentary Privileges and Ethics, with similar function and powers to the Legislative Council Privileges Committee. The Committee can receive references from the House, pursuant to Standing Order 92:

92. Except as provided in standing order 91 and in paragraph (5) of this standing order, a matter of privilege shall be brought before the House as follows:

1. A Member desiring to raise a matter of privilege must inform the Speaker of the details in writing.
2. The Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the Standing Committee on Parliamentary Privilege and Ethics (the Committee) is to take precedence under the standing orders. The Speaker must notify this decision in writing to the Member.
3. While a matter is being considered by the Speaker, a Member must not take any action or refer to the matter in the House.

4. If the Speaker decides that a motion for referral should take precedence, the Member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The notice must take precedence under Standing Order 118 on the next sitting day (unless the next sitting day is a Friday sitting).

5. If the Speaker decides that the matter should not be the subject of a notice of referral, a Member is not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.

6. If notice of a motion is given under paragraph (4), but the House is not expected to meet on the day following the giving of the notice or the next sitting day is a Friday sitting, with the leave of the House, the motion may be moved at a later hour of the sitting at which the notice is given.

Also reproduced below are relevant provisions of the original Standing Ethics Committee:

The functions of the Standing Ethics Committee are:

(a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted, and

(b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly, and

(c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.

Extracts from various minutes in 1999:

Appointment of Community members

The Parliamentary Officer circulated a briefing folder which contained an example of an advertisement calling for expressions of interest for community members. The Committee requested the Secretariat to draft and circulate an advertisement for such expressions, and suggested dates and places for publication.

Appointment of Community Members:

The Clerk to the Committee briefed the Committee on the former community members and the qualities and criteria relevant to the appointment of community members. The Committee agreed to individually submit a short-list of a maximum of ten persons selected for interview for the appointment of community members and to defer the decision until the next Committee meeting.
Appointment of Community Members:

Members advised of their individual short-lists of applicants to interview for the three community member positions.

The Committee resolved on the motion of Mr Brown, seconded Mr Martin that the following applicants be called to interview:

(Six names followed)

The Committee interviewed six people in turn who had responded to an advertisement in the newspaper calling for applications for the appointment of community members on the Standing Ethics Committee. The Chairman questioned all applicants as to their eligibility under s. 72F(2) (not a member of a political party).

The Committee interviewed Mr Shane Godbee, who had responded to an advertisement in the newspaper calling for applications for the appointment of community members on the Standing Ethics Committee. The Chairman questioned Mr Godbee as to his eligibility under s. 72F(2) (not a member of a political party).

The Committee deliberated.

The Committee resolved on the motion of Mr Richardson, seconded Mr Brown that Mr Rod Caldwell, Dr Fran Flavel and Mr Shane Godbee be appointed as the three community members on the Standing Committee.

The Committee agreed that Mr Anthony Lupi would be the reserve if one of the three selected was unable to accept the position.

Ronda Miller
Clerk-Assistant (Procedure) and Serjeant-at-Arms

Response from the New South Wales Legislative Council

1) There is no experience of appointing a lay person to a Legislative Council committee. In 1994, an amendment to the Independent Commission Against Corruption Act 1988 proposed the appointment of a joint ethics committee to oversee ethical standards. This committee was to have five community members on it. However the proposal was rejected in the Legislative Council for a number of reasons, including that it would not be appropriate to appoint non-elected members to such a committee, given that they would not be accountable in the way that elected members of Parliament are accountable. The Legislative Assembly Standing Ethics Committee, was, however,
established with three community members. The Legislative Assembly would be able to provide more information in relation to the operation of this committee.

2) In New South Wales, the conduct of members is regulated in part by the Code of Conduct, which is adopted for the purposes of the Independent Commission Against Corruption Act 1988 (ICAC Act). Corrupt conduct is defined in sections 7, 8 and 9 of the ICAC Act. Section 9(1)(d) provides that corrupt conduct includes conduct of a member which falls within section 8 of the Act and which also constituted or involves 'a substantial breach of an applicable code of conduct'. The Council has adopted the Code of Conduct as an applicable code for the purposes of section 9(1)(d).

Section 10 of the Act provides that any person may make a complaint of corrupt conduct to the ICAC for investigation. In addition, under section 73(1), both Houses may refer a matter to the ICAC. ICAC may conduct a public inquiry if it considers it is in the public interest to do so (section 31). However, ICAC also has significant investigative powers that are not or do not need to be exercised in public. (Such powers are balanced by other accountability mechanisms such as oversight by the joint parliamentary Committee on ICAC and the role of the ICAC Inspector.)

If ICAC reports to the House that a member has engaged in corrupt conduct, including a breach of the Code of Conduct, it is up to the House to decide what action to take against the member.

While the ICAC Act provides for an ethics committee in each House, the functions of these committees do not include investigating breaches of the Code of Conduct, but rather concern matters such as drafting and reviewing the Code.

The Houses have appointed a Parliamentary Ethics Adviser to advise members on ethics issues.

*Lynn Lovelock*
*Clerk of the Parliaments*

**Response from New Zealand House of Representatives**

Our research, in consultation with the Parliamentary Historian, has not disclosed any New Zealand instance in which a lay member has been appointed to a committee of the House of Representatives or of the Legislative Council (note that the Council was abolished in 1950). An examination of early versions of the Standing Orders adopted following the establishment of the House of Representatives in 1854 has found that there seems always to have been a presumption that select committees comprise only members of the House. The only exception was the occasional joint committee established with members from both the House and the Council.
In answering this question, we understand “membership” of a committee to connote formal appointment of a named person to serve on a committee, participating in its proceedings and receiving relevant evidence and advice. The term tends to imply an ability to participate in decision-making, but this is not necessarily the case—in New Zealand, members of Parliament are occasionally appointed to select committees as “non-voting members”. These members receive committee papers, hear evidence and contribute to discussions, but have no right to vote on any question put to the committee. This development accommodates the needs of smaller parties, which, under the House’s proportionality rules, cannot have members appointed to every subject select committee. Non-voting membership is a mechanism to permit members of such parties to participate in the consideration of business by select committees while maintaining the overall proportionality of committee membership. The appointment of a non-voting member is through the House’s Business Committee, which requires at least the support of the major parties.

There have been instances in which people who were not members of Parliament have been permitted to participate in select committee proceedings to a limited degree, but never to the point of being formally appointed as a member. For example, some committees considering local bills or private bills have worked with promoters of those bills, allowing them to be privy to advice and evidence. Select committees regularly contract independent specialist advisers, which may involve varying levels of participation in proceedings by those advisers. In one particular instance, a committee considering a major revision of the tax law asked a specialist adviser to sit with the committee and hear evidence and listen to the advice being proffered by the Inland Revenue Department. This arrangement arose largely out of the respect held for the adviser (he was a former President of the Court of Appeal) and his knowledge of the subject area. However, he was never considered a member in any procedural sense.

In New Zealand there is no single Code of Conduct for members of Parliament. Aside from the general obligation for members to comply with the law and the Standing Orders of the House of Representatives, since 2005 there has been a particular requirement for members to declare pecuniary interests. Procedures for dealing with complaints that members have failed to declare interests, and other matters of privilege, are discussed below.

_Debra Angus_
_Deputy Clerk of the House of Representatives_

**Response from Newfoundland**

We have no experience with appointing lay members to parliamentary committees.

_Elizabeth Murphy_
_Clerk Assistant, Clerk of Committees_
Response from the Legislative Assembly of Nunavut

1. We have no experience of appointing lay members to committees of our legislature, as our rules do not provide for the appointments of non-Members. Our Assembly is not currently contemplating any changes in this area, but the final report of your committee will be of interest.

2. The conduct of our Members is primarily governed by the provisions of the territorial statute called the Integrity Act, a copy of which I am attaching for your reference. I would, in particular, draw your attention to the provisions of sections 36–52 of the legislation.

Response from the Ontario Legislative Assembly

1. Never done in Ontario, and we cannot recollect that our MPPs have ever explored the idea.

2. Ontario has long had a Members’ Integrity Act that sets out an ethical regime for MPPs, a disclosure regime for MPPs. The Act is administered by the Integrity Commissioner, an independent Assembly officer, who has jurisdiction to (a) advise MPPs, (b) receive, investigate and report on an MPP’s complaint that another MPP has breached the Act or parliamentary convention, and (c) advise the Cabinet as to whether a Cabinet Minister has breached the Act or parliamentary convention.

The Commissioner has no jurisdiction to receive and investigate complaints from the public; we do not recollect that an inquiry by the Integrity Commissioner has ever been open to the public, albeit the Commissioner does have broad powers to control the procedure to be followed in an inquiry.

Additionally, under the Cabinet Ministers’ and Opposition Leaders’ Expenses Review and Accountability Act, 2002, the Integrity Commissioner reviews travel, meal, hospitality, and hotel expenses of Cabinet Ministers, Parliamentary Assistants, Opposition Leaders and people employed in their offices. Both Acts require the Commissioner to make various reports that are tabled by the Speaker.

Todd Decker
Deputy Clerk
Response from the Prince Edward Island Legislative Assembly

Prince Edward Island has never had lay representation on parliamentary committees (nor has it been seriously contemplated to date).

Charles MacKay  
Clerk of the Legislative Assembly

Response from Québec

Sections 10 and 12 of the Act respecting the National Assembly (R.S.Q., c. A-23.1) stipulate that the parliamentary committees and subcommittees are composed of Members. These provisions implicitly prohibit the appointing of lay members to parliamentary committees.

However, on 15 June 2005, the National Assembly carried a motion to establish the Select Committee on the Election Act which was composed of nine members, all Members of the Assembly, including the Minister responsible for the Reform of Democratic Institutions. A non-partisan consultative citizens' committee was created to assist the select committee in carrying out its mandate. The motion provided that this citizens' committee was to be composed of eight persons registered on the list of electors, namely four women and four men.

A public call for nominations was issued by the select committee for the purpose of forming the citizens' committee, and the selection of the members of this committee was conducted by a random draw among the eligible and available candidates, while ensuring the best possible representation of the diversity of Québec’s population, particularly according to age and the regions.

Response from the Queensland Legislative Assembly

1. The comparable committee in the Queensland Parliament is the Integrity, Ethics and Parliamentary Privileges Committee (the IEPPC or ethics committee), a statutory committee established under the Parliament of Queensland Act 2001 (the POQA). There are no lay members appointed to the IEPPC. Section 81 of the POQA provides that a statutory committee must consist of seven members (four members nominated by the Leader of the House and three members nominated by the Leader of the Opposition). Standing Orders 194 to 196 also deal with the membership of committees and the appointment/discharge of committee members.

In its report titled Review of the Queensland Parliamentary Committee System, tabled on 15 December 2010, the Committee System Review Committee recommended that the Crime and Misconduct Act 2001 be reviewed with a view to having lay members included on the Parliamentary Crime and Misconduct Committee (recommendation 46). The Committee’s Report did not specifically address how the issues of
parliamentary privilege might be overcome. The ministerial response to the committee’s recommendations is awaited. (Under section 107 of the POQA a response is required to be tabled within three months or an interim response within three months with a final report within six months.)

Under section 92 of the POQA, the investigation of breaches of the code of conduct is the responsibility of the IEPPC. Procedures for raising and considering complaints, and the procedures of the IEPPC, are set out in chapter 40 of the standing orders.

The Speaker advises the House whether or not a matter raised will be referred to the IEPPC. To the extent that the standing orders, the code of conduct and the Record of Proceedings are published on the parliament’s internet website, the process for investigating complaints against members is open to public scrutiny.

Under Standing Order 270, evidence of the IEPPC is heard in a private hearing, unless the ethics committee determines that it is in the public interest to hold the hearing in public. The committee’s reports are tabled and published on the website. Sessional orders provide for the debate of parliamentary committee reports.

**Response from the Saskatchewan Legislative Assembly**

The Standing Orders state that membership of committees is to comprise of Members of the Legislative Assembly. Citizens have been employed by committees, from time to time, as experts on a subject matter, research assistants or subject area experts for hiring Officers of the Assembly. These persons are not considered members of the committee.

Saskatchewan does have a Code of Ethical Conduct but it does not contain any enforcement provision. Mechanisms exist in the Legislative Assembly Act and the Members of the Legislative Assembly Conflict of Interest Act for a Member to complain about the conduct of another member, and for the Assembly collectively, by order, to cause an inquiry into the conduct of a Member. In these circumstances the inquiry is restricted to allegation of misuse of office for personal advantage or resources. Recently the Conflict of Interest Commissioner investigated two allegations about a member, one ordered by the Assembly and another on the complaint of a Member. If you are interested, the reports are in the What is new section of the Saskatchewan Assembly website. These inquiries can be considered typical with respect to process and scrutiny by the public. Both the inquiry process and results remained closed from any sort of scrutiny until the reports were tabled with the Speaker.

http://www.legassembly.sk.ca/news/default.htm

There is no process in existence to complain of breach of ethics for actions not connected to conflict of interest.

*Gregory A Putz
Clerk of the Legislative Assembly*
Response from the South Australian House of Assembly

1. The South Australian House of Assembly has a Standing Order (SO324) for the appointment of ‘advisers to assist’ a Select Committee inquiry. This SO has in the past been used to allow the Committee to appoint to its number for the purposes of hearing evidence and deliberation a person expert in the field of inquiry. The extent the Committee allows the adviser to participate in the proceedings is up to the Committee but in my experience they have been allowed to access to all evidence, ask questions of witnesses, contribute to the text of the report and travel with the Committee.

2. The South Australian House of Assembly has no Code of Conduct for Members. There was an attempt in 2004 to implement a Statement of Principles for Members which met with little if any support from Members. I think it could be best described in the words on one Member who said “They want us to design another stick with which they can beat us”. There was no explanation as to who ‘they’ might be but the Joint Committee inquiry came about largely as result of media pressure.

Malcolm Lehman
Clerk

Response from the Parliament of Western Australia


2. We don’t have a code of conduct, other than the normal Standing Orders and Members Financial Returns.

Malcolm Peacock
Clerk of the Legislative Council and Clerk of the Parliaments

Response from the Yukon Legislative Assembly

1. We take that view that a body that contains, among its membership, individuals who are not Members of the Legislative Assembly is not a parliamentary committee. In that regard, such a body would not be entitled to use the resources of the Assembly (funding, personnel, and facilities). Where such bodies have been formed they have been resourced by the executive branch of government, not the legislative.
2. Yukon has a *Conflict of Interest (Members and Ministers) Act* which is administered by a Conflict of Interest Commissioner. Ministers also have a code of conduct. Members of the Legislative Assembly do not.

_Floyd McCormick_
Clerk

**Response from the Legislative Assembly for the Australian Capital Territory**

1. There is no capacity for a Committee to appoint a lay person to a Committee. Committees however do have the capacity to employ consultants to assist with inquiries but not participate in committee proceedings.

2. In the first instance an alleged breach in the committee would be dealt with by the Committee and would be conducted in private meetings. If the matter could not be resolved at the committee level, the Chair would correspond with the Speaker or refer the matter to the Assembly for resolution.

_Tom Duncan_
Clerk
Formal Minutes

Wednesday 26 October 2011

Members present:

Rt Hon Greg Knight, in the Chair

Mrs Jenny Chapman
Nic Dakin
Mr Roger Gale
Mr James Gray

Tom Greatrex
John Hemming
Mr David Nuttall

Draft Report (Lay membership of the Committee on Standards and Privileges), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 78 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as Appendix 1.

Resolved, That the Report be the Sixth Report of the Committee to the House.

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

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 27 April was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 2 November at 3.00 pm]
Witnesses

Wednesday 27 April 2011

Sir Malcolm Jack KCB, Clerk of the House, House of Commons

Wednesday 18 May 2011

Rt Hon Kevin Barron MP, Chair, Committee on Standards and Privileges

Wednesday 15 June 2011

Sir Christopher Kelly KCB, Chair, Committee on Standards in Public Life

Mr Bernard Jenkin MP, Chair, Public Administration Select Committee

List of printed written evidence

1. Rt Hon Sir Malcolm Rifkind MP (P 83, 2010–12)  Ev 22
2. Chris Mullin, former Member of Parliament (P 86, 2010–12)  Ev 22
3. Lord Nicholls (P 90, 2010–12)  Ev 22
5. Sir William McKay KCB (P 95, 2010–12)  Ev 26
6. Rt Hon Kevin Barron MP, Chair, Committee on Standards and Privileges (P 98, 2010–12)  Ev 27
7. Sir Philip Mawer, former Parliamentary Commissioner for Standards (P 100, 2010–12)  Ev 29
8. Committee on Standards in Public Life (P 101, 2010–12)  Ev 32
List of Reports from the Committee during the current Parliament

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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Oral evidence

Taken before the Procedure Committee on Wednesday 27 April 2011

Members present:
Mr Greg Knight (Chair)
Mrs Jenny Chapman
Mr Roger Gale
Mr James Gray
John Hemming
Mr David Nuttall
Bridget Phillipson
Jacob Rees-Mogg

Examination of Witness

Witness: Dr Malcolm Jack, Clerk of the House, House of Commons, gave evidence.

Q1 Chair: Thank you for coming, Dr Jack. We are grateful to you for giving us the benefit of your opinions. Do you want to say anything at the outset? Dr Jack: Thank you very much for your invitation, Chair. We are dealing with a fairly specific matter this afternoon, the addition of lay members to the Standards and Privileges Committee. All I say at the outset is that I entirely understand the policy reasons that lie behind the idea, which was originally proposed by the Committee on Standards in Public Life, and I entirely understand why the proposal has come forward.

In December, the House resolved that there would be lay members, I am concerned about how that can be done without, as I see it, affecting some of the privileges of the House. I just want to say that I understand why it has been proposed.

Q2 Chair: By saying that you rather indicate that it is not an idea on which you are particularly keen. Dr Jack: Clerks are very cautious about things for which there are no precedents, and there are no precedents of a convincing nature for bringing outsiders to act in the same capacity as elected Members.

Q3 Mr Gale: You have said, “There is a risk that the addition of lay members to a committee would alter its character to such an extent as to cast doubt on whether its proceedings were actually proceedings in Parliament protected by Parliamentary privilege.” So you appear to be saying that the privilege itself is under duress. What is your real concern about the privilege implications of adding lay members to the Committee? Dr Jack: Perhaps I could provide a little background, which may be helpful. As Members know very well, article 9 of the Bill of Rights is where modern privilege is codified. The privilege, of course, is much more ancient than article 9, but that is where it is codified. That is where freedom of speech and proceedings of the House are absolutely protected. So there is absolute protection for anything that is done or said in the House, but that only covers things done or said by Members of the House. Nobody else participates in proceedings in the House.

By very long-standing practice, those who assist Committees—Committee Clerks, witnesses and so on—are also protected by parliamentary privilege for what they say. What I am saying before the Committee right now, for example, is protected by parliamentary privilege.

It is not clear that lay members would be protected, but perhaps we will come back to that later. As usual, Professor Sir William McKay puts it rather more succinctly than me. The question is whether a Committee constituted of people who are not Members of the House would actually be involved in the proceedings of the House—would those be proceedings? Of course, the other thing to bear in mind is that it is the courts that determine the ambit of privilege, rather than the House.

Q4 Chair: But we could pass legislation to say that anything a Committee with lay members did was deemed to be proceedings. Dr Jack: Yes, absolutely. That is right. That is what Bill McKay suggested in his evidence. Otherwise, there is a question of a challenge of some sort as to whether, in a fairly contested situation, the activities of such a Committee were matters of privilege. Some of these Standards inquiries are not exactly neutral affairs. They are affairs where there is an adversarial contest going on, if I can put it that way.

Q5 Mr Gale: Setting aside the thorny issue of precisely how these great and good people will be chosen and by whom, if they are at all, there is then the issue of whether they are allowed to vote, given that they are not Members. What is the implication, Dr Jack, of whether they can vote? How do you draw the line between something that is not contentious at all and something that is highly contentious? Dr Jack: The voting on and moving of amendments in Committee are proceedings. There is no question about that. I understand that the Committee on Standards in Public Life recommended full voting rights for lay members, but if they were to have those full rights, they would be participating in the proceedings, which would question whether those proceedings were proceedings in Parliament. They could be challenged.
Q6 Mr Gale: I may be pinching someone else’s turf here, but we come back to Mr Anderson in 1875 who challenged the fact that it was not possible to challenge on the Floor of the House those people voting, because they were not Members. It is a murky area indeed.

Dr Jack: That is right. You are referring to that 1876 Select Committee, mentioned in the very useful note that your Clerk produced for you. There is in its Report that rather Victorian and resonant phrase, “inconsistent with ancient parliamentary usage”. That was the Committee’s conclusion, which was rather sonorous, but it still applies.

Q7 Mr Gale: From my tone, you will gather that I am less than enamoured with most of this, but the other area that does not seem to help us very much—you touched on this in your opening remarks—is that save for a skirmish in New South Wales and bits and bobs in Canada, absolutely nobody else seems to have gone down this route at all. Are there any precedents? You have referred to the value of precedents, but there don’t seem to be any.

Dr Jack: No. Yes. That is why I said that as Clerk of the House, I am rather cautious. You have had a paper, which we gathered, with such responses as came from our Commonwealth colleagues. As the Committee knows, the Commonwealth community is extremely important in this matter of privilege. We are part of a common community. As you say, Mr Gale, the precedents are very, very thin. The Australian House of Representatives says that it has had no such experience, apart from that of some people who have been drafted in as advisers. That is not uncommon in many of the jurisdictions. The Canadians say the same, although they seem to suggest that privilege would cover lay participation. But on the other hand, they prevented participants from moving motions or voting—the very thing that we are talking about. The New South Wales example you mentioned is the only solid one, and I think this rather goes back, Chair, to your earlier remark that you could do this by legislation, because this was in fact done by legislation in the case of the provincial legislature in Australia. There was actually an Act, and the Act said that the participation of the lay members in the decision-making process was to be deemed to be part of our parliamentary proceedings, and the Act was short and unequivocal, what concerns do you have that it might still be subject to legal challenge?

Q8 Chair: If legislation were to be pursued to make it quite clear that the participation of lay members in the decision-making process was to be deemed to be part of our parliamentary proceedings, and the Act were short and unequivocal, what concerns do you have that it might still be subject to legal challenge?

Dr Jack: Well, that raises the question that anything that is put in legislation is justiciable. Because it is in legislation, it is for the courts to interpret the meaning of law. But I think the risk would be small, particularly if—the Committee will know that the Government are proposing a privileges Act—this were to be part of that Act. I have brought with me the Australian Parliamentary Privileges Act 1987. It does not cover something like this, but it is a privileges Act—such a thing exists. Our Australian colleagues tell us that it has not led to a great deal of litigation in the courts about the meaning of the provisions in the Act. So I think there would still be a residual risk, but it would be much less. If it were in a privileges Act, it would be less likely to become the target of a challenge.

Q10 John Hemming: We have a Standards and Privileges Committee that previously was a Privileges Committee and the word “standards” was added. Why not separate the two out?

Dr Jack: There is a lot to be said for that. As you know, the standards element came up in the mid-'90s, after the so-called cash-for-questions scandal. I should have looked this up before I came; I am sorry I didn’t. At the time, it was thought that tacking it on to an existing Privileges Committee was the easiest way to deal with it, but in my view, the functions are completely different.

A Privileges Committee is concerned with things like Select Committee evidence, leaks from reports, interruptions of proceedings, problems with witnesses, serving legal papers on Members and, recently, of course, hacking. Those are a different kind and category of business than the standards business, which is really mainly based around the advocacy rule, registration of interests—all the sort of things that you, as Members, will be very familiar with—allowances and their misuse, stationery and all those sort of things. I think that they really are a completely different set of matters. I think it says in the paper that the Committee on Standards in Public Life recognises that distinction, and it is concerned with standards and not with privileges. So I think that the answer is yes.

Q11 John Hemming: If you were to separate the two out, would you try to maintain the same membership, or actually have a different membership for each?

Dr Jack: It could overlap in some ways, but I think the Privileges Committee should certainly be a
Committee of Members of the House only. I really do not think that lay members should sit on a Privileges Committee. That would be quite wrong.

Q12 John Hemming: Do you think that that would be a better way of doing things than having a single Committee with Sub-Committees?
Dr Jack: Yes, I do. The Sub-Committee route would lead to difficulties about different decisions in the Sub-Committee and the main Committee, and so on and so forth. I think go for separation. I was about to say that a Privileges Committee—I know that Mr Hemming has a particular interest in the subject—would not be in constant session, but that is maybe a risky thing to say.

John Hemming: Yes, I know. I’ve only raised five cases recently.
Dr Jack: At any rate, the old Privileges Committee didn’t meet very often.

Q13 Mr Gray: Is there a linkage, therefore, in this? Supposing that we were to reply to the request that we have had by saying that we can understand the policy reasons for having lay members on the Standards Committee, but we would only consider accepting that or agreeing with it if there were to be that separation of powers between the two halves. Is there logic in that somewhere?
Dr Jack: Yes. You’re the Procedure Committee. It’s perfectly open to you to make such a suggestion. In fact, that is where the House would expect such a suggestion to come from.

Q14 Mrs Chapman: The call for having lay members on the Committee seems to have come as a result of the expenses scandal. Obviously, we now have IPSA, which is run by lay people. Do you think that that changes the terms of this at all?
Dr Jack: In respect of the fact that standards matters are still within the jurisdiction of Standards and Privileges, no. IPSA is concerned with the regulation of the allowance system, and so on, but the control of conduct cases is still within the House, so I don’t think that it has changed. In fact, if I may say so, the Chairman will remember that this was one of the things that alarmed me when I saw the first draft of the Parliamentary Standards Bill—namely, that this function was going to be transferred to IPSA, and I rather forthrightly spoke out against that.

Q15 Mrs Chapman: So you don’t think that it affects the working of it?
Dr Jack: No, I don’t think so.

Q16 Mrs Chapman: I understand that the Standards Committee has broader functions. What is your opinion about how lay members would be able to contribute to that?
Dr Jack: I understand the reasons why this policy is being put forward. They would bring, presumably, expertise and experience of a professional nature and so on. It is not uncommon in other professional bodies to have lay members sitting on ethics committees, which this would be. Of course, it would also be a boost to public confidence that the system had this objective element. There can be advantages provided that they are added in such a way that they don’t raise these privilege problems.

Q17 Mr Nuttall: Without wishing to prejudge in any way the outcome of our inquiry, if we were to proceed with the idea of having lay members on the Committee, do you feel that two is the right number, or three or more than three? To what extent would one or more of them have to be present at every meeting to make the meeting legal? Is there a danger that if we said that a lay member had to be present they would then have the capacity to hold that Committee to ransom by simply not turning up?
Dr Jack: These really are matters of judgment. One cannot be absolutely conclusive about this. I have suggested in my paper that there might be a requirement in the quorum of the Committee, which would be put in the Standing Orders of the House, that lay members would have to attend, merely to confirm the fact that the House wasn’t overriding the idea of having lay people on the Committee. What proportion of the quorum that should be is difficult. The majority should still rest with Members of the House. This is a Committee of the House, after all. I think they should have the majority on it at any meeting, so that the quorum would be arranged in that way.

I think in my paper I mention that we have had a bit of experience. Members will be aware that the Speaker’s Committee for IPSA, which has just been mentioned, has now appointed three lay members. They have staggered their appointments, so that one is appointed for five years; one is appointed for four years, and so on. So there is a kind of rotation and turnover. That could be a model. It depends how large you are going to make the Standards Committee itself.

Q18 Mr Nuttall: There has been a suggestion, I think from Chris Mullin, that the Chairman of the Committee could be one of the lay members. Do you have a view about the difficulties that that might cause in procedural terms or whether there might perhaps be some benefits?
Dr Jack: This would immediately raise the problem of proceedings again. Surely, a Chairman of a Committee must be involved in proceedings, must be involved in the decision, unless, somehow, there was a provision in the Standing Orders that one of these lay members could take the Chair, still without voting rights. I think it would be pretty odd for the Chairman to be a lay member, but it is not insuperable; it is something that could be written into the Standing Orders if it was desired.

Q19 Mr Gray: On recruitment, do you have views about the means by which these people could be recruited, bearing in mind the experience of the Speaker’s Committee on IPSA and the Parliamentary Commissioner and all that?
Dr Jack: I have set out in my paper around paragraphs 25 onwards the possible process for appointing the lay members. It would obviously need to be a transparent process in itself. The very object of the exercise of producing people who were coming with an objective
and outside view might be called in question if people suddenly appeared on recommendation from someone or other. But so far as the SCIPSA is concerned, there was a competition; there was a board; and people applied. A specialist recruitment agency was used, and so on and so forth. It was a very open process, and I think the same thing would have to apply in this case.

Q20 Mr Gray: So that openness would presumably mean that the Chairman of the Committee should not have an undue influence or involvement in the recruitment?

Dr Jack: Yes, I think that is right.

Q21 Mr Gray: The risk of all that might be that you land with someone with an agenda, or two people who believe they are coming as reforming angels into this corrupt den of thieves. If we couldn’t influence it for the reasons you describe, we would risk recruiting the wrong kind of person for the work, which often concerns delicate matters of judgment. It is simple when it is plain black and white that a chap has fiddled something, but often these things are matters of quite delicate judgment as to whether something was intentional. If you recruited the wrong kind of person, presumably there would be a risk of there being a presumption of guilt.

Dr Jack: Yes, I think that is right. It is also about the type of person you are trying to recruit. Would these people be legal experts? What sort of person would you be looking for? But, yes, I think that that is the case. However you do it, you would have to have an open system.

Q22 Chair: Just for the written record, will you confirm that you were nodding to all of Mr Gray’s questions?

Dr Jack: Yes, I was nodding. I am so sorry; I should not nod, but articulate my nods.

Q23 Mr Gray: On the question of who they are and what their abilities are, do we want just the great and the good? Do we want lots of people who have been on quangos and things, or do we want somebody with a fresher mind?

Dr Jack: These are difficult questions.

Mr Gray: That’s why I am asking them.

Dr Jack: Exactly; absolutely. I would have thought that if the main object is to instil public trust in the system, one should perhaps go a bit wider than the great and the good by recruiting people who do not normally fall into that category. On the other hand, for reasons you have just said, you would want people with judgment and some special qualities to bring to the deliberations. There would have to be a balance.

Q24 Mr Gray: Lastly then, let’s suppose that we’ve appointed two people through a transparent process and there is at least a possibility that those people arrive with a determination to be seen to be cleaning up the place. The Committee is split in its judgment on some matter, with the majority of elected Members going one way and the lay members going the opposite way. Under those circumstances, or a great many other circumstances, how would you preserve the secrecy of the proceedings of the Committee? Surely, some lay people would say, ‘Well, it’s our duty now to go to speak to The Daily Telegraph because we think all you people are in it together.’

Dr Jack: So far as the deliberations are concerned, there would have to be some undertaking of confidentiality, otherwise I don’t see how a Committee could function properly. Any Committee has to have a notion of confidentiality while it is deliberating. Under the proposal that I have put forward to you, that would not necessarily be such a problem. First of all, these members would not be voting.

Q25 Mr Gray: That has not been decided—they may, or they may not. One proposal is that they should be voting members.

Dr Jack: But I am saying that my proposal is that they shouldn’t. If they shouldn’t, the problem is removed. Secondly, if they—

Q26 Mr Gray: Sorry to interrupt. Even if they weren’t voting, they could well take a diametrically different view to the view of the elected Members.

Dr Jack: That is the point I am getting at. My suggestion comes. Their view should be recorded and published with the Committee’s report to the House. So they would be subjects or—if I can jest for a moment—victims of transparency themselves, because the reasons for their views would have to be stated.

Q27 Mr Gray: I have one last question on confidentiality. We are subject to the strictures of the Committee ourselves. If we reveal a report before it has been published, we are hauled in front of the House and/or the Committee. Even if the lay members had signed a confidentiality agreement, what sanctions would there be? Would they be hauled before the Committee?

Chair: The sanctions would be this—wouldn’t they?—if we split the two Committees and had a Standards Committee and a Privileges Committee and the lay members of the Standards Committee started to leak against the wishes and undertakings given to that Committee, the lay members of the Standards Committee would be referred to the Privileges Committee.

Dr Jack: That could well be the case.

Mr Gray: They would be in breach of parliamentary privilege by doing that.

Dr Jack: They would be committing a contempt of some sort, just as if your staff suddenly started leaking, that would amount to a contempt.

Q28 Mr Gale: Can I just come back to the selection process? There is a revolving door of people, rather like the rep that the BBC producers use on current affairs programmes. There are the so-called great and good who crop up with tedious regularity on absolutely everything. I’m not clear, if we go down this road and recommend that there should be lay members—even accepting the separation of the Committee, which seems to me to be the least worst of the proposals that have been put forward—who will pick the lay members and by what yardstick will they
be appointed? We’ve established there is no precedent, but do we have any idea how that might be done to avoid the revolving door process?

**Dr Jack:** I suppose that it would begin with the way the advertisement for calling them was worded. You would start off with a recruitment process, and you would write that in such a way as to limit the kind of people who would be eligible. These are quite serious matters that would have to be looked at very carefully. In the case of the Speaker’s Committee for IPSA, the Speaker himself decided to stand back a bit from this and the Clerk Assistant chaired the actual recruitment board—there were Members on it as well. You could have some sort of mixture of that kind.

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1 Witness correction: The recruitment board consisted of officials and external members only. See Memorandum (P 103) paras 25 to 27.

Obviously, I think there would certainly have to be a Member element on the recruitment board for these people. These are difficult matters, and I think you’d have to sit down with a list of what it was that the process was aiming to achieve, as Mr Gray has said. What sort of persons were you trying to get?

**Chair:** Does any other member of the Committee want to ask a question? Dr Jack, do you want to add anything?

**Dr Jack:** No, I don’t think so. I think we’ve covered the ground, particularly mentioning, as I said at the beginning, that there are no clear precedents and that there are no Commonwealth precedents. I think I’ll just end on that note.

**Chair:** Can I thank you for your evidence on behalf of the Committee? It will be invaluable in enabling us to make a decision, so we thank you for your time.
Wednesday 18 May 2011

Members present:

Mr Greg Knight (Chair)
Mrs Jenny Chapman
Thomas Docherty
Mr Roger Gale
Mr James Gray
Tom Greatrex
John Hemming
Mr David Nuttall

Examination of Witness

Witness: Rt Hon Kevin Barron MP, Chair, Committee on Standards and Privileges, gave evidence.

Q29 Chair: Kevin, thank you for coming. We much appreciate you giving us some of your time, knowing how busy you are. Do you want to make an opening statement or do you want us to go straight into our questions?

Kevin Barron: I am very happy to do that. You will have seen the evidence on what the last Committee on Standards and Privileges in the last Parliament said about this relationship between lay members on the Committee. As you know, Chairman, as you were on it for a while as well, I sat on the wings of that Committee. We looked at this in this Session of Parliament, and we came to a different conclusion in relation to the issues about privilege and standards, but I am very happy to take questions on that basis.

Q30 Chair: Could you start off, then, by telling us why your Committee supports this proposal?

Kevin Barron: First of all, this came about in 2002. It was the Committee on Standards in Public Life that made recommendations to the House about what we should do in relation to standards. I was not on the Committee then, but as I recall, one was about expanding the membership and looking at its quorum. Consequently, the membership was expanded to 10. Its quorum is five. It has to have five members of the ruling party on it, or parties on it as we are at the present time, but a member of the opposition shall chair it—that is, the major opposition party. It also said it ought to have lay members on it as well. I think the House agreed this in about 2005, and the Standards and Privileges Committee certainly discussed it in the previous Parliament and agreed with that conclusion.

You will know that the House now has lay members on SCIPSA, the Speaker’s Committee on IPSA. I don’t know exactly how that is designated in here, but I sit on that Committee ex officio as Chair of the Standards and Privileges Committee, and the first evidence session on a lay member being involved in taking evidence from SCIPSA, on its budgets, was last week. Unfortunately, I wasn’t there; I was doing other things with the Standards and Privileges Committee, but you will be able to see from the evidence how that interaction played. I have read the informal minutes of that meeting.

The evidence is around lay members playing a role. As I said earlier, this comes from the Committee on Standards in Public Life. I have a firm belief as an individual that there is nothing wrong in this. I served nine years as a lay member on the General Medical Council. I recognise that that is a statutory body, a statutory committee, but there were three Members of Parliament on it; Parliament used to appoint one from each major party at one time. I used to be there, and I used to take evidence and ask questions in relation to the fitness to practise of doctors. The role that I played there I was quite comfortable with. It was to give some assurance to people outside. Effectively, you looked at the accusation that you were not stuck to what they should have done. There was a question about their fitness to practise, and I was very comfortable that lay members have a role to play in that as well. That goes on to this day, in most regulatory bodies that we as parliamentarians actually set up. Yet in our own regulatory body here—non-statutory as it is, of course—we don’t have lay membership. I am quite comfortable, and I think the Committee, both in the last Parliament and in this Parliament, is quite comfortable that this should happen.

What we didn’t think—and I will finish at this, Chairman—was that it ought to be up to us as a Committee to decide how they sat with us and who they were, effectively. We think that is a matter for the House, not a matter for us, because there are wider issues about whether or not expenses and maybe a per diem would be paid to individuals as well. Indeed, you will see from our note that we did suggest that that could be easily looked at, as far as having lay members on the Committee, shall I say, for standards. Privilege is another matter that we have rethought in this Parliament, of course.

Q31 Chair: What difference do you think it would make to how your Committee would work if you had to have lay members as part of the process?

Kevin Barron: Let me say that we don’t have to have them. We have asked for them. In the last Parliament, I was very much in favour of this happening as well, because of my experience elsewhere in terms of being a lay member on the General Medical Council. So, how would it work? I think there are issues around privilege. The solution to the privilege issue in the last Parliament was that you may have a sub-committee of sorts, so that you do standards. You could have a sub-committee that would look into privilege, of course, but that would mean maybe that lay members should not look at privilege. I think that we recommended that that should not be the case.

What we have suggested to you in the note that we put into the Committee is that maybe we should have
two committees: one is the Committee for Standards; the other one is the Committee for Privileges. You could have—and this would be up to the House—the same members on both but of course, in terms of standards, you could then have lay members on it. They would then be a party to everything, taking all decisions in relation to that. I think we feel that if it was done on the basis that the Standards Committee was a sub-committee of the Standards and Privileges Committee, then they could not take a decision in the final acceptance of a report. We think that that would be wrong. So we think the two-committee solution is probably one that you ought to look at seriously. Of course, we will be looking at your recommendations, and not just at what we have said to you.

Q32 Chair: I think Roger Gale will come back on that a little bit later on. Your committee not only looks into individual cases, but actually has a broader function of overseeing the operation of the House’s disciplinary arrangements as a whole. How do you think these lay members would be able to contribute in those sorts of decisions?

Kevin Barron: In my time on the Standards and Privileges Committee, one of the issues that has been around for a very long time, and those of you who were here before the last general election will know that—that when it comes to issues around being consulted in relation to the Code of Conduct, which basically is where the breaches come, in terms of expenses and so on, I do not agree with that analysis, having sat on the Standards and Privileges Committee, the accusation that was made against them—one of the issues that has been around for the last two years, and those of you who were here before the last general election will know that—that when it comes to issues around being consulted in relation to the Code of Conduct, which basically is where the breaches come, in terms of expenses and so on, I do not think there is any problem at all with lay members looking into that. I don’t know how this would work, but I think we are statutorily one of the organisations that IPSA should consult if they are looking at some major consultation process in relation to what is now the Independent Parliamentary Standards Authority. It seems to me that, under those circumstances, lay members could have a very good role to play as a full member of the Committee, hopefully giving some assurance that what we are doing, and the decisions we are coming to with fellow professionals in here, is something that the public can have more confidence in. I think we certainly need that after the last two and a half years.

I know when I first went on the General Medical Council, the accusation that was made against them—from my nine years’ experience, I would say it was unfair—was that it was about doctors looking after doctors. I don’t agree with that analysis, having sat on it, but you are open to that allegation, as I am sure you would feel that Parliament is, potentially, when it is sitting and looking at the conduct of Members of Parliament on their own: it is well open to the accusation that it is Members of Parliament looking after Members of Parliament. It often happens, quite frankly, even now, but there you are.

Q33 John Hemming: The Committee heard concerns from the Clerk that there is a risk that the addition of lay members to a Committee would alter its character to such an extent as to cast doubt on whether its proceedings were actually proceedings in Parliament, protected by parliamentary privilege. Obviously, one solution to that is to change the statute. The other solution proposed is to have lay members but not allow them to vote. What are your views on that issue?

Kevin Barron: On the latter, it would be effectively saying that you have a second-class member of a Committee. It seems to me under those circumstances it would be wholly wrong to say, “You can sit here, but you can’t vote”. Let me also say that there has never been a vote on the Committee since I have been on it. I have sat on the Standards and Privileges Committee since 2005, as the Chair in the last 11 months or eight months, or whatever it is. I have made sure at all times that this is done on a consensus basis. It is a very difficult area for Members of Parliament to come to agreement on. I think the past Chairmen have done exactly the same thing as well. I don’t think there has been a division since 2001, so I am not too worried about that. You mentioned another thing, John.

Q34 John Hemming: You could pass statute defining the proceedings as proceedings in Parliament.

Kevin Barron: Well, yes. We had a short debate about this, prior to agreeing a memorandum to send to you, asking you to do what you are doing now. One of the things put to us was: “Well, you could be challenged in a court of law, because it is not a Committee of parliamentarians anymore; there are other people on it as well.” That may be possible, but it doesn’t mean to say that you shouldn’t do it. The greater problem with how our law is put together is that there may be two or three challenges on two or three different issues. An individual has come in front of this Committee, which looks like it is not just a Committee of parliamentarians but more of a jury-type thing, for want of a better expression, and under those circumstances you may be vulnerable to challenge in a court of law. That could be the case, but if there were three challenges, it could be on three different issues to do with three individual cases. My view is that that is something that, in a democracy, we have to accept. We have to move on from where we are now, in terms of the make-up of the Standards and Privileges Committee.

Q35 John Hemming: On the issue of having lay members without a vote—I am in a sense putting words into your mouth—do you think there is any merit in that at all? You might as well not have the lay members in the first instance.

Kevin Barron: I would never say it is not worth having members even if they don’t have a vote, but when I sat as a complete lay member alongside senior clinicians looking at whether doctors had breached codes or not, I was never, ever in an uncomfortable position. I was never in a position where it broke down between lay and medical members of those committees. I used to chair some of these fitness to practise committees and it seems to me, under those circumstances, that full membership is a prerequisite.

Q36 Chair: Would not having a vote stop them doing their job? If they disagreed with the elected members on the committee and had a mechanism for making their views known, that would be as effective, wouldn’t it?
Kevin Barron: Something written in the back of a report, maybe, so that those who want to look at it could turn round and say, “Well, yes, we can see what happened here”. I will re-emphasise: I don’t see why we can’t have full membership of lay members on the Standards and Privileges Committee. There are no second-class citizens as we sit at the moment. There is a Chair, obviously. Other than that, they are members of the Committee appointed by the House to that Committee, and given the responsibility by the House to look into matters in relation to standards, in the case that I am directing my comments to at the moment. I think that it would be wholly wrong to have people on there who did not have the vote, even if it was identified that they were unhappy. We ought to be looking at what the quorum is and making sure that there is a lay member there. Hopefully, if it goes as it has since 2001—or as I have been told it has—there will be no vote that splits the Committee; you try to come to a consensus on the facts that are in front of you. It seems to me that that is the way that we should operate as parliamentarians—and, if lay members or one lay member comes along, lay members as well.

Q37 Mr Gale: The 2009 Standards and Privileges Committee report suggested that privileges should be a sub-committee of the main Committee of elected Members only. Your current Committee recommends that there could be a Standards Committee and a Privileges Committee, which would, therefore, presumably embrace lay members on both.

Kevin Barron: I don’t think that is the intention, Mr Gale. I think the intention is that the Standards Committee would have lay members, and the Privileges Committee would not.

Mr Gale: Right. I misunderstood you, in that case.

Kevin Barron: That is my understanding.

Q38 Mr Gale: The Parliamentary Commissioner suggests that the membership of the two committees should be the same, which does beg the question: if you are going to do that, why have two committees?

Kevin Barron: On the basis of what I have just said, I would say that he is probably wrong in that respect. That is the way that I believe it would work. I think there would be a sub-committee, and say, “Well, we would have an issue about having lay members on a committee that is looking at parliamentary privilege. That is my advice, and that is my understanding of what the House authorities think as well.

There is a way around this without having somebody who is effectively a second-class citizen, or has been asked to remove themselves from the room because we are now going to move on to an issue of privilege, as opposed to an issue of standards. Let me give you a practical example. Mr Chairman, that you will have seen when you sat on the Committee in the last Parliament. The Commissioner for Standards does come along, mostly to meetings where we are talking about standards. You will have seen it in the session in which we looked at phone hacking. So, he will come along; he will give us his update on where he was in certain areas, and guidance about what is coming down the road in terms of any possible memorandums for us to take decisions on. Then when we went on to the phone hacking, he would remove himself from the room. Now, I think he probably just wanted to get away and he didn’t have an interest in hacking. It seems to me to say to lay members of the same Committee, “Well, you can go now, because we have to look at another matter”—my instinct is it would be wrong. Therefore, I do believe that we could have two committees. It would be entirely up to the House whether—as far as the House membership is concerned—it was exactly the same, and whether the Chair was exactly the same. As we put in our memorandum, the Chair does not have to get any further remuneration on top of what they get currently, effectively. I think that could work well, if the House agrees it, of course. Whether the House agrees it will be a matter of whether you recommend it, I suspect.

Q39 Mr Gale: I can see where you are coming from now. Quite clearly, it could be the same parliamentary membership of both committees. If that is so, is there anything that we would lose by having two committees rather than one under those circumstances?

Kevin Barron: No, it seems to me a lot cleaner, a lot clearer, and providing that the lay members have the same status as other members on it, it would be better, in our view, that privilege is taken separately as opposed to either/or, being sub-committeed, et cetera. As I say, it would be up to the House, but I can’t see why we couldn’t operate currently as a Committee on Standards and a Committee on Privileges. I will give you a classic example about where we change. We morph from one to the other when somebody leaves the room because they are not involved with the second investigation that we are discussing.

Q40 Mr Gale: To put the remuneration issue to bed, if the chairmanship of the Standards Committee and the chairmanship of the Privileges Committee was one and the same person, he or she would be the Chairman of Standards and Privileges, so effectively that would resolve that issue.

Kevin Barron: You would have to ask the House authorities how it would work, but if it was two committees with one chairman, it seems to me that remuneration for one would be quite adequate. We cover both of these areas now and have done since, I think, the mid-1990s, in a practical sense. It is just a question of how you protect the integrity of a committee that has lay members sat on it, as opposed to a parliamentary committee dealing with matters that lay members would not and should not be involved in.

Q41 Chair: If the House decided to split the Committee into two, would you be comfortable chairing both, if you were asked to do so?

Kevin Barron: Yes.

Q42 Mrs Chapman: On the practicalities of how this might work, there have been a range of views about the number of lay members who might be invited to join. That has gone from at least two to no more than three to begin with. Do you have a view on the number of lay members that would be appropriate?

Kevin Barron: I think we said two because that was what the Committee on Standards in Public Life was
talking about back in 2002, but, no, I don’t have a
view on that. If you look at most of the regulatory
bodies that we pass legislation on now, they talk about
parity, or near parity, in terms of lay members to
medical members, certainly on the General Medical
Council. This is not a fitness to practise committee, so
maybe I should steer away from that, but you would
have both lay and medical on fitness to practise
committees. In practical terms, that is what we are
talking about on standards in Parliament. So, no, you
could have more than two if that is what you wanted.
I think what you ought to look at, as I suggested
earlier, what the Committee on Standards in Public
Life recommended back in 2002 and was
implemented. There are 10 members on it now, five
from the major party, five from the opposition. I
suspect that they would want to look at that. They did
say two, and we have effectively endorsed that, but I
have quite an open mind, and I suspect the Committee
does, but what will actually take place will do so on
the basis of your recommendations.

Q43 Mrs Chapman: Do you think two would satisfy
the public?
Kevin Barron: If only I knew what satisfied the
public, I probably wouldn’t be sitting here now. When
I went on the General Medical Council, I think I was
one of 24 lay members on a council of about 120. That
is different now, and I was involved in the governance
changes on two occasions with the General Medical
Council. It is different now. It is not numerical. As I
said, hopefully the Committee on Standards, if that is
what it ever became, would not divide, in the way that
Standards and Privileges has not divided since 2001.
That is the art of running these Committees, I suspect.
I don’t think it is numerical, but it is to give people
some confidence that while we don’t have statutory
regulation for these professionals in here, if that is
what we are, we should perhaps still look at managing
misconduct in the way that we expect it to be managed
by other professions in the UK.

Q44 Mrs Chapman: Chris Mullin thinks that one of
the lay members should be the Chair. Do you have a
view on that?
Kevin Barron: I haven’t really, no. I am quite open to
that. As I said earlier, when I first went on the General
Medical Council with no training whatsoever, in terms
of sitting in adjudication, other than what I had done
in here for a number of years as a parliamentarian, I
often used to take over the chair of fitness to practise
committees.

Q45 Mrs Chapman: What about quorums? Do you
think there should be a requirement for a certain
number of lay members to be there, in order for the
meeting to begin?
Kevin Barron: Yes. Put simply, the Committee on
Standards in Public Life said that it should be 10, and
five is the quorum, which you will recognise is quite
a high quorum for a parliamentary Committee. If you
are going to add two or four, then it seems to me it
would be six or eight. Would that be right? It would
certainly be six or seven, but there would have to be
a lay representation. A fitness to practise committee,
from my experience with doctors, would not sit if
there weren’t both lay and medical members on it. That
seems to me to be quite healthy, given what you
set out to do.

Q46 Mrs Chapman: Do you think only two lay
members is enough, if we are to make sure that one
or two are always present?
Kevin Barron: It is a very interesting question,
because I was in the Committee on Standards and
Privileges last week when SCIPSA met, and I think
there was only one lay member out of three in
attendance. I could maybe ask them what happened
and pass a note back to you, but that is something you
have to take into account, of course. If you have just
one or two, and they have to be a part of the quorum,
then quite clearly that is something that you would
have to take recognition of. If you have four or five,
it does not mean to say they all have to be there all
the time, of course. That is another issue, but it is
about being able to get at least one there. I will not
bore you with the stories that I used to hear on some
of the General Medical Council committees, when I
first went on, about the problems of getting lay
members there. It wasn’t as organised as it is in
Parliament and the issues it deals with. I am sure that,
following on from SCIPSA, people would take this
very seriously.

Q47 Chair: If the Chairman was a lay member,
might this not be objectionable to a number of
Members? As you know, the Chairman of any
Committee sets the agenda. Do you not think it is
objectionable to have a Committee Chairman who
could not explain or justify to the House what his
Committee had done because he or she was not a
Member?
Kevin Barron: That is a very good point. My instinct
is that lay members can chair these Committees, but
the good point is: what was the report back on the
Committee, and it is on the Floor of the House? It
seems that in those circumstances, that would
certainly be difficult. Then again, if the report was
published on the Thursday and was to be debated on
the Monday, and something happened to me over the
weekend, would they still have the debate? I may not
have been there; nothing in Standing Orders says that
I have to be there. Parliament says that the Chairman,
after the Front Benchers, gets up and speaks on
privilege at the moment. No, that may be a difficult
thing, but you might be looking at setting something
in train now that could alter in future.

Q48 Mr Gale: For example, the parliamentary
spokesman for the Church Commissioners speaks to
Parliament on behalf of the Church Commissioners. If
you had a lay Chairman of a Committee, would you
be comfortable with a Member of Parliament taking
the parliamentary role to present whatever it was to
Parliament? Because obviously a lay member could
not.
Kevin Barron: I think that is what we would be
talking about under those circumstances, yes.
Q49 Mr Gray: The process for appointing them: should you or the Chairman be involved? How would we find some way of getting the right people to be there who would not either be, in your words, the great and the good, nor indeed incapable of doing the job? What sort of process?
Kevin Barron: Let me give you my experience of being on a statutory regulatory body. You need the machinery to move somebody if they are not functioning properly. I will not go into details, name no names, but you need that type of machinery. I found very early on in the General Medical Council that was difficult to get, to remove somebody who had been there. This is mentioned in the memorandum that we sent to this Committee. It seems to me that that can be in place. That should not be too difficult.

Q50 Mr Gray: That is removing them, but what about appointing them? How would you select them? Would it be a public process?
Kevin Barron: The SCIPSA appointment was, I think, advertised in the national press. Who did the selection from there, I am not sure. I was appointed by the Leader of the House to the General Medical Council in 1999. The second time round, I went to an interview up in Leeds with the Public Appointments Board, because we were getting rid of Members of Parliament and reshaping the regulatory body. I was quite comfortable with that. If that was to happen with the SCIPSA appointments, I am not sure. Mr Gray, if that was the case, it seems that that would be the one to follow and there may be lessons that you can learn from that. The process for appointing them: is it possible and desirable to candidates who aren’t seen as the usual quangocracy, or the great and the good? Kevin Barron: My instinctive answer to that is yes, I think you should. I walked into the General Medical Council, having been asked by the Leader of the House to sit on a regulatory body that has three Members of Parliament on it. It was nothing beyond that, and it was quite refreshing for me to go in there and apply what I felt the needs of the job were, as somebody who was not a clinical professional and was not looking to compete with them. I did buy a medical dictionary so I knew what some of these phrases were when I used to read these briefs. They were quite challenging, from a grammatical point of view, but I didn’t get too fussied about that. The important thing is to have some sort of balance, in terms of what you are doing. I think that you can pick people in life who are doing all sorts of different jobs but have a balanced view about matters.

Q51 Mr Gray: Term of office: I think you have suggested five years, haven’t you?
Kevin Barron: We did. One of the comments in the memorandum is saying, “Well, they wouldn’t go native”. Well, after five years they may go native, but we are all natives in that respect, many of us. I have been native for many years on that basis in this place. It doesn’t stop me having an open mind. I think there is no question about that—could they stay on for a longer time than five years—but I think we suggested that it was going to be a Parliament, as the Committee is set for a Parliament as well. Five years comes out of the basis of current legislation or proposals.
Mr Gray: Or staggered terms: one for five years, and then halfway through—
Kevin Barron: You could do that, indeed. Many regulatory bodies do that. It seems to me a very sensible thing to do, because that way you have experience, hopefully on both sides of the Committee—on the Members of Parliament side, and on the lay member side as well. That would be a sensible thing to do.

Q52 Tom Greatrex: Can we go back to the candidates? I think in your memorandum you talked about people being at ease in the environment while maintaining a degree of separation from it. Is it possible and desirable to candidates who aren’t seen as the usual quangocracy, or the great and the good?
Kevin Barron: Well, sadly so, yes. This has been the demise of me over the last 28 years, Mr Gray, but there you are. The real problem is being able to pick somebody out who is suitable and who is balanced in what they think. I think most of us would say that that is going to be very difficult from the British public, in view of what they think about Members of Parliament in general, if not us in particular. There are people out there who are quite well balanced; they sit on all sorts of different boards and are selected through a process that looks for the balanced individual. I don’t have a problem at all with thinking that that could not be done, and it does not have to be somebody who is known or is one of the great and the good.
Q54 Tom Greatrex: Very briefly, on a related point about confidentiality, you have talked about the importance of confidentiality being observed by lay members. How can the House do that, given the sensitivity of some of the proceedings we are likely to be dealing with?

Kevin Barron: This is where we move over to the other side a little bit, in a sense. If somebody was a lay member and had potentially breached the confidentiality of a Committee, then is that contempt of Parliament? The other Committee, if you had two Committees, would deal with that anyway. You may have heard in my speech on the Fifteenth Report in this session that there is currently an investigation taking place about breach of confidentiality from the Standards and Privileges Committee. We have no current lay members on it.

Q55 Chair: One quirk of this is that if the House were to recommend that there be two Committees, and the membership was the same apart from the lay members, and a lay member leaked a confidential paper of the Standards Committee, the lay member would be up before the colleagues he works with on the Privileges Committee.

Kevin Barron: Indeed. It could be deemed contempt of Parliament. That could be the case, Chairman. At this stage, I would have every confidence that selecting people with open minds, who recognise what the job in hand is, will not be too difficult, and that confidentiality should not be an issue. If you start on the basis that that is likely to happen, then we go nowhere. It seems to me that that would be wholly wrong.

Q56 Mr Gray: Would you agree with me that if these people are to fulfil any particularly useful function, there will be some occasions—possibly many occasions, or all occasions—when they take a slightly different view from the parliamentary members of the Committee?

Kevin Barron: Yes. As I suggested earlier, in my experience on a statutory regulator, that didn’t happen. My instinct, as a member of the Committee in the last Session, and as its current Chair, is that that has to be avoided at all costs. As for the way Standards and Privileges operates, it is quite unique to say that a parliamentary Committee has not had a division, I think, since 2001. It is quite a unique Committee. The cases it has handled are quite sensitive, and one of the things I have always said on Committees that I run—not just this Committee but others as well—is, “You leave your party politics at the door on your way in and you pick them up on the way out. That way we will be able to do our job properly”. I would say that on departmental policy as well.

Q57 Mr Gray: That applies to all Select Committees, but the question here is: if these lay people merely agreed with the parliamentary people on the Committee all the time, then what is the purpose of having them? Surely the purpose of having them would be fresh minds, maybe not going as far as dividing the Committee, but to a greater or lesser degree saying, “Well, I am not sure that you are right on that particular aspect.”

Kevin Barron: That is absolutely right. On that basis, we might be looking at them through these rose tinted Members of Parliament glasses, saying, “Well, I have a different view here.”

Q58 Mr Gray: Given that is the case, and given that you are dealing with very complex, abstruse and difficult matters that no layman would possibly have any idea about, would you not agree with Bernard Jenkin that what you want to have is someone who has, for example, a judicial mind—a retired judge was his suggestion—who is able to understand what they are talking about and able to come up with, perhaps, very particular and detailed differences with Members of Parliament? If you have Mr and Mrs Average Layman off the street, surely they will simply be bamboozled by the very clever MPs on the Committee.

Kevin Barron: I will leave the latter point, but just say at this stage that I think that would be wholly wrong. I think you ought to look at this on the basis of: what do our next-door neighbours think about Parliament and parliamentarians? What do the general British public think about the last 18 months, in terms of what has come out over the expenses scandal? I think that we don’t need to look for that. As I said earlier, I never went on the General Medical Council to try in any way to compete with the clinicians who sat on there. I went on there to give a view that wouldn’t necessarily be counter to that but would probably be a different view. There were no loggerheads.

Q59 Mr Gray: If that is the case, if you are inviting the public to have a look, from a public standpoint, at what they think of Members of Parliament, that is a rather different function to the function that the Standards and Privileges Committee currently fulfils, which is quasi-judicial and very detailed, where you are looking at a person’s career or at something very technical. If all we are going to have is Mr and Mrs Average, who will come in and say, “You are all crooks”—I exaggerate my case—

Kevin Barron: I think they would probably fail at the stage of being interviewed if they set off on the basis that all MPs were crooks. The process of appointment is important in this respect. You could say or interpret it that I ruined careers as a lay member on the General Medical Council. I would be a party to a decision that would strike off a doctor, or put conditions on a doctor that would make life difficult for them. It was on the basis of the protection of the public in those instances. The way I see lay members working on the Standards and Privileges Committee, they would help to build confidence in the public that we don’t just look after ourselves, and that we are quite happy and prepared to have people come and sit on our Committee that looks into alleged misconduct by MPs, very much as we appoint lay people on to regulatory bodies that look into the misgivings of other professionals.
Q60 Mr Gray: So the outcome of your consideration is that the report might well not be judicial, but might be a PR report; it might be what people think, but not necessarily be absolutely precisely judicial, as to whether or not someone was guilty of a particular offence.

Kevin Barron: Let me put it this way: judicial matters are for the Metropolitan Police. We do have two or three lawyers on the Committee, so we go into a judicial mode from time to time. That is not a matter for us. What happens to the Metropolitan Police and Members of Parliament is a matter for the Metropolitan Police and the Member of Parliament, except in one case when we were asked by the Commission to make a referral earlier in this current Session. Beyond that, we don’t look into details like that at all. Nothing in what I have been doing for the past five, nearly six years now, frightens me that a layman couldn’t sit round the table and perfectly understand what we were looking at. It is the Commissioner who puts the case and the memorandum together. We then look at that and decide on the basis of findings whether we agree with the Commissioner, and what we should do with our report—our view on that memorandum. I don’t see in any way that we would need a lawyer, or for that matter anybody of any great talent, beyond somebody who has a common-sense view of life and can look at things in an open way, basically. If they think all MPs are crooks, probably that would be a bit difficult if we were starting from there.

Q61 Chair: Thank you for being so frank and forthright with us. Is there anything you want to add?

Kevin Barron: No. I just hope this happens, Chairman. We think it is absolutely right that the Procedure Committee should look at this, and not us. I would be very comfortable if you put matters forward on the Floor of the House, and we could move on this. I think the CPSL was right in 2002. None of us knew what was coming down the road, in terms of the public’s thoughts about politicians doing things wrongly. Nobody predicted in 2002 what the expenses scandal was going to bring out, and it seems to me that we ought to go ahead with this job. If there were grounds for doing it in 2002, there are certainly grounds for doing it now.

Chair: Thank you very much for coming. We do appreciate it, and I would like to place on record the Committee’s appreciation of your giving us your time today. That now concludes the public part of our proceedings.
Wednesday 15 June 2011

Members present:

Mr Greg Knight (Chair)
Mrs Jenny Chapman
Thomas Docherty
Mr Roger Gale
Helen Goodman
Mr James Gray
Tom Greatrex
John Hemming
Mr David Nuttall
Jacob Rees-Mogg

Examination of Witness

Witness: Sir Christopher Kelly KCB, Chair, Committee on Standards in Public Life, gave evidence.

Q62 Chair: Sir Christopher, welcome, and thank you for coming. I apologise on behalf of the Committee for keeping you waiting. We had a division on the floor of the House that has slightly thrown us out in terms of timing. As I am sure you are aware, the House has asked us to look at the issue of having lay members on the Committee on Standards and Privileges. The House has agreed with the principle but has asked us to look at it, and that is what we are doing, and that is why we value your contribution today. Is there anything you want to say by way of an opening statement?

Sir Christopher Kelly: Not particularly, thank you. Thank you very much. I suspect it will be more help if I simply answer questions.

Q63 Chair: Could you perhaps then start by telling us what has led to the apparent change of heart by the Committee on Standards in Public Life because I understand back in 2002 you didn’t think this was necessary, but in 2009 you appeared to think it was necessary. Could you just give us some background as to why you have moved in this direction?

Sir Christopher Kelly: Of course. Although the same name, it was an entirely different committee membership in 2002 than it is now of course. I don’t think there was an overlap in membership. I think there are two reasons for that. One is because the world has moved on quite a lot since 2002, both in terms of what the outside world thinks about self-regulation of professional bodies, and indeed, the reputation of the House of Commons, and secondly, what our predecessor committee did say in their report that I have in front of me is that following a long passage in which they doubted whether the House would be prepared at that stage to accept the notion of lay representation on the Committee on Standards and Privileges, they did say, “We recognise a strong case could be made out, but we don’t think it is necessary”. But they then went on to suggest a range of other measures, some of which were adopted by the House and some of which were not, one of which was the referral of serious cases to an investigatory panel with an independent chair. So I think it is probably true to say, although I wasn’t of course around at the time, that they were in two minds; they thought of addressing it in a different way. As I say, time has moved on since then.

Q64 Chair: Would you say that generally other professional bodies have moved towards having lay members take part in decisions of this sort?

Sir Christopher Kelly: I don’t know. I have not done a full survey of other professional bodies, so I don’t know whether or not the public would take a better view of the CSP if there were lay members on it. In answer to the second question, if the answer to that were to be yes, there would have to be some evidence that firstly the public had a low opinion at the moment of the Committee on Standards and Privileges, and secondly, that that would be improved by appointing lay members. That was the question. Is there any evidence? Has there been any polling, or do we know any reason for thinking that the public think...
badly of the committee now and believe that that would be improved with more lay members?

Sir Christopher Kelly: I suspect that the vast majority of people have no idea of the existence of the committee, of course, and certainly I am not aware of any polling evidence. In a sense, I think I would put the question the other way round, which is does this Committee and House think it would be credible for Parliament to take a different view about the involvement of lay people than the equivalent bodies for all other professions?

Mr Gray: That is a different question. To those who would say, “The public’s opinion of Parliament would be improved if we do this thing,” the answer is that there is no evidence that is the case at all.

Sir Christopher Kelly: I think that what would happen would be the same as in the case of the Standards and Privileges that you think historically would have been improved by virtue of having a lay member?

Sir Christopher Kelly: I have no idea. I have not studied in detail—

John Hemming: Where the issue becomes more complex is where I am intending to come in, which is in the context of the issue of privilege, because you are currently a witness in a committee and are participating in a proceeding in Parliament, so you are protected by privilege. The danger that has been identified for the committee is not what you describe in your evidence—on the face of it, issues of privilege should not arise in relation to most of the matters considered but there are times when it is more than a matter of commentary that there has been after particular decisions that were taken by the House would have less substance behind them, and the views of the public are of course influenced by what the media say about you.

Q67 John Hemming: Just one little question to follow on, if you don’t mind, from the previous one: are there any decisions of the Committee on Standards and Privileges that you think historically would have been improved by virtue of having a lay member?

Sir Christopher Kelly: I have no idea. I have not studied in detail—

John Hemming: Where the issue becomes more complex is where I am intending to come in, which is in the context of the issue of privilege, because you are currently a witness in a committee and are participating in a proceeding in Parliament, so you are protected by privilege. The danger that has been identified for the committee is not what you describe in your evidence—on the face of it, issues of privilege should not arise in relation to most of the matters considered but there are times when it is more than a matter of commentary that there has been after particular decisions that were taken by the House would have less substance behind them, and the views of the public are of course influenced by what the media say about you.

Q68 John Hemming: Is your view therefore that you might as well not have a lay member if they don’t have voting rights, and in losing privilege through that, that would be a price worth paying?

Sir Christopher Kelly: No, I wasn’t saying that, and I do not think it would be better to have no members than to have a member without voting rights. I think it would be something greatly to be desired if a way could be found of giving voting rights without creating overwhelming problems of privilege.

Q69 John Hemming: So from your point of view, it is important to maintain the privilege?

Sir Christopher Kelly: Of course it is important to maintain the privilege, but as I say, not necessarily from the point of view of maintaining protection against libel. I realise there are a number of other considerations.

John Hemming: The privilege applies to consideration by the courts for contempt of court and libel, and what I am trying to get to the bottom of is that the concern is that in having a voting lay member, that would be lost. There is an argument both ways, but I am trying to get to your view on where—your preference seems to apply to keeping privilege and therefore having the non-voting lay member, if necessary.

Sir Christopher Kelly: I am not sure I said it quite that way. I thought there was also another aspect, which is not wanting to make the proceedings of the committee subject to judicial review, which is a separate issue.

John Hemming: That is also an issue, yes.

Sir Christopher Kelly: A separate issue from libel. No, what I was expressing support for of course was the doctrine of parliamentary privilege. What I was expressing doubt on, solely on the basis of the evidence you have received, is whether it is true that giving members voting rights would endanger privilege and create that difficulty. But that is an issue for you to decide, and as I have said, I am not an expert on the subject.

Q70 John Hemming: If we come to the conclusion that it would damage privilege, you would accept that it would be necessary then for a lay member not to have a vote?

Sir Christopher Kelly: I think it would be a great shame to create first and second class members of the committee, and I am not sure that that would serve the purpose, which is to improve the credibility of the disciplinary process in the House.

Q71 John Hemming: From your point of view then, you might as well not have a lay member if they don’t have it?
Sir Christopher Kelly: No, I specifically said that is not the view I take, and I have noted the advice you have had from the Clerk of the House about alternative ways of achieving the same objectives. I think what I am trying to say—in an obviously inadequate way—is that I think the existence of lay members is very important, but I think it would be a great shame if you were to come to the conclusion that it was impossible to do that and give them full voting rights. But I would still say to you that my personal view would be it would be better to have lay members with the additional conditions suggested by the Clerk than no lay members at all.

Q72 Chair: If lay members were to take part in this process, but did not have voting rights, I would expect them to have a right to express their view, and would you not see them being just as effective if in any report the lay member was to say that he regarded the punishment imposed by the committee as wholly inadequate? That would be quite devastating, wouldn’t it?

Sir Christopher Kelly: Indeed, it would.

Chair:—if the lay member recorded that view? So they could play a worthwhile role, could they not, without voting rights, provided the report recorded their view of the conclusion of the committee?

Sir Christopher Kelly: I agree with that statement. I think there could still be a worthwhile role for them to play, but I repeat my view that it would be a shame if you were not able to find a safe way around this issue, because it would create the impression that there were first and second class members of the committee, which I don’t think would serve credibility. In the ultimate scenario there is always the possibility of legislating to put the matter beyond doubt, although personally I would not want that to be used as a reason for delaying making the change.

Q73 Mrs Chapman: My questions are on the practicalities of how we make this work, so I would just like to get your view on how many lay members you think would be appropriate, and linked to that, what would be an acceptable quorum of lay membership at a particular meeting. Also, it has been suggested that the lay member may act as chair of the meeting, which does seem attractive in some respects, but how would that person then be answerable to the House? If we could just have your thoughts on those issues, please.

Sir Christopher Kelly: It would be wrong of me to pretend that my committee had spent a lot of time debating these issues of practice, and so anything I say should be taken in that context. What we said was at least two members. The reason we said at least two was because we thought one wasn’t enough, in the sense that if there is only one, that person can be isolated, bullied, what have you. Two would create a more sensible number. Two still carries with it the possibility, of course, of unavailability.

Mrs Chapman: That is right.

Sir Christopher Kelly: I notice that some of your witnesses have suggested three, and there is nothing in what we have suggested that would rule out three. Three in some ways is a better number than two. As to a quorum, a number of suggestions have been made. I don’t have a particularly strong view in favour of any. Clearly, the process doesn’t work unless at least one member is present. Two members would be better. A lot will depend upon the practicalities of doing it, rather than, I think, any great matter of principle. Is it necessary for a lay member to be a chair? No, I don’t think it is necessary in order to achieve the objective. It is certainly a possibility that, as I understand it, some other regulatory bodies may have accepted. It would help to put the matter of independence, I would have thought, beyond doubt, but I don’t think it is a necessary part of the process to do that.

Q74 Mrs Chapman: If the lay member was the chair though, do you think there is a problem that we should be concerned about in terms of them being answerable to the House?

Sir Christopher Kelly: The House has other ways of holding people to account, including this. I am not sure how good a precedent it is but I see that I think it was the current chairman of the committee who drew your attention to the precedent of the Church Commissioners, and the fact that a parliamentary member of the Church Commissioners speaks to the House for the Church Commissioners.

Q75 Helen Goodman: Sir Christopher, I would like to come back to the point that James Gray was making. Are you saying that you can’t think of any reports in the last three or four years where there is question mark about the punishment that the Committee on Standards and Privileges made to a Member who had ripped off the taxpayer to the tune of thousands of pounds?

Sir Christopher Kelly: No, I am not saying that, because I am as conscious as I suspect you are of a number of cases where certainly the media have suggested that the punishments that were meted out were inadequate for the transgression, and I have personal views about that. What I was trying to say was the only information I have to go on in two of the most prominent cases is what I read in the media, and the fact I read the reports of the committee. I haven’t had the advantage of hearing the evidence that the committee had, so I hesitate to express a view without having all the facts.

Helen Goodman: Well, that is a—

Sir Christopher Kelly: It is a practice I have tried to follow in chairing this committee, which is avoiding commenting on individual cases where I am not in full possession of all the facts.

Q76 Helen Goodman: That is true. The reason it comes back to the point that James Gray was making was of course if there is no criticism to be made of rulings that Standards and Privileges have made; then we are in the arena of appointing people to raise public confidence, rather than to change the decision making. Would you agree with that?

Sir Christopher Kelly: Indeed, yes.

Helen Goodman: So we are looking—in your estimation—to do both, to have people who will raise
the confidence and who will have a substantive input into the quality of the decision making.

**Sir Christopher Kelly:** Indeed. Thank you for putting that better than I did.

**Q77 Helen Goodman:** Do you think then that the process that we have followed for appointing people to SCIPSA was a good process?

**Sir Christopher Kelly:** To the extent that I understand it, the answer to that question is yes, and I think I understand it quite well, because I think one of the members of my committee was represented on the panel as one of the independent members.

**Q78 Helen Goodman:** Well, of course there can be no higher recommendation than that. I am interested that you say that, because I think there is a criticism that the kind of people who have been appointed hitherto are probably, in many respects, quite similar to Members of Parliament.

**Sir Christopher Kelly:** Yes.

**Q79 Helen Goodman:** If they are quite similar to Members of Parliament, we wouldn’t get either a sufficiently different perspective to have an impact on decision making, nor a substantial improvement in terms of the public confidence. Do you think that is true, or am I—

**Sir Christopher Kelly:** I understand the argument that has been made, that simply appointing standard members of the great and the good doesn’t necessarily do the trick. I think that the important thing is that the appointments process should start from a clear understanding of what the qualities required on the committee are, and I take those to be things like independence of view, ability to sustain an argument and be robust against pressure, ability to understand evidence, those sort of things, which are characteristics that are not necessarily only found in the ranks of those who typically join the shortlist of appointments like this.

**Q80 Helen Goodman:** No. Do you think that particular experience in terms of employment and human resources and that sort of thing might be valuable?

**Sir Christopher Kelly:** I think there is a range of backgrounds that might be valuable, because there are a range of ways that the necessary qualities and experience can have been gained.

**Q81 Helen Goodman:** How would you set about having a pool of people that went wider than the existing filter has produced?

**Sir Christopher Kelly:** As I understand it—and I speak subject to correction—I think that headhunters were employed to help find candidates for the Speaker’s Committee for IPSA, and, as always with these things, it starts from the nature of the advertisement that you draw up, where you put that advertisement—just putting in the *Sunday Times* is not necessarily the right way of securing people of the right kind—and the instructions that you give to the headhunters as to the sort of areas in which they should be searching.

**Q82 Helen Goodman:** So assuming that the chair of the committee were to be a Member of the House, not one of the lay people being appointed, do you think that the chair of the committee should have some involvement in the recruitment process?

**Sir Christopher Kelly:** That is an interesting question. Speaking as someone who has chaired a number of boards and committees in my time, I would be quite cross if I did not have a role in choosing members of the committee that were going to join me. On the other hand, in these circumstances, since credibility is particularly important, there might be a strong case for the chair of the committee not being involved in the way that, as I understand it, it was in choosing people for the Speaker’s Committee. Although a recommendation was made to the Speaker, the Speaker did not take a role, and I don’t think that panel was chaired by an Officer of the House.

**Q83 Helen Goodman:** So in that case, the chair might be involved in drawing up the plan for the advertising, possibly the questions that they wish to have covered in the interview, but not carry out the interview.

**Sir Christopher Kelly:** You are pressing me into an area that I had not given as much thought as I clearly should have done, but I think that would probably be what I would advise.

**Helen Goodman:** Thank you very much.

**Q84 Mr Gale:** I would like to go right back to the beginning, and to James Gray’s question. We appear to be once again being pushed into a realm where we are mending something that isn’t broken, for a purpose that is not entirely clear. You were asked whether you felt there was a lack of public confidence in the committee, and your reply was that you thought that most members of the public didn’t even know there was such a committee. Then you went on to say that having lay members might somehow mitigate media reports that were adverse, so is the process being driven by the *Guardian* or the *Daily Telegraph* or the *Sun*? Then you were asked by Helen Goodman, “Well, was the purpose of this to raise public confidence?” and having said that the public didn’t seem to know much about it at all anyway, you then said yes. You have not offered any evidence for the conclusion that your committee appears to have come to. There does not seem to be any reason at all behind the need for change. Can you clarify that?

**Sir Christopher Kelly:** I will certainly try, Mr Gale. There is no lack of polling evidence that politicians in general are held in low esteem by members of the public, and there are conflicting surveys, and some of them show no change and some of them show after what happened on MPs’ expenses that confidence and trust went down, but esteem is certainly low. I think it is also the case that over the last 20 years in all those areas where self-regulation used to be the norm, that practice has now stopped, and it has stopped for reasons that presumably all those concerned thought that you got better decisions if it was not just self-regulation, and that public confidence in the process of regulation would also be increased. So the absence of any polling evidence, which is what I was
particularly asked about by Mr Gray, does not seem to me to mean that there is no evidence that a step of this kind would be helpful in maintaining the credibility of the House of Commons. I think you would also find that—although I have not done so—if, having explained to members of the public that the Committee on Standards and Privileges did exist, you were to ask whether they thought it was acceptable that that committee should consist solely of Members of Parliament, I suspect—but I have no proof that this would be the case—they would answer no.

Mr Gale: Well, that is a bit of a “When did you stop beating your wife” question.

Sir Christopher Kelly: No, if I may say so. I think it is about the House of Commons showing leadership in maintaining its own credibility in an area in which almost every other profession has already moved.

Q85 Mr Gale: I am sorry, I have to press you on this. You seem to be confusing two things. You raised the canard that Members of Parliament are held in low esteem. Mr Gray says it was ever thus; it was ever thus. That is not the same as the committee that we are talking about being held in low esteem. There is no evidence to suggest that there has been any serious criticism of any decision taken by the committee or of any individual members of the committee, or of the manner in that the committee is working. Now, again, we have something that appears to work, has worked, continues to work, so why do we want to change it?

Sir Christopher Kelly: Ms Goodman pressed me on the issue of whether or not there were examples of committee decisions that looked a bit odd, although that wasn’t quite the way she expressed it, and there have certainly been a number of cases in the past couple of years where there has been extensive comment on the apparent leniency of the sentences that were voted on by the House of Commons.

Mr Gale: You very carefully chose not to go down that road, because quite properly, you said you had not heard the evidence, and the journalist concerned had not heard the evidence. The committee has done its job and it has done it well, so I—

Sir Christopher Kelly: Well, in a sense, if I may say so, Mr Gale, you are making my point. You said there is no evidence that there was any disquiet about individual decisions.

Q86 Mr Gale: Are you going to offer some evidence to justify that remark?

Sir Christopher Kelly: There was plenty of media comment about the decision that was taken in relation to Mr Conway; there was plenty of media comment in relation to the decision that was taken about Mr Laws.

Mr Gale: But media comment is not evidence.

Sir Christopher Kelly: Your question to me, I thought, was about whether I was aware of any public criticism of those decisions, and I regard that as being public criticism.

Q87 Mr Gale: We are going to have to agree to disagree, but let me just try one other point that Helen Goodman raised again, which is that we see a developed repertory company, a quangocracy, that moves seamlessly from appointments of this kind to appointments of this kind. How do you think we might break away from that so that the usual suspects do not simply get reappointed, if we are going to down this road at all, to this committee, as they seem to be to virtually every other committee?

Sir Christopher Kelly: I tried to deal with that in my response to Ms Goodman. I am not sure I have anything further I can usefully add.

Q88 Mr Nuttall: Thank you, Sir Christopher, for the evidence that you have given so far. I believe that the House of Commons is fundamentally different from those professional bodies that have historically been part of the self-regulation system, in that all the Members of this Committee and all the members of the Committee on Standards and Privileges are in fact no more than members of the general public themselves, who have been chosen through a democratic election by our peers to represent them in Parliament. I am just a member of the public who happens to be a Member of Parliament because my constituents have put me here, yes? I am a member of the public, I am a Member of Parliament because other members of public have elected me to represent them, and I fail to see—and I can’t see—how the democratic legitimacy and the strength of the committee would be increased by putting two members of the public on who have not been elected by 70,000 people or thereabouts, but have been chosen by a few people behind closed doors. Do you think that the general public would think that putting two people on a committee of 10 will strengthen it?

Sir Christopher Kelly: Yes, I do, or I would not have proposed it. The ultimate sanction of democratic accountability is that the committee makes recommendations to the House as a whole, and it is the House that takes decisions. One of the issues is that almost all groups of individuals always think that—let me rephrase that. The risk that I tried to outline in the beginning is of people thinking that decisions that are taken by committees of peers are self-interested, and I am not sure that I understand how the fact that you are elected guards against the risk of people thinking that in taking decisions about peers, you may be pursuing self-interested reasons.

Q89 Mr Nuttall: Is there not a danger that by putting two members of the public who have not been elected on there simply serves to further undermine the general standing of Members of Parliament who have been elected?

Sir Christopher Kelly: I am afraid I don’t understand how that could happen at all. So the answer to your question has to be no, I don’t think that it would happen.

Mr Nuttall: Well, if these proposals were to go through, members of the public who have not gone through the process of a general election, who have not been elected, have the same voting rights as those who have, and that surely to some extent demeans and starts to undermine the democratic legitimacy of those who have been elected in a general election.
Sir Christopher Kelly: I am afraid I still don’t understand that argument. What we are talking about is a disciplinary process. We are not talking about the exercise of democratic rights.

Q90 Mr Gray: There have been a couple of decisions of the committee that have been questioned by the press. There is no real evidence that had there been lay members of that committee at that time those decisions would necessarily have been different, although they might have been. Therefore, coming back to the Chairman’s original point about the question of whether or not privilege would itself be undermined by having voting members of the committee, is there not an argument that what one ought to have would be Members of Parliament being the voting members of the committee, but having mentors, if you like, or lay people not voting but, as the Chairman suggested, having the ability to say, “In our lay opinion, this particular penalty” for example, in the two cases you mentioned, “is absurdly low.” That would make them significantly more powerful than if they were merely a voting member of the committee, because after all, a voting member of the committee might be outvoted—it could be 10 to two against. If they were independent mentors sitting on the committee and saying, “We don’t agree with that particular penalty or a particular Member of Parliament,” you would both preserve the privilege point, but you would also have a watchdog. I suspect that is the point you make about once you have opened this can of worms, reversing it would make us appear to be self-serving and protecting ourselves, and is there not a possibility that that solution might answer the public perception question, while at the same time preserving privilege?

Sir Christopher Kelly: I think there is a possibility that it would do that, and that is not a million miles away from the proposal that I drew attention to, the 2002 version of our committee. Just to pick up something else you said at the beginning of that, of course I don’t know whether any of those decisions that were criticised would have been different if there had been lay members, but it would have been possible for someone to have stood up in the face of that criticism and said, “This is not just the view of MPs judging their peers or even allowing party political considerations to play a part, because there were these fine, upstanding lay members who also played a part in the committee.” That defence is denied you if you do not have them there.

Q91 Chair: Thank you. Do you wish to add anything?

Sir Christopher Kelly: I don’t think so, thank you very much. I am sorry that Mr Nuttall thinks I don’t understand the relevance of his question.

Mr Nuttall: It is perhaps a wider point.

Chair: Well, thank you very much for your contribution, which we value and will assist us in reaching our conclusion on this rather difficult matter. Thank you.

Examination of Witness

Witness: Mr Bernard Jenkin MP, Chair, Public Administration Select Committee, gave evidence.

Q92 Chair: Bernard, thank you for coming. We are running late, primarily because of the division, but also because that last contribution encouraged rather more questions than I expected when we started. Is there anything you want to say upfront, as it were, by way of a statement to us?

Bernard Jenkin: No, but if I may, I will, having listened to some of those previous exchanges, just make two points. First, I very much support the memorandum that you have received from the Clerk of the House. It presents a very balanced approach to this, and you might want to question me around those issues. But secondly, because Parliament has fallen into ill-repute—starting 20 years ago; this really started going bad when the first Nolan Committee was appointed—there has been a fashion that somehow people outside politics are more objective in giving opinions and making judgements about people in politics than people in politics themselves. We have to accept that that has been a very strong public perception, but that it is not necessarily the case. We are almost straying into a sort of Cromwellian age where Cromwell, having asserted the rights of Parliament, then proceeded to usurp the rights of Parliament and set up his own committees to oversee and supervise Parliament—the Committee of Generals or whatever it was called—because he regarded this diverse, rumbustious and disputatious group of people as rather unfit to carry out the solemn business of supervising the Government of the country, which, in his puritanical mindset, he was much better fitted to do. Without wishing to denigrate the public-spirited motives of many of our great and good, I feel that they are rather sorry for Parliament, and they see a lot of people in Parliament of less education and inferior intelligence and they want to protect us. But I am not necessarily sure that allowing them free rein to do that is good for Parliament or good for democracy. So I think some of the resistance that we instinctively feel for this is extremely justified, though we have to accommodate the public perceptions and respond to the public concerns that I think Sir Christopher was expressing.

Chair: Thank you. For someone who didn’t want to make an opening statement, that was a very interesting start.

Q93 Mr Gale: This is a bit tricky, because you have sat in on the previous line of questioning.

Bernard Jenkin: Some of it.

Mr Gale: In a sense, you have answered therefore the first two questions, but let me formally ask you. Because you have heard me ask the questions, you know that my view is that Sir Christopher has offered no evidence whatsoever to justify the need for change,
other than a perception, but if perception is all-important—if perception is all-important—would it help to resolve some of the difficulties with public perception if we had lay members on the committee?

**Bernard Jenkin:** I would hesitate to be so confident that the inclusion of lay members in some capacity would resolve the issues, but they remove another potential cause of it. I am very particular about how we do this, and I think you will want to move on to that line of inquiry, but as Sir Christopher was saying, it is practice in the City and in other professions to have independent scrutiny, a different viewpoint, an outside view. I think if the committee recruits people with the right skills, complementary skills—it has always occurred to me that in its standards role, the Committee on Standards and Privileges is undertaking a judicial function, but it is very, very short on juridical experience, juridical practice. There is an argument that the commissioner should in fact be a judge, because it is all about interpretation of rules and evidence, and if you want a fair trial, you would not submit to a judge who had not been trained to assess rules and evidence. So maybe the lay members should sit with juridical skills in mind to help advise the committee on how to reach fairer, more justifiable, more legally analogous decisions than we are tempted to do.

But at the same time we need to recognise that all people in public life are subject to the same kinds of pressure. I think Sir Christopher was under enormous media pressure at the time he produced the response to the expenses scandal, and I do not suppose that in the end his judgement was any more objective than anybody else’s, and we need to dispense with this idea that somehow that there is a sort of college of superhumans who are above all influence, because they’re not. As the democratically elected representatives, I think ultimately we must remember that we are a sovereign Parliament and the buck stops with us, and we can’t give that up.

Q94 **Mr Gale:** If we were to go down this road, should the lay members have voting rights?

**Bernard Jenkin:** Well, I can’t see the point of it. I don’t see what benefit there would be of giving lay members voting rights. So long as their opinion is made publicly available alongside any decision of the committee, they effectively have a vote. Any published opinion would be regarded as proceedings in Parliament, but as soon as you let them vote and influence the decision, my understanding is that the Committee on Standards and Privileges acting in that capacity could be interpreted to have ceased to be a committee of the House. It has become something else, and therefore you have lost all the protection. Those lay members themselves might find themselves subject to judicial challenge for the way they have exercised their power.

Q95 **Mr Gale:** The Chairman raised the point that these people, if they didn’t have voting rights, could speak out and say, “We don’t think the decision that has been reached is adequate or meets the need.” If you are appointed to a committee like this as a lay member, if you are a superannuated, knighted civil servant and you wish to be seen to be doing the right thing, you are almost instinctively, are you not, going to disagree with the committee? So isn’t there almost a danger of appointing a built-in bias against whatever decision is taken?

**Bernard Jenkin:** Well, I think that very much depends on who is appointed. If two or three people were appointed with, say—I heard mention of somebody with HR skills, understanding how an employer should deal with employees. If somebody was appointed who had been involved with adjudicating on criminal or civil cases, somebody who was used to dealing with making judgements about complex financial information, subjective judgements, perhaps somebody who had been an adjudicator in the Inland Revenue or somebody like that, you could bring to the committee skills that are needed, and would make it more difficult for the committee to act in a subjective manner and certainly make it more difficult to accuse the committee of acting in a subjective manner.

But I don’t like the idea of lay members. They would be advisors, albeit advisors perhaps who have special knowledge of privileges attached to their status, partly because of the privilege question, but I just don’t think it—

**Bernard Jenkin:** Well, it depends on two things. It depends what sort of lay members they are. If they are chosen at random like jurists, I would expect it would be rather easier to ignore their opinion than if they were chosen for their technical skills. If they were chosen for their technical skills and their professional skills, one would expect them to wish to confine their criticism to technical aspects that are the more subjective aspects of the committee’s decisions, and also, it would depend upon the nuance with which they each made their commentary. If they flatly contradicted the opinion of the committee, yes, it would be a time bomb. It would blow the credibility of the committee out of the water. But I think the question is how these people are chosen and what skills they are chosen for and how their responsibilities are defined. I don’t think they can sit as equals of Members of Parliament in all respects with equal powers and equal status, partly because of the privilege question, but I just don’t think it—otherwise, we might as well scrap self-regulation altogether and go for some sort of statutory process, which would at least be totally independent and fair, in which case we do pass a law about how Members of Parliament conduct themselves and we leave it to the courts to decide. But it seems to me that that is not the point of the committee. The point of the
committee is to save an enormous amount of public expense by dealing with the vast majority of low-level cases below the level of criminality in an expedient and efficient and publicly accountable way.

Q97 Thomas Docherty: I think, Mr Jenkin, you have already covered the issue about the qualities, but I am intrigued that, as you have gone through your evidence, you have almost changed it from seeing them as a judge, to a jury and then lastly as an advisor, and you said that we need to have their responsibilities defined. So do you think that if we assume it is—

Bernard Jenkin: Sorry, can I just correct you? I don’t see I have been inconsistent. I think what I am saying is—

Thomas Docherty: Developed rather?

Bernard Jenkin: No, the point is that even if one of the lay advisors was a retired judge, he wouldn’t be making a judgement, he would be advising the committee on how to make a judgement rational and consistent in its own terms, and there is a subtle difference. I am not asking him to act as judge, I am only asking him to give advice to the committee on how the committee should act as judge, because that is what the committee does.

Q98 Thomas Docherty: So therefore you wouldn’t see a retired judge making the process too legalistic?

Bernard Jenkin: Well, maybe the advantage of not having a judge as commissioner, but having a judge to advise the committee on technical and quasi-legal interpretations of rules and evidence is that you would avoid precisely becoming legalistic. But in any adjudication there is always the potential of becoming legalistic, and indeed, there have been many cases where colleagues have insisted on bringing legal representation, even though there are no judges or legal people involved in adjudicating over them, and that is just the nature of—it is the right of people to make sure that they are properly represented.

Q99 Thomas Docherty: If the House ultimately decided that it wanted the lay members to act as, for want of a better analogy, jurists rather than simply as advisors on the cases, would you accept that—heaven forbid, you have appeared before a jury—that jury would be drawn up of 12, or in Scotland 15, random members of the public, while there is a judge there to steer proceedings, so are we not introducing an artificial or arbitrary measure by saying that it would be helpful to be someone of a legal background, whereas in the normal court of law you do not have a jurist who has legal training?

Bernard Jenkin: Well, the jurists are the members of the committee. The members of the Committee on Standards and Privileges, they are the jurists, because they have to make the juridical decision. What the judge does is directs the jury in a legal case. To a certain extent, the commissioner directs the committee of what he understands to be the facts of the case, but if there were a retired judge who was a lay member or a lay advisor, he would also give a second opinion on the material that was placed in front of him. I think that could only strengthen the understanding of the committee of what they were being asked to decide about and the quality of evidence that they were being asked to assess.

Q100 Thomas Docherty: I was very intrigued by your suggestions about the other options that might be out there in terms of someone with a human resources background or financial background, and obviously you heard the earlier questioning to Sir Christopher. How would you advise, with your experiences on the Public Accounts Committee, that we should appoint these lay members to avoid the usual suspects, I think it was the repertory company. What would your advice be?

Bernard Jenkin: Well, correction, I am on the Public Administration Select Committee. I think it is very important that Parliament itself should be in control of the appointment process. The disadvantage of the Nolan Committee and its successors is that it is a creature of the Executive, and it arose because John Major was trying to divert the political heat of problems in Parliament away from the responsibility of the Government. It is a perfectly legitimate thing to do in its own terms, but it is a good question, isn’t it? Maybe the Committee on Standards in Public Life should be appointed by Parliament and not by the Prime Minister, because the Prime Minister is a politician too, so why is he any better than other politician? I am not speaking personally, of course.

We have just been through a process in Parliament to appoint the successor to the parliamentary ombudsman and we have taken that process off the Executive. Previously it has always been conducted by the Cabinet Office. We have chosen a candidate who we think will reflect Parliament’s wishes rather than being imposed by the Executive. I think that is quite simple, that Parliament should take control of the process. Incidentally, as select committees are looking more and more at how public appointments are made, there are certain categories of appointment that clearly should be parliamentary appointments, and not made by Government.

Q101 Jacob Rees-Mogg: I just want to ask one thing, and that is on a judge being on the committee, and whether it would be appropriate in terms of the separation of powers to have a judge overseeing the House of Commons’ activity, and it leads on to a further—

Bernard Jenkin: I would suggest a retired judge, not somebody serving on the judiciary. I don’t think that would be appropriate.

Jacob Rees-Mogg: I wonder if the same problem arises, that a retired judge is nonetheless a judge, and certainly it has been said that he cannot be a retired Member of Parliament—that is already in the suggestions—and I would have thought if you want a member of the public, it shouldn’t be a peer, an MP or a judge, past or present, because otherwise you are bringing judges into overseeing the House of Commons, which I certainly wouldn’t like from a constitutional point of view.

Bernard Jenkin: Except they would only be there in an advisory capacity, almost in the same way as a select committee takes evidence from a witness.
Q102 Jacob Rees-Mogg: Do you think they would be as little as that in terms of the current—

Bernard Jenkin: No. Well, obviously somebody of, say, ex-High Court judge status would be a very considerable figure, but I think the right person would want to exercise that function with due reverence, particularly if Parliament had made the appointment and been able to choose the right sort of person.

Q103 Jacob Rees-Mogg: It leads on to a further thought. You discussed the various type of people who could be on this committee, and I think you could find a Member of the House who had fulfilled every one of those roles in their previous professional lives; certainly there is plenty of legal experience within the House. There must be people who have been involved in HR and there are certainly people with City backgrounds. It does seem a bit rum to get them from outside to do exactly what we have the resources to do ourselves, the only objection to our doing it ourselves being that nobody has any confidence in our doing it, because they think we are all clums and look after each other.

Bernard Jenkin: I think it would be rum if the committee could guarantee to have that same degree of experience on the committee, but I wouldn’t see this as duplication, because from your experience in investment management, fund management and running a regulated business and all the fiduciary responsibility of doing that sort of thing, you are now very busy with many other things. For you to be able to turn to someone who speaks your same language, who could give you a second opinion on what your understanding of the issues are I would have thought would strengthen your confidence in your position, or maybe alter it. But that is not usurping your position or duplicating your position. I emphasise that I do think these lay members should be advisory and not making decisions, and not least because of the privilege points raised by the Clerk in his note.

Q104 Mr Nuttall: Following on from that point, could a fairly similar outcome therefore achieved by always ensuring that the clerk to the committee was legally qualified, so that he or she could give advice to the committee about the legal process involved in ensuring that the rules were correctly followed, regardless of whether the members of the committee were legally qualified or not?

Bernard Jenkin: I think you need more manpower than that, and possibly, to satisfy what the House has already accepted in principle I understand, more independence than that. The clerks are very much servants of the House and the advantage of lay advisors is that they will be less overtly brought up and educated as servants of the House. But in my short experience of as select committee chairman, I have drawn upon Speaker’s Counsel, for example, for independent legal advice, and it has been extremely useful. But having known one or two colleagues who have been in front of the Committee on Standards and Privileges, in one case on an extremely unjustified charge, I emphasise that a lot of effort and legal advice was about trying to understand and explain why the procedures of the committee were unfair, inherently unfair, and having some external advice on how to make what is fundamentally a tribunal legally fair on those who are being arraigned is not something you could ask a single clerk to do on their own.

Q105 Chair: Thank you very much for coming.

Bernard Jenkin: May I just add one other point, very briefly?

Chair: I was about to invite you to do so.

Bernard Jenkin: Thank you so much. When the Committee on Standards and Privileges was first renamed as such in order to emphasise its role as supervising the conduct of Members of Parliament as well as protecting the privileges of Parliament, I don’t think it was the least envisaged that it would become such an arduous posting. Consequently, the Committee on Standards and Privileges is a very busy committee—or has been at times extremely busy—and this has militated against some of the more senior Members of the House of Commons sitting on the Committee on Standards and Privileges, such that when we came to the Damian Green case, it was not felt appropriate to allow the Committee on Standards and Privileges to adjudicate on the privileges aspect of that case, because there were not enough senior Members on it, and the Campbell Committee was set up in place of it.

I think this rather makes the case for separating the two functions; that the Privileges Committee should be a separate committee and the Standards Committee should operate separately. That would also avoid any possibility of an implication that somehow lay advisors or lay members were going to be advising the House on matters of privilege, which really are absolutely to be preserved as a matter for the House alone and not for outsiders to decide upon. I think the appointment of lay members militates even more strongly in favour of separating the two functions and having a separate Privileges Committee.

Chair: Thank you for raising that. Although we didn’t question you about it today, that is something we are looking at. I thank you again on behalf of the Committee for coming.

Bernard Jenkin: Thank you. It is a great privilege to appear before you. Thank you very much indeed.

Chair: If after today there is anything else you think of that you wish to add to your testimony, as it were, please do drop me a line.

Bernard Jenkin: Thank you very much indeed.
Written evidence

Written evidence submitted by Rt Hon Sir Malcolm Rifkind MP (P 83, 2010–12)

Having served as Chairman of the Standards and Privileges Committee, I have to say I am unconvinced as to the need for lay membership on the Committee as has been suggested. I am doubtful as to any added value it would provide and I think the Committee works well at present.

Having said that, I am conscious that I only served on the Committee for a relatively short period of time and it may be that the current Chairman and his colleagues take a different view!

February 2011

Written evidence submitted by Chris Mullin, former Member of Parliament (P 86, 2010–12)

1. I was the MP for Sunderland South from 1987–2010 and a member of the Committee on Standards and Privileges between 2006–10, a period which included the publication of Members’ expenses and the resulting fall out.

2. Although our reports were based on findings of fact by an independent commissioner and although the committee took a generally robust view of breaches of rules, we were frequently criticised for being unduly lenient towards colleagues. Fairly or unfairly—the point was often made that Members sitting in judgement on colleagues could not be considered impartial.

3. In my view much of the criticism was unfair and often based on a misunderstanding, wilful or otherwise. There is, however, an issue of perception that, in the light of recent events, needs urgently to be addressed. It has to be recognised that the days are over when professions—whether they be lawyers, doctors, policemen or even journalists—can be entirely self-regulating and hope to retain the respect of the public.

4. There are two basic alternatives. Either responsibility for dealing with complaints against Members should be taken entirely out of the hands of Parliament and handed either to an ombudsman or a committee of non-members with perhaps a token parliamentary representation. Or the existing committee should be opened up to include lay members as is already the case on the General Medical Council and the Press Complaints Commission (which has majority of lay members).

5. I do not believe there is a case for removing the complaints process entirely outside of parliament. The appointment of an independent commissioner, responsible for determining issues of fact, is already a considerable safeguard. I do, however, believe that the time has come to add lay members to the committee.

6. I would suggest no more than three at this stage. The appointments process should be by advertisement and entirely transparent—anything that looked like an Establishment “fix” would only inflict further damage on the reputation of Parliament. Consideration should perhaps also be given to designating that the chairmanship should always be held by a lay member.

7. As to whether non-Members should be permitted membership of a select committee, this is an issue for finer minds than mine. Given the will, Parliament can presumably amend its Standing Orders in any way it sees fit. I would only say that should this problem prove insurmountable, the only alternative would be to remove select committee status from the committee and to create either an ombudsman or a committee of laypersons on which Parliament is represented. I do not favour this, but that is what it may come to unless a sensible compromise can be reached.

February 2011

Written evidence submitted by Lord Nicholls (P 90, 2010–12)

1. What goes on within Parliament is, in general, a matter for control by Parliament alone. Such matters will not be reviewed by the courts. This broad principle, sometimes called “exclusive jurisdiction” or “exclusive cognisance”, is well established. It is one facet of parliamentary privilege.

2. An important, present day exception to this principle should be noted. Proceedings in Parliament are excluded from the Human Rights Act 1998 and from the jurisdiction of the United Kingdom courts. But they may nevertheless be within the jurisdiction of the European Court of Human Rights. If procedures adopted by Parliament when exercising its disciplinary powers are not fair, they may be challenged by a member who is prejudiced. In recent years more than one parliamentary committee has recommended changes which should be made in parliamentary procedures to ensure that disciplinary proceedings are “fire proof”.

3. Against this background I turn to the recommendation in Sir Christopher Kelly’s report that at least two “lay” members who have never been parliamentarians should be on the standards and privileges committee, and that these external members should have full voting rights. The question which has arisen is this: would a decision of the standards and privileges committee which included voting lay members enjoy the same immunity from court review as a committee composed wholly of parliamentarians?
4. I am firmly of the view the answer to this question is yes. The deliberations and decisions of a standards and privileges committee to which lay members have been co-opted are as much an exercise by Parliament of its control over parliamentary affairs as those of a committee comprised entirely of parliamentarians. In both cases the members of the committee, parliamentarian and lay, are appointed by Parliament in exercise of its non-statutory powers. In both cases the functions of the committee are the same. In both cases the source and nature of the committee’s powers are the same. In both instances the committee remains a committee of the House. The rationale on which immunity from court process is accorded to a committee composed entirely of parliamentarian is equally apt, no less and no more, to a committee onto which Parliament has chosen to invite non-parliamentarians to serve, whether in a purely advisory capacity or in a voting capacity. The presence and participation of lay members does not change, or detract from, the essential nature of the function being exercised by the committee.

March 2011

Written evidence submitted by Professor Anthony Bradley1 (P 94, 2010–12)

1. In this paper I consider the possible implications for parliamentary privilege of adding lay members to the Standards and Privileges Committee, as recently recommended by the Committee on Standards in Public Life.2

2. The starting-point for discussion of parliamentary privilege may be found in the (Nicholls) Report of the Joint Committee on Parliamentary Privilege in 1999:

“Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary business effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.”3

3. Nevertheless, views may differ as to what is necessary to enable each House to function effectively. In 1704, the House of Commons accepted that “neither House … can create any new privilege that is not warranted by the known laws and customs of Parliament”. But in the 1830s, a remarkable battle occurred between the House and the courts, over whether the House had privilege to authorise the publication outside the House of reports made on behalf of the House, even though they contained material that would apart from parliamentary privilege be defamatory. The court held, in Stockdale v Hansard,4 that Hansard, publisher of such reports, was not protected by a resolution of the House authorising him to do this. The judges dealt with the argument that publication of the reports for sale outside Parliament was necessary for the proper functioning of the House. Lord Denman CJ said:

“If necessity can be made out, no more need be said because [necessity] is the foundation of every privilege of Parliament and justifies all that it requires.”

He found there to be no proof of necessity, but merely “a very dubious kind of expediency”. In any event, the practice of publishing reports was too recent to have established a privilege. Littledale J said that article 9 of the Bill of Rights, protecting proceedings in Parliament from being questioned in the courts, was confined to what took place within the walls of Parliament, “for what is necessary for the transaction of the business there”. Patteson J held that it could not be a matter of necessity for the Commons to invade the rights of those outside the House. In consequence of this setback for the Commons, the Parliamentary Papers Act 1840 was passed to require proceedings in defamation to be stayed whenever the defendant could produce a certificate that publication had been authorised by one of the Houses.5

4. Hitherto, membership of committees of the two Houses has been confined to members of the House in question. Evidently the main purpose of Article 9 of the Bill of Rights is to protect the freedom of speech and debate in Parliament; and each House restricts the right to address the House to its members. However, some

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4 (1839) 3 Ad & El 1.
benefits of parliamentary privilege extend to two groups of persons who are not members of the Commons: (a) the clerks and other officials of the House, who work under the authority of the Speaker and the Clerk of the House; and (b) witnesses who give evidence to committees of the House. It is certainly a contempt of the House to penalise a witness for evidence given to a committee or to prevent them from giving evidence. And a witness may not be sued in defamation for remarks made in the course of giving evidence. So far as I am aware, there is no statutory provision that expressly extends parliamentary privilege to these persons. The justification for protecting these two categories must be the practical necessity of enabling the House to function. The term “proceedings in Parliament” thus extends to aspects of the House administration that relate directly to the holding of debates in the House, and to the proceedings of committees, both while members of the committee deliberate and while a committee is receiving evidence from persons outside Parliament.

5. The proposal by the Committee on Standards in Public Life that some “lay” persons be added to the Committee on Standards and Privileges breaks new ground. I assume for purposes of discussion that the House of Commons would endorse the view of the Kelly Committee that there are important policy considerations in favour of this innovation and would adopt a resolution to this effect. Given that decision by the House, it is not obvious why this would cause proceedings of the enlarged Standards and Privileges Committee to go outside the protection given to parliamentary proceedings by article 9 of the Bill of Rights. For the additional lay members to be protected in this way would be analogous to the present position of those who give evidence to select committees. Even if the new members are to have voting rights (as Kelly recommends), the great majority of members would continue to be MPs.

6. If the matter were to be challenged in a court (say, by an individual whose conduct had been criticised in a report from the enlarged Committee on Standards and Privileges), the challenge might be formulated in two ways:

(1) that the House’s resolution to include additional members in the committee would amount to an attempt by the House, acting unilaterally, to create a new privilege that adversely affected the rights of persons outside the House; and that the change could properly be authorised only by Act of Parliament (this argument would rely heavily on the precedent of Stockdale v Hansard, as discussed above); and

(2) that the resolution would in effect extend the scope of Article 9 of the Bill of Rights by widening the meaning of “proceedings in Parliament”; and again that this could be done only by Act of Parliament.

7. In reply, the arguments that could be made include:

(A) this is not the creation of a new privilege, but the application of an existing privilege in changed circumstances;

(B) Article 9 of the Bill of Rights is a statute of constitutional importance and, while its authoritative interpretation is ultimately a matter for the courts, (i) that interpretation must give full weight to the views of the House and (ii) the application of Article 9 may change from time to time since (to borrow well-known words that have been applied to the European Convention on Human Rights) the Bill of Rights should be regarded as a “living instrument”;

(C) enlargement of the Committee does not infringe the common law rights of persons outside the House (unlike the situation in Stockdale v Hansard), since the powers of the Committee are not extended;

(D) the decision to add members to the Committee is a decision by the House in exercise of its right to have “exclusive cognisance” of its own proceedings, and it is not for the courts to express a view as to the propriety or desirability of that decision; and

(E) the addition of lay members to a committee that will still predominantly comprise MPs falls far short of any attempt by the House to vest one of its ancient functions in a body outside the House (which would require an Act of Parliament—as in the case of election petitions and, more recently, MPs’ expenses); reports made by the enlarged Committee would be made to the whole House, at which stage lay members would have no right to speak or vote.

8. Is any guidance on these matters to be found in the recent decision of the Supreme Court in R v Chaytor? The context of that case was entirely different, since the issue was whether the making of false claims for expenses was within the jurisdiction of the criminal courts. I have re-read the leading judgment given by Lord Phillips and the following summarised points may be relevant to the present discussion (numbers in square brackets refer to paragraphs in the judgment).

(a) Parliament accepts that the courts are not bound by views expressed by parliamentary committees or the House as to the scope of privilege [15], but the courts will pay careful regard to views expressed by either House or by bodies or persons in a position to speak with authority [16].

(b) The principal matter to which Article 9 is directed is freedom of speech and debate in the House and in parliamentary committees, which is where the core or essential business of Parliament takes place [47], that core business consists of collective deliberation and decision-making [62].

(c) Communications outside the House must have a close relationship to business within the House to attract privilege [52].

* [2010] UKSC 52; [2011] 1 All ER 805.
(d) The management of the expenses scheme was “essentially a matter of administration properly to be performed by officials” [60].

(e) Each House has an exclusive right ("exclusive cognisance") to manage its own affairs without interference from outside Parliament [63]: areas in which the courts ought not to interfere extend beyond proceedings in Parliament into areas that are “so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament’s sovereignty as a legislative and deliberative assembly” (quoted from the Joint Committee, 1999, para 247) [73].

(f) When judicial review is sought in relation to the conduct by each House of its internal affairs, “the courts will respect the right of each House to reach its own decision in relation to the conduct of its affairs”. Thus judicial review was refused (1) on an attempt to challenge the Speaker’s decision to withhold parliamentary facilities from members who had not taken the parliamentary oath; [7] and (2) on an attempt to challenge a report by the Parliamentary Commissioner for Standards, since the responsibility for supervising the Commissioner was placed by Parliament on the Committee on Standards and Privileges; “it is for that body to perform that role and not the courts” [77].

9. What, in summary, may be drawn from R v Chaytor is that, while holding that the criminal law applies to the making of false claims for MPs’ expenses, the Supreme Court has accepted that the courts will not interfere with the right of each House to control its own proceedings, especially in matters that relate directly to the core functions of collective deliberation and decision-making. In my view, these matters include the appointment of committees for purposes such as those vested in the Committee of Standards and Privileges.

10. If, therefore, the addition of lay members to the Standards and Privileges Committee were authorised by resolution of the House, and the work of the Committee were challenged by judicial review because of the additional members, I consider that a court would be likely to refuse judicial review and would hold that the House had not attempted to create a new privilege or extend the scope of privilege.

11. To this conclusion, I would add three additional remarks.

(A) If it is desired to bar in advance any attempt by judicial review to challenge the appointment of lay persons to the Committee, a necessary step would be to include a clause to authorise the change in a Bill going through Parliament. If the need to enlarge the Committee is felt to be urgent, such a clause could be enacted without waiting for parliamentary privilege to be codified in a Parliamentary Privileges Act, as was recommended by the Joint Committee in 1999.

(B) I claim no knowledge of any depth regarding the extent to which, if at all, other parliaments may co-opt lay persons to serve on their committees. A rapid look at a number of European constitutions [9] shows that in one group of constitutions the provision empowering the parliament to appoint committees (of one form or another) includes the specific requirement that the committees must be drawn from members of the parliament. [10] In some constitutions, the requirement is that the composition of a committee shall reflect the proportion of party groups in the parliament, a rule that presumably excludes the appointment of additional lay or independent members. [11] In some other countries, the parliament is empowered to appoint committees without either of these requirements being specified in the constitution, [12] but in one country in this group, Germany, I am informed that in the Bundestag the members of committees are always MPs. [13] While the interpretation of a national constitution is a matter for the relevant court, I surmise that, in the absence of express provision for appointing non- MPs, a power given to a parliament to appoint committees might well be read as limited to appointing committees composed exclusively of members of the parliament. I have not come across any European constitution that provides expressly for parliamentary committees to include non-MPs. The United Kingdom’s constitution is of course unwritten and flexible, but the proposal for adding lay members to the Standards and Privileges Committee does raise issues of principle that need to be considered.

(C) This paper does not discuss any issues relating to Article 6/l (right to a fair hearing) of the European Convention on Human Rights, for the reason that I do not consider that to add two lay members to

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9 As contained in Constitutions of Europe, a two volume work prepared by the Council of Europe’s Venice Commission in 2004 and published by Martinus Nijhoff. For a reliable comparative study, it would be necessary also to study national legislation, standing orders and the procedure adopted by parliaments. References to Articles in the next three footnotes are to the national constitution, in the translation printed in Constitutions of Europe.
10 These include Austria (Art 55, requiring the “Main Committee” and its sub-committees to be drawn from members of parliament); Belarus (Art 96); Bulgaria (Art 79); Cyprus (Art 73); Denmark (Art 51); Greece (Art 68); Hungary (Art 21); Slovak Republic (Art 91); Sweden (Chap 4, Art 3); Switzerland (Art 153).
11 This group includes Italy (Arts 72, 82); Portugal (Arts 178, 179); Romania (Art 61).
12 This group includes Finland (Art 35); Germany (Arts 43–45, in conjunction with the Rules of Procedure of the Bundestag, ss 54–74); Poland (Arts 110, 111).
13 My informant, Dr Katja Ziegler of the University of Oxford, whose help I am pleased to acknowledge, states that in Germany experts who are not MPs can be members only of special enquête commissions (established under the Rules of Procedure of the Bundestag, s 56), and not of regular parliamentary committees. These enquête commissions have a general policy-making or advisory nature and are not a regular instrument of parliament for controlling the government. Experts on such commissions have no special privileges and are not remunerated.
the Standards and Privileges Committee would be enough to have any bearing on the potential application of Article 6(1) to privilege decisions.

**March 2011**

**Written evidence submitted by Sir William McKay KCB, former Clerk of the House, House of Commons (P 95, 2010–12)**

1. In November 2009, the official Committee on Standards in Public Life recommended that at least two persons who were not and had never been elected Members of the House should serve on the Select Committee on Standards in Public Life proposed, and to ask the Procedure Committee to bring forward proposals to implement it (HC Deb (2010–2011) 519 cc 995–1018).

2. On 2 December 2010, the House resolved after debate to agree with the principle of what the Committee on Standards in Public Life proposed, and to ask the Procedure Committee to bring forward proposals to implement it (HC Deb (2010–2011) 519 cc 995–1018).

3. Many practical aspects of the proposal were raised in the course of the debate. In this short paper, I intend however to deal only with the issue of whether proceedings of the kind envisaged would, as proceedings in Parliament do, enjoy the protection of the Bill of Rights 1689.

**“Lay” Participation and the Bill of Rights**

4. Article IX of the Bill of Rights enacts that “debates and proceedings in Parliament” are not to be “impeached or questioned” in any “court or place out of Parliament”. The protection attaches both to Members personally and to what is said on a protected occasion. Whether any particular action falls within article IX is not a decision for either House but—since the Bill of Rights is statute—for the courts. No UK court has ever attempted a comprehensive definition of “proceedings”, so that while the Bill of Rights is not to be narrowly interpreted and mainstream parliamentary activity is protected, there is no indication of what would be the test to determine, in novel situations such as this, what lies within the boundary and what goes beyond it.

5. It could be argued on the other hand that appointments such as those proposed are precedent. Between 1917 and 1920 the National Expenditure Committee was authorised by the House to appoint (to determine, in novel situations such as this, what lies within the boundary and what goes beyond it. In 1932–33, the joint committee on Indian Constitutional Reform was given the power to “call into consultation representatives of the Indian States and of British India to consider the future government of India”.

6. Following these precedents might have its attractions. If the Standards and Privileges Committee were divided into “standards” and “privileges” sub-committees, with “lay” members only on the former, the final report of the Committee would be exclusively in the hands of Members. At the same time, to reassure public opinion, the proceedings of the “standards” sub-committee, including any votes cast by the “lay” members, could be published. But that solution has two fatal flaws. It would not meet the demands of the Committee on Standards in Public Life (which stipulated that the “lay” members should have “full” voting rights). Nor would it meet the concern that a court might well rule that the activities of a committee which included persons not Members of either House were not “proceedings in Parliament”. In neither case mentioned in the preceding paragraph were the appointments challenged but if they had been, judges might have been more ready to defer to the constitutional position of the Houses a century and three-quarters of a century ago than they would be today.

7. An invitation by the House—even an order—cannot necessarily insulate from the legal consequences of their actions those who accept the invitation or comply with the order. In the leading case, *Stockdale v Hansard*, the printers of the House had published by order of the House a report laid on the Table. When an action for libel was brought against them, the court did not consider that the House’s order to print was a sufficient defence. In this instance, the courts might find that the House’s invitation to external members to take part in committee proceedings was as ineffective in terms of protection as was the order to Hansard to

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14 Though s 16 of Australian Parliamentary Privileges Act 1987 defines parliamentary privilege as covering “all words spoken and acts done in the course of or for purposes of or incidental to the transacting of the business of a House or of a committee”.

15 CJ (1917–18) 170; (1918) 13, 72, 204; (1919) 98; and (1920) 94. Committees such as the Members’ Estimate Audit Committee or the Speaker’s Committee on the independent regulator include persons who are not Members of either House; but these are not select committees.

16 CJ (1932–33) 137.

17 173 English Reports 322 (1836–37); Erskine May’s Parliamentary Practice 23rd edition page 185. The judgement was confirmed in a subsequent case proceeding on much the same facts (112 English Reports 1120–22, 1157H, 1167, 1168 (1839)). The Parliamentary Papers Act 1840 resolved the situation by giving statutory protection to papers published by order of either House. In effect, what the Bill of Rights put a stop to was the possibility of an action against a Member for initiating in the House the justiciable act done on the House’s instructions outside it.
8 March 2011

Written evidence submitted by Rt Hon Kevin Barron MP, Chair, Committee on Standards and Privileges (P 98, 2010–12)

STRUCTURE AND MEMBERSHIP OF THE COMMITTEE

1. The Committee on Standards and Privileges in the previous Parliament endorsed the recommendation of the Committee on Standards in Public Life (CSPL) that at least two lay persons should be appointed to the Committee.\(^1\) The present Committee also supports this proposal. In our view, two is the minimum number of lay members if the reform is to achieve its stated purpose of “enhancing public acceptance of the robustness and independence of the disciplinary process.”\(^2\) Although we would not object in principle to having more than two lay members, the implications of this would need careful consideration, especially if the lay members were to have full voting rights.

2. The present structure and membership of the Committee derive in large part from previous recommendations of the CSPL. In its Eighth Report, published in 2002, the CSPL recommended that no one political party should have a majority on the Committee and that it should continue to be chaired, as in the past, by a Member drawn from one of the Opposition parties. The House agreed to these proposals and since 2005 the Committee has had 10 members, five of whom have been from the main party of Government. From among its number it elects a Chair who is a member of the main party in opposition. The Committee also has an unusually high quorum of half its membership.

3. In the view of the Committee, there is no need to change these arrangements, which have worked well. Accordingly, we suggest that the lay members should be additional to the elected membership. However, like our predecessors, we consider that the Committee should not deal with standards matters in the absence of both lay members. We therefore propose that the quorum of the Committee should be amended, to require at least one of the lay members to be present when any business relating to standards is considered.

4. We know from informal contacts with the CSPL after publication of its report that there was never any intention on the part of the CSPL to suggest that lay members should be able to participate in or vote on matters relating to privilege. One question for your Committee arising from this is how to ensure that the CSPL’s recommendation is implemented without infringing on the House’s exclusive jurisdiction over its own affairs.

5. In practice, the Committee on Standards and Privileges frequently deals with standards issues and with matters relating to privilege in the course of a single meeting. Some mechanism will need to be found to exclude the lay members from consideration of matters relating to privilege.

The previous Committee proposed that it should be able to form a sub-committee of the 10 elected members of the full committee, of which the lay members would not be members and the meetings of which they would not attend. On reflection, we see two difficulties with this approach. First, it offends against the general rule of the House that any member of a full committee may attend a meeting of a sub-committee of that committee, even if not appointed to it. Some form of special provision would have to be made in this case to exclude the lay members. Secondly, the established practice of the House is that a Report from a sub-committee is made through the full committee, which, if it so wishes, is able to discuss it, to amend it and even to reject it. Again, there would have to be some special derogation from this procedure to avoid the Reports of a privileges sub-committee being subject to proceedings in the full committee with the participation of lay members.

\(^{1}\) HL 43, HC 214 (1998–99).
\(^{2}\) Second Report, 2009–10, Implementing the Twelfth Report from the Committee on Standards in Public Life
\(^{20}\) CSPL Twelfth Report, paragraph 13.67
6. An alternative approach would be to turn the previous Committee’s proposal on its head, and to appoint the lay members to a standards sub-committee of the Committee on Standards and Privileges. This can be objected to on the grounds that the full Committee would then be able, should it so wish, to amend or reject a Report from the sub-committee, without the participation of the lay members—which would appear to vitiate some of the force of the CSPL’s proposal. There would also be the novelty of a sub-committee having more members than the full committee of which it is a part.

7. The solution which we now favour would involve splitting the responsibilities of the present Committee between two committees: a Committee on Standards; and a Committee of Privileges. We are aware of the case advanced at the time the present structure was first put in place, in the mid-1990s, that standards and privileges are two such closely related concepts that they should be responsibilities of the same committee. In practice, we do not think that the relationship between the two has been nearly so close as previously envisaged. As already noted, the two areas of responsibility are clearly distinguished from each other on the Committee’s agendas and are dealt with separately. We see no difficulty in formalising this arrangement by dividing them between two committees. It would of course be open to the House to appoint the same Members to both committees, although we are not proposing this.

8. We enter one caveat at this point: the splitting of the Committee should not lead to extra costs. The two committees could share a secretariat, and the Chair of the Committee of Privileges, which would be likely to meet less frequently than most committees, should not receive an additional salary by virtue of holding that post.

**Status of Lay Members**

9. One of the most difficult questions for your Committee to resolve is what should be the status of lay members appointed to a select committee of the House. The CSPL recommended that lay members should have “full voting rights.” As the previous Committee noted in its Report of November 2009, the term “full voting rights” was not defined by the CSPL. Taken at face value, it would appear to allow lay members to vote on any matter that is before the Committee. This would include procedural motions and the election of a Chair. We do not know whether this is what the CSPL intended. If lay members are to have “full voting rights”, those rights will need to be codified.

10. In practice, the Committee on Standards and Privileges divides very rarely.21 We are very aware that the impact of our conclusions and recommendations would be greatly reduced were we to fail to reach agreement on them. This would surely apply with equal if not greater force to any decision taken by a committee having lay members.

11. Finally, we suggest that it is vitally important that lay members should be bound by the same duty of confidentiality as applies to all members and staff of select committees. In the event that a lay member were to breach that duty of confidentiality, the House would be able to proceed against him or her as against any other person who commits a contempt.

**Appointment and Remuneration of Lay Members**

12. The CSPL proposed that the lay members should be appointed through “the official public appointments process.” The previous Committee took the view that it would not expect to administer that process and this Committee shares that view. However, we suggest that applicants for these positions might find it helpful to be able to ask questions of a member of the Committee at each stage of the process; and the process itself might benefit from having direct access to the Committee’s experience and expertise. We would therefore be willing to be represented on any panel formed to carry it out. Other than that, we would hope that there would be substantial external involvement in the process and that it should so far as possible be OCPA-compliant, although the final appointments should in our view be made by the House.

13. As for the qualities required of lay members, it will be important that those appointed are available to attend meetings of the Committee at Westminster, which may sometimes take place at short notice, and that they have sufficient time in which to prepare thoroughly for those meetings. We have no desire to create new opportunities for “the great and the good” to add to their portfolios of public offices. But it should be borne in mind that those appointed will need to exercise judgment and discretion in a challenging environment. They will need to be at ease in that environment, while maintaining a degree of separation from it. Although they will, in a sense, be representatives of the public, they will need to bring their independent judgment to bear on some complex questions and they will need to be sufficiently resilient to deal with pressure both from the media and, indeed, from members of the political classes.

14. In our view, lay members should be appointed for a single term, which could be one Parliament or a similar period (ie, five years); any longer than this and they risk becoming insiders. Some procedure will be required for removal of a lay member who either fails to discharge his or her duties or becomes incapable of discharging them. The provisions which apply to the Commissioner may provide a convenient template for this.

15. When it comes to remuneration, the previous Committee suggested that lay members should be able to claim a *per diem* rate similar to that which is paid to specialist advisers to select committees, plus expenses.

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21 The last division was in 2001
We support this. The current daily rate for specialist advisers is £160 to £280. Advisers may claim for time spent preparing for meetings—for example, time spent reading committee papers. We suggest that lay members should be able to claim on a similar basis.

**Conclusion**

16. We are grateful to the Procedure Committee for carrying out a full inquiry into the CSPL’s proposal for lay members of the Committee on Standards and Privileges. We are confident that whatever detailed proposals emerge from this process will command greater confidence than if they had been brought forward by the Committee on which the lay members will eventually sit. The Committee on Standards and Privileges is committed to ensuring that its lay members are able to play a full part in the House’s standards regime and looks forward to an early decision by the House on your Committee’s recommendations.

_March 2011_

**Written evidence submitted by Sir Philip Mawer, former Parliamentary Commissioner for Standards (P 100, 2010–12)**

1. I am grateful for the Procedure Committee’s invitation to make a written submission to its inquiry into lay membership of the Committee on Standards and Privileges. In responding to this invitation, I am conscious that it is now over three years since I stepped down as the Parliamentary Commissioner for Standards and that much has happened since. I shall therefore keep my comments brief.

2. The submission I make is entirely personal. It in no way relates to my role as the Prime Minister’s Independent Adviser on Ministers’ Interests.

**Lay Membership of the Committee on Standards and Privileges**

3. The House has, as I understand it, expressed its support in principle for the proposal that lay members should join the Standards and Privileges Committee. The focus of the Procedure Committee’s inquiry is on the practical implications of such a step. In accepting in principle the recommendation (originally made in the Twelfth Report of the Committee on Standards in Public Life) that lay members should be included in the Committee, the House wishes to enhance public confidence in the process for adjudicating on reports by the Parliamentary Commissioner for Standards about complaints investigated by him.

4. If this objective is to be achieved, it is important that the number of lay members; their status and powers within the Committee; the process leading up to their appointment; and the terms of their appointment should be such as to carry credibility with the public. The House’s objective will not be met if their presence on the Committee is perceived as merely token.

**Standards, not Privileges**

5. The focus of the original recommendation by the Committee on Standards in Public Life was on lay involvement in the Committee on Standards and Privileges’ role in relation to disciplinary proceedings arising from alleged breaches of the House’s Code of Conduct. It was not concerned with the Committee’s role in considering matters of Parliamentary privilege.

6. The Report by the Committee on Standards and Privileges on “Implementing the Twelfth Report from the Committee on Standards in Public Life” (Second Report of Session 2009–10, HC 67) commented:

“Privilege must remain a matter for the House and its Members. We suggest that a clear distinction will need to be drawn between matters relating to privilege and the other work of the Committee, once the lay members have been appointed.”

7. I respectfully agree with that observation. Lay members should not be involved in the privilege aspects of the Committee’s work, just as the Commissioner is not currently involved in that aspect of the Committee’s remit. Whether that separation is achieved by the creation of two different committees or the establishment of a separate Privileges sub-committee consisting of the 10 elected Members of the current Committee is a matter for the House to determine. I believe there is advantage in the same 10 elected Members continuing to consider both standards and privileges matters, but whether they look at privileges as members of a Privileges sub-committee of a combined Standards and Privileges Committee or when sitting as members of a separate Privileges Committee of the House is not a point I judge to be of great importance. If I had to decide the issue, I would probably favour creating a separate Privileges Committee, for the sake of clarity and in order to minimise the scope for confusion.

**The Role of the Lay Members in Relation to Standards**

8. Consideration so far of the role and status of lay members has tended to focus on the part they will play in the consideration of individual cases. It should not be overlooked that they will have an equally important role in bringing an external perspective to bear on the operation of the House’s disciplinary arrangements as a whole, and in helping the Committee on Standards and Privileges determine how, on the basis of the advice it
The Number of Lay Members and the Quorum of the Committee

9. The Committee on Standards in Public Life recommended that at least two lay members should be appointed to the Committee on Standards and Privileges. The recommendation in the latter Committee’s Second Report of 2009–10 was for the appointment of two lay members in addition to the 10 elected members. The Committee further recommended that the quorum of the reconstituted Standards and Privileges Committee should in future consist of five elected and one lay member.

10. These recommendations represent, in my view, the minimum the House should contemplate if it wishes to secure public confidence in any new arrangement. I recognise that there are a number of balances to be struck. There is a need to avoid token action on the one hand and to ensure Members’ continued confidence in the House’s adjudicatory procedures on the other. There is a need to ensure that the number of lay members appointed achieves a certain critical mass (so as not to leave any lay member sitting alone isolated and exposed to pressure) whilst not enlarging the Committee so much as to render it ineffective.

11. Considerations to do with ensuring public confidence in the new arrangements and an adequate attendance of lay members at meetings lead me to tend to favour the appointment of three (rather than two) lay members plus 10 elected members to the Committee, with the quorum being seven of whom two should be lay. This would take the overall size of the Committee to 13 and mean that no case would be capable of being decided at a meeting attended by less than a majority of all members of the Committee (a step which I would have hoped Members would favour). However, I feel less strongly about the number of lay members appointed to the Committee than I do about their status and powers, and to that I now turn.

The Status and Powers of Lay Members

12. If the House’s objective of enhancing public confidence in the disciplinary process is to be achieved, I believe it desirable that lay members should have the same status within the Committee as elected members (including voting rights). I note the concern of the Clerk of the House that the direct participation of lay persons in the taking of decisions by a Committee of the House may not be covered by privilege, and of course I defer to the Clerk as the House’s principal adviser on these matters. I would simply offer the following observations:

(a) On my understanding, privilege attaches to the House itself, and only in consequence to its elected Members when undertaking their parliamentary duties.

(b) Privilege may also attach to officers and other servants of the House when carrying out duties on the House’s behalf.

(c) Once the Commissioner has decided to accept a complaint against a Member for inquiry, all stages of the consideration of the complaint form part of a proceeding in Parliament. (It is for this reason that an investigation by the Commissioner is regarded as privileged.)

(d) If the House decides that lay members should form part of its disciplinary process, I do not immediately understand why they should not similarly be covered by parliamentary privilege.

13. I would add that whilst no one can foresee what view the courts might take on the matter, it would be curious to say the least if the courts were to mount an attack on the House’s privileges in consequence of a development (the inclusion in the Committee of lay members) intended to strengthen, not weaken public confidence in the fairness and impartiality of this aspect of the House’s proceedings.

14. I also note that the Government’s intention to introduce a Privileges Bill will provide an opportunity to put this matter beyond doubt.

15. I believe that the question of the status and powers of lay members of the Committee is crucial because it would be unwise to be seen to develop an arrangement in which there were first and second class members of the Committee. I note that, if it is decided to withhold voting rights from the lay members, it will still be necessary to define their rights in other respects. Whilst, happily and rightly, the Committee on Standards and Privileges in my experience avoids divisive debates and votes wherever possible, they will occur from time to time, perhaps in relation to the most difficult and contentious of cases. What will the position be of lay members in relation to such matters as speaking in Committee, tabling motions and amendments, and appending minority reports to Committee documents (should they wish to do so, if they find their views seriously at odds with the elected majority)? Conventions will need to be clearly established on these matters if public confidence is to be maintained and if people of the necessary skills and abilities are to be willing to undertake the demanding and responsible duties involved. Far better, in my submission, to avoid all this and simply to accept that—in this narrow and limited instance and because the House judges it to be in the overall interests of the public as well as of the House itself—lay members will have the same rights and responsibilities as elected Members on the Committee.
THE APPOINTMENT OF LAY MEMBERS

16. The Committee on Standards in Public Life recommended that the lay members of the Committee should be "chosen through the official public appointments process". As Members of the House have subsequently noted, it is not altogether clear what that phrase means.

17. The key consideration, I suggest, should be that the process of appointment is one which carries the confidence of both the public and the House. That means that it should observe the procedural principles established by the Commissioner for Public Appointments, should involve some independent element, and the final decision should be taken by the House.

18. The Parliamentary Commissioner for Standards is appointed by a process of advertising; selection by the House of Commons Commission (with the full involvement of the Chairman of the Committee on Standards and Privileges and of the Office of the Commissioner for Public Appointments); and confirmation by the House. I suggest that a similar process might be adopted in respect of lay members of the Committee. This would have the advantage of ensuring that, under the authority of the House, the same body was responsible for making all lay appointments connected with the House’s disciplinary arrangements.

QUALIFICATIONS OF LAY MEMBERS

19. It will be important to establish those qualities the House will be seeking when making appointments to the Committee. I would identify the following as particularly important:

(a) An understanding, and appreciation of the value of the role undertaken by elected Members and of the particular context in which they work (although candidates should not formerly have been Members of the House);

(b) The capacity to sift complex evidence and to reach a reasoned judgement on it, not being swayed by press comment or by other pressure;

(c) Resilience;

(d) A readiness to work with others and accept the disciplines of working as a member of a parliamentary committee;

(e) Availability—an ability to respond quickly as the needs of the Committee and the House may require.

20. In my view, lay members should be appointed on the firm understanding that they will express their views as members of and within the Committee, not, in all normal circumstances, outside it.

21. I see that, in the debate in the House on 2 December 2010, reference was made to the possible attraction of appointing a retired judge as one of the lay members of the Committee. While I acknowledge the potential value of having members on the Committee who are familiar with the requirements of due process, I would counsel caution before taking any steps which might judicialise the proceedings in the Committee or make them overly legalistic in character.

22. Whoever is appointed to the Committee and whatever their background, it is essential that they be given an effective induction into their role.

TERM OF APPOINTMENT

23. I suggest that the term of appointment of lay members should be five years. It would be for the House to decide whether this should coincide with the fixed lifetime of a Parliament or bridge that of two Parliaments. On the grounds of continuity (avoiding a complete change in the Committee’s membership at the same point) and in order to simplify the process of appointment, there would be something to be said for the latter. It may also be sensible to stagger the lay appointments so as to avoid them all falling due at once. The appointment should not, I suggest be capable of renewal.

TERMINATION OF APPOINTMENT

24. The premature termination of an appointment should only be possible by a Resolution of the Whole House, on a report by the House of Commons Commission, following advice from the Committee on Standards and Privileges, and a motion moved for by a member of the Commission. It would not seem appropriate for such a motion to be moved for by a member of the Committee on Standards and Privileges itself, as any such motion should, I suggest, in view of its gravity, be seen to have the endorsement of the Commission (and the Commission, I have already suggested, should have played a crucial role in recommending the appointment of someone as a lay member to the House).

25. I hope that these observations and suggestions will be of assistance to the Committee in deciding how it should report to the House.

March 2011
Written evidence submitted by the Committee on Standards in Public Life (P 101, 2010–12)

INTRODUCTION

1. The Committee on Standards in Public Life (the Committee) welcomes the opportunity to comment on the Procedure Committee inquiry into lay membership of the Committee on Standards and Privileges. As with the Committee’s report on MP’s Expenses and Allowances (Cm 7724), the Committee’s politically appointed members22 have not taken part in the preparation of this response to avoid any real or perceived conflict of interest.

2. In its report on MP’s Expenses and Allowances the Committee recommended that there should be at least two lay members who have never been parliamentarians on the Standards and Privileges Committee and that their appointment should be made in the same way as that of the lay members of the Speaker’s Committee of the Independent Parliamentary Standards Authority.

3. On 2 December 2010 the House of Commons passed a resolution inviting the Procedure Committee to bring forward proposals to implement the principle that lay members should sit on the Committee on Standards and Privileges. The Procedure Committee is now conducting an inquiry into the implications for parliamentary privilege and the practical considerations of lay membership.

PRINCIPLE

4. The Committee recommended introducing a non-parliamentary element to membership of the Committee on Standards and Privileges as a step towards enhancing public acceptance of the robustness and independence of the disciplinary process for Members of Parliament. Following the expenses scandal it was clear that the arrangements for disciplining Members did not command public confidence. During the inquiry on MP’s Expenses and Allowances the then Chairman of the Committee on Standards and Privileges, Rt Hon Sir George Young, said:

“we would be very happy to consider having outside members sitting on the Standards and Privileges Committee, not least to allay the concerns you mentioned earlier, […] about how we might recalibrate our disposals to conform with public expectations. So that is something which my Committee is prepared to put on the table, having outside members sitting on our Committee, particularly to assist us in coming to judgements where people may feel at the moment we are possibly too lenient.”23

5. If the disciplinary system for MPs is to remain a matter of self-regulation, it needs to be strengthened to give the public confidence that matters will be dealt with appropriately. The Committee imagines that this is an objective the House will share. The Committee believes that issues of implementation should not put into question this important principle.

PARLIAMENTARY PRIVILEGE

6. It is, of course, important that the arrangement should be set up in a way which is consistent with parliamentary privilege. On the face of it, issues of privilege should not arise in relation to most of the matters considered by the Committee on Standards and Privileges. The ultimate safeguard is that decisions on any recommendations of the Committee on Standards and Privileges in relation to breaches of privilege will continue to be taken by the House itself.

March 2011

Written evidence submitted by Sir Malcolm Jack KCB, Clerk of the House, House of Commons (P 103, 2010–12)

INTRODUCTION

1. The Procedure Committee has invited written submissions to its inquiry into the privilege implications and practical considerations of lay membership of the Committee on Standards and Privileges, including the structure of the Committee, the participation of non-Members in select committee meetings and decisions, the number of lay members and the quorum, the appointments process for the lay members and other relevant matters; and to make recommendations.

2. On 2 December 2010 the House agreed with the principle as set out in the Twelfth Report from the Committee on Standards in Public Life (CSP)24 that lay members should sit on the Committee on Standards and Privileges; and invited the Procedure Committee to bring forward proposals to implement it. I understand the policy consideration leading to this proposal, namely that external members can bring to the Committee a different perspective in the way that external members of professional organisations do in similar deliberations of bodies concerned with ethics and standards.

3. I shall tackle the various limbs of the inquiry (set out in paragraph 1 above) in turn.

22 Oliver Heald MP, the Rt Hon Margaret Becket MP and the Lord Alderdice
23 Rt Hon Sir George Young MP, Public Hearing, 29 June 2009, paragraph 135
24 Twelfth Report from the Committee on Standards in Public Life, Cm 7724
PRIVILEGE IMPLICATIONS OF LAY MEMBERSHIP

4. The proceedings of the Committee on Standards and Privileges, like those of other Committees of the House, are protected by parliamentary privilege. The principle of the freedom of speech enshrined in Article IX of the Bill of Rights 1689 applies to the proceedings of the Committee, as to proceedings in the Chamber. Other aspects of privilege, including the exclusive regulation of its internal affairs, come within the exclusive cognisance of the House and devolve to the Committee as they do to other Committees of the House. This means that the Committee’s decisions and conduct of its affairs cannot be challenged outside Parliament, nor can any aggrieved party go to law in order to overturn the Committee’s findings.

5. There is a risk that the addition of lay members to a committee would alter its character to such an extent as to cast doubt on whether its proceedings were actually proceedings in Parliament protected by parliamentary privilege. At present, the only non-Members participating in Committee meetings are witnesses, staff of the House and specialist advisers, but they do not have their views formally recorded nor have they any role in proceedings such as voting. However, these participants are protected by parliamentary privilege.

6. An important principle that needs to be borne in mind is the long-held understanding that it is for the courts to determine the scope of privilege. This principle has recently been restated by the Attorney General in a memorandum to the House on the role of the courts and the House of Commons. The Attorney General emphasized the importance of comity between the role of the courts and Parliament, concluding that “it is the role of the courts to determine the law relating to parliamentary privilege (especially in relation to Article IX).” This view that the extent of parliamentary privilege is ultimately a matter for the court has recently been upheld in the Supreme Court although its President has said that the views of Parliament would be taken into account.

7. Three further considerations are relevant. Firstly, in 1705, it was agreed that “neither House of Parliament hath power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament”. Declaring a committee comprising partly Members of Parliament and partly lay members as a committee of the House of Commons, to be covered by the usual norms of parliamentary privilege, could be regarded as the assertion of a new privilege.

8. Secondly, the courts might question whether the House had the power to make provision for a subsidiary body to do something it could not do for itself: and the House surely lacks the power to decide by a majority to co-opt unelected Members with full voting rights. Indeed in another area, the House itself makes a distinction between bodies which are composed entirely of Members (All-Party Groups) and those which have non-Members (Associate Parliamentary Groups).

9. Finally, any attempt to legislate on the matter would be an invitation to the courts to decide whether and to what extent a particular case fell under the expressed legislative provision.

FREEDOM OF INFORMATION AND DATA PROTECTION

10. One practical application of parliamentary privilege is in relation to freedom of information. One of the available exemptions from the duties under the Freedom of Information Act 2000 to disclose information is where an exemption is required in order to avoid an infringement of the privileges of either House of Parliament. This is an absolute exemption and the public interest test under the Act does not apply. The Speaker of the House of Commons (or the Clerk of the Parliaments for requests affecting the House of Lords) may sign a certificate as conclusive evidence of the fact that such an exemption is required. As intended by the legislation, such certificates have never been challenged by the Information Commissioner nor in any tribunal or court. That does not mean, however, that certificates are unimpeachable in all conceivable circumstances; and the addition of laymen to a select committee might possibly give grounds for arguing that the parliamentary privileges exemption did not apply to a body which was not wholly parliamentary in nature. It may still be perfectly possible for a Standards Committee to operate effectively without it relying on a FOIA section 34 (parliamentary privilege) exemption. Other available exemptions might include (where necessary) legal professional privilege, investigations, personal information and information intended for future publication—but such exemptions are reviewable by the Information Commissioner and some are subject to the public interest test.

11. The Freedom of Information Act 2000 made certain amendments to the Data Protection Act 1998 in relation to parliamentary privilege. The applicability of data protection principles could be highly relevant to the work of a Standards Committee. Unlike the Freedom of Information Act, there is no provision under the Data Protection Act (even as amended) for the Speaker to issue a certificate as conclusive evidence of fact that, for example, the processing of certain personal data is required for the exercise of any function of the House of Commons.

26 Committee on Issue of Privilege, First Report HC 62 (Session 2009–10) Ev 131
27 R v Chaytor and others [2010] UKSC 52, para 16
PRACTICAL CONSIDERATIONS: A WAY FORWARD

12. I turn to consider how a way might be found to secure the advantages that would derive from the addition of lay members without running the risk of losing the independence from the courts that the House’s self-regulatory system currently enjoys.

13. I understand that the proposal that the lay members should be voting members rests on the desire to ensure that the lay members play a full part in the Committee’s proceedings and that their views should not be lightly cast aside or over-ridden by the Members on the Committee.

14. Both of these aims can be achieved without violating parliamentary norms. First, it should be a condition of the quorum, or a standing instruction to the committee, that the Committee may not meet at all unless there is present at least one of the lay persons to be appointed by the House. Secondly, it should be a standing instruction to the committee that any report to the House should include a statement of the opinion of each of the lay persons on the Committee’s conclusions.

15. By having these provisions set out in the Standing Orders of the House, I am suggesting that the lay members would have every chance to participate in the Committee’s proceedings, including the questioning of witnesses and the informal consideration of reports. What they would not be able to do would be to move amendments or have a formal vote recorded but that would not, in my view, undermine their effectiveness since they would be participating in consideration of reports.

16. It would therefore be for the Committee to take a decision on a standards matter with the full participation of lay members in its deliberations; and the views of the lay persons present at the Committee’s deliberations would be laid bare and published for all to see. While the actual decision of the Committee would remain in the hands of the elected members, in effect that would be the case anyway—unless the number of the voting lay members outnumbered the elected Members on the Committee.

17. Neither of the standing instructions should apply to cases of privilege referred to the Committee, for as long as the present combined standards and privilege remit is maintained.

THE STRUCTURE OF THE COMMITTEE: SPLITTING STANDARDS FROM PRIVILEGES

18. My main proposal on the structure of the system is that the House should revert to its time-honoured practice of having a distinct and senior Committee of Privileges, to meet on the relatively infrequent occasions that the House refers matters to it. The task of the Committee of Privileges is, in the main, to investigate apparent contempts that have been committed against the House and to decide what action, if any, ought to the taken to punish any such as contempt or other breaches of privilege. Such a Committee should comprise Members only, as it is my firm view that the exclusive control which the House has of its own proceedings means that privilege questions should be for Members alone to consider.

19. I would not recommend the use of two sub-committees of a continuing Standards and Privileges Committee, one to deal with standards matters and the other to deal with privilege. The arrangement would be more complicated; a means would have to be found to prevent the decision of a sub-committee ever being overruled by a Member majority on the main committee; and there is much to be said for a clear Member and public perception that standards matters will be dealt with separately from privilege matters.

20. One consequence of dividing the remit of the existing Standards and Privileges Committee would be that the Speaker would have to determine, in accordance with section 12 (2) and (4) of the Parliamentary Standards Act 2009, who should replace the Chair of the Standards and Privileges Committee as an ex officio member of the Committee on the Independent Parliamentary Standards Authority.

THE NUMBER OF LAY MEMBERS

21. In order to allow for continuity and transmission of the Committee’s ethos as it develops over time, it would be desirable to stage the turnover of lay members. In the first instance, their terms of appointment might be of different lengths, moving towards a cycle of periodic replacement of lay members one at a time as their term of appointment came to an end. In the case of the Speaker’s Committee on IPSA, the Speaker determined that the duration of the three appointments of lay members should be staggered in order to provide continuity for the Committee. Accordingly, the motion approved by the House reflected the outcome of the recruitment competition, in nominating one person for five years, another for four years and a third for three years.

22. It would be desirable to have a single non-renewable term, as for the Parliamentary Commissioner for Standards, to make quite clear that the lay members had no interest in currying favour or cultivating the support of anybody—and, equally, to demonstrate that they had nothing to fear from incurring the odium of unpopularity from any quarter.

23. With a move towards fixed-term Parliaments of five years, the House might decide on a fixed single non-renewable term, in the range from, say, three to seven years.
Quorum

24. As I have already pointed out (see paragraph 14 above) it would be essential to make provision that the Committee could not operate without its lay members. So a prudent quorum requirement would be that at least one lay member should be present. It may also be considered desirable to provide that the lay members should not be allowed to dominate proceedings and that therefore the quorum should be double the number of lay members, plus one. Alternatively, a less onerous provision might be that the quorum should be one greater than the number of lay members, so that the lay members could not constitute a quorum by themselves.

The Appointments Process for the Lay Members

25. We have some experience of appointing lay members, in relation to the statutory Speaker’s Committee for IPSA. In that case, the recruitment competition required by the statute was conducted at the Speaker’s request by a board chaired by the Clerk Assistant with independent members appointed to it. The board was assisted by a specialist recruitment agency, who were employed following a tender exercise in July 2010. The recruitment process involved stages of advertisement, long-listing, short-listing and interview. Following final interviews the Speaker met four candidates recommended by the board, from whom he made his selection of the three persons named in the motion approved by the House on 26 January 2011.

26. The House will have to decide what it requires in terms of the character and calibre of lay members of a Standards Committee, and in order to do that there will have to be clarity about what the purpose of the lay members is. If they are to be experts in due process, then a legal or judicial background is indicated. A harder task would be to recruit individuals who commanded public confidence to such an extent that they could refute the ill-founded but nevertheless deeply ingrained suspicion, in the media and elsewhere, of Members and their motives. The Procedure Committee may think that qualifications and calibre of the lay members of the Speaker’s Committee on IPSA might be a useful comparator.

27. One of the pitfalls in expecting lay members to act as tribunes of the people, or in some way to guarantee the integrity that what goes on behind the closed doors of the committee room in investigating complaints, is the risk that the lay members will be expected to “blow the whistle” by disclosing the private deliberations of the Committee. Although committees are in fact quite transparent in the way they publish their reports and their formal minutes, it would be deeply damaging to their capacity to operate at all if every remark made in a conversation at private meeting was liable to be relayed to the press. It ought to be made clear to the lay members that any premature or unauthorised disclosure of committee proceedings may be found to be a contempt of Parliament.

Other Relevant Matters

28. Lay members need to be properly equipped to do their work, but they should keep an appropriate distance. I would suggest that lay members should be issued with full photo-passes allowing them unfettered access to the parliamentary precincts. Subject to the Procedure Committee’s recommendations and the decisions of the House on them, I would suggest that the lay members would not require office space of their own on the parliamentary estate nor would we need to supply them with any computers or other ICT equipment.

29. The Parliamentary Standards Act 2009 requires the Speaker to prescribe the remuneration of lay members of the Speaker’s Committee on IPSA, which he has set at £300 a day. This was set at the lower end of a number of public sector comparators, and is comparable to the scale of honoraria for specialist advisers to select committees with a current top rate of £280 a day. There would also be reasonable travel and subsistence expenses.

30. I have a particular responsibility as Chief Executive of the House of Commons Service to keep any eye on cost pressures in the context of an overall reduction in spending of 17% over the lifetime of this Parliament. The recruitment and remuneration of lay members of the Standards Committee will involve some additional expenditure. I think this is likely to be modest but I mention it for the sake of completeness.

Conclusion

31. The House has endorsed the principle of adding lay members to its Standards and Privileges Committee. I hope to have indicated in this paper how such members could participate in the proceedings of a Standards Committee, separated from a Committee of Privileges, without raising problems in the area of parliamentary privilege.

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