



House of Commons  
Committee on Standards

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# **The House of Commons Code of Conduct and the Criminal Law**

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**Seventh Report of Session 2013–14**





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**Seventh Report of Session 2013–14**

*Report, together with appendix and formal minutes*

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## The Committee on Standards

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

### Current membership

Rt Hon Kevin Barron MP (*Labour, Rother Valley*) (Chair)  
Sir Paul Beresford MP (*Conservative, Mole Valley*)  
Mr Robert Buckland MP (*Conservative, South Swindon*)  
Rt Hon Tom Clarke MP (*Labour, Coatbridge, Chryston and Bellshill*)  
Mr Christopher Chope MP (*Conservative, Christchurch*)  
Mr Geoffrey Cox MP (*Conservative, Torridge and West Devon*)  
Sharon Darcy (*Lay Member*)  
Sir Nick Harvey MP (*Liberal Democrat, North Devon*)  
Mr Peter Jinman (*Lay Member*)  
Fiona O'Donnell MP (*Labour, East Lothian*)  
Mr Walter Rader (*Lay Member*)  
Heather Wheeler MP (*Conservative, South Derbyshire*)  
Dr Alan Whitehead MP (*Labour, Southampton Test*)

The following were also Members of the Committee during the Parliament:  
Annette Brooke MP (*Liberal Democrat, Mid Dorset and North Poole*)

### Powers

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

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: [www.parliament.uk/standards](http://www.parliament.uk/standards).

### Committee staff

The current staff of the Committee are Eve Samson (Clerk), Danielle Nash (Second Clerk) and Miss Christine McGrane (Committee Assistant).

### Contacts

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

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# The House of Commons Code of Conduct and the Criminal Law

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1. The Committee, the Parliamentary Commissioner for Standards and the Metropolitan Police have reaffirmed and redrafted the existing concordat on the complaints system and the criminal law.<sup>1</sup> It is published as an Appendix to this Report.

2. The concordat is concerned with operational matters. It would be inappropriate for it to set down the possible effect of parliamentary privilege on any future legal proceedings. Accordingly, the Committee has decided to set out in more detail the relationship between the inquiries conducted by the Parliamentary Commissioner for Standards and the Committee and those conducted by the police, and to correct some misunderstandings of the effect of parliamentary privilege on court proceedings.

3. Privilege protects parliamentary proceedings and the core functions of Parliament. As the Joint Committee on Parliamentary Privilege said:

Privilege refers to the range of freedoms and protections each House needs to function effectively: in brief, it comprises the right of each House to control its own proceedings and precincts, and the right of those participating in parliamentary proceedings, whether or not they are Members, to speak freely without fear of legal liability or other reprisal.<sup>2</sup>

Privilege does not provide a haven from the general criminal law.

4. It is not for the Committee or the Commissioner to decide whether criminal conduct has occurred: it is for the prosecuting authorities to make that case, and for the court to decide. As the Committee on Standards and Privileges has remarked, “the separation of courts and Parliament is a fundamental constitutional principle”.<sup>3</sup> The Committee will not attempt to usurp the functions of the prosecuting authorities. Parliaments and Governments in other jurisdictions have been criticised for encouraging political prosecutions. It is easy to be complacent and claim such things could never happen in the United Kingdom. One of the reasons such things do not happen in the United Kingdom is that the House and its Committees are scrupulous about respecting the boundary between their role and that of the prosecuting authorities.

5. In recent decades there have been occasions when parliamentary proceedings might have cut across criminal investigations; in such cases Committees have exercised their undoubted powers very carefully indeed.<sup>4</sup> Each case has to be considered on its own merits

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1 Committee on Standards and Privileges, Eighth Report of Session 2007–08, *The Complaints System and the Criminal Law*, HC 523

2 Joint Committee on Parliamentary Privilege, First Report of Session 2013–14, *Parliamentary Privilege*, HC 100/ HL Paper 30, para 3

3 Committee on Standards and Privileges, Second Report of Session 2012–13, HC 635, para 3

4 See, for example, Public Administration Committee, Fourth Report of Session 2005–06, *Propriety and Honours: Interim Findings*, HC 1119, paras 15–21 and Culture, Media and Sport Committee, Eleventh Report of Session 2010–12, *News International and Phone-hacking*, HC 903, paras 12–14

as the relationship between committee proceedings and criminal investigations will vary, but it is right that Parliament should exercise self restraint in considering cases where prosecutions may ensue.

6. The Supreme Court judgment in *R v Chaytor and others* noted the overlapping jurisdiction of the courts and Parliament:

Where a crime is committed within the House of Commons, this may well also constitute a contempt of Parliament. The courts and Parliament have different, overlapping, jurisdictions. The House can take disciplinary proceedings for contempt and a court can try the offender for the crime. Where a prosecution is brought Parliament will suspend any disciplinary proceedings. Conversely, if a Member of Parliament were disciplined by the House, consideration would be given by the Crown Prosecution Service as to whether a prosecution would be in the public interest.<sup>5</sup>

The protocol appended to this Report sets out the principle that criminal investigations should generally have precedence over the House's own disciplinary proceedings. It is intended both to reduce the risk that the House's disciplinary proceedings may contribute to a decision that prosecution is not in the public interest and to reduce the risk of any trial being prejudiced by publicity arising from those proceedings.

7. There has been some suggestion that if the police and CPS decide that there may be grounds for a prosecution in a case where the Committee has reported on a Member's conduct, a criminal trial could be hindered by the fact that the Commissioner's investigation and our Report are proceedings in Parliament and cannot be impeached or questioned in court. It is a misconception to think that privilege would prevent the underlying evidence from being used in criminal proceedings. The only material which is privileged is our Report, the Commissioner's memorandum and the associated evidence *in the form in which it appears in our Report*, in essence material prepared for submission to the Commissioner and the Committee. The police have powers to make their own investigations and to adduce unprivileged material in evidence, subject to the normal rules governing criminal proceedings. In *Chaytor* it was held that original documents, such as invoices or claims forms, did not form part of proceedings in Parliament. They would not become so simply because they had been reproduced or referred to in a report.<sup>6</sup> We see no reason why these or equivalent material should not be used in legal proceedings if appropriate to do so.

8. Parliamentary privilege is not the only reason why material contained in a memorandum from the Parliamentary Commissioner for Standards and the Committee's subsequent Report might be inadmissible in a trial: there are strict legal safeguards around the gathering of evidence in criminal proceedings. Admissions made to the Parliamentary Commissioner for Standards are indeed covered by privilege, but in addition, the standards of fairness in the Commissioner's investigations are those appropriate for disciplinary purposes. They are not, and not intended to be, the same as those in a criminal

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5 *R v Chaytor and others* (Appellants) [2010], UKSC 52, para 81

6 *R v Chaytor and others* (Appellants) [2010], UKSC 52, para 59

investigation. The Commissioner and the Committee are concerned with the conduct of a Member of Parliament as a Member subject to the Code of Conduct. Members are obliged to co-operate, and since they do not face criminal sanctions, the investigation, although fair, is not conducted with the legal safeguards appropriate in criminal cases, such as interview under caution. If the Committee considers that a crime may have been committed, we will authorise the Commissioner to inform the police so that consideration can be given to a criminal investigation in the normal way. Decisions on whether such an investigation should be undertaken, together with decisions about any subsequent legal proceedings, are the responsibility of the prosecuting authorities, not the House.

## Appendix

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### **1. Letter to Rt Hon Kevin Barron MP from Mark Rowley, Assistant Commissioner, Metropolitan Police Service**

I write with regard to the proposed protocol between the Metropolitan Police Service (MPS), Parliamentary Commissioner for Standards and the Parliamentary Committee on Standards. I understand that officers from the MPS Special Enquiry Team have met with the Clerk to the Committee on Standards and the Parliamentary Commissioner and discussed the content of this protocol.

I endorse fully the content of the protocol and commit the Metropolitan Police to working closely with you going forward. Although not expressly covered in the protocol I will ensure that officers maintain regular contact with both the Clerk of the Committee on Standards and the Parliamentary Commissioner, particularly when there has been a change in staff.

On behalf of the MPS I would like to invite you formerly to sign the protocol and I look forward to a healthy and successful working relationship in the future.

*5 November 2013*

## 2. Protocol—the Code of Conduct and the Criminal Law

### 1. Purpose

1.1 The purpose of this protocol is to record formally an agreement between the Metropolitan Police Service (MPS), Parliamentary Commissioner for Standards (PCS) and Parliamentary Committee on Standards in respect of allegations received concerning the conduct of Members of Parliament (MP's or Members).

1.2 It will replace an existing statement agreed between all parties in 2008, attached as an Appendix to the Committee publication 'The Complaints System and the Criminal Law'.

1.3 The protocol is intended to ensure that:

- public confidence is maintained in respect of potentially criminal conduct by Members;
- the administration of justice is not impeded by actions undertaken by the Parliamentary Commissioner or the Committee on Standards;
- the Parliamentary Commissioner's investigations and the Committee on Standards's determinations are not unnecessarily impeded or delayed;
- there is transparency about the relationship between the House's disciplinary system and the law; and
- Members whose conduct is under investigation are treated fairly.

1.4 The protocol will set out high-level principles and commitments. It covers:

- i) enquiries into possible breaches of the Code of Conduct by Members which also raise questions of criminal responsibility; and
- ii) enquiries by police into the conduct of a Member which may also relate to the House's disciplinary process.

1.5 It does not cover other relationships between investigating and prosecuting authorities and the House authorities, such as the protocol on searches on the Parliamentary Estate, contacts with the Office of Speaker's Counsel or the requirement to notify the arrest or detention of a Member to the Speaker.

1.6 This protocol also does not cover criminal allegations made against Members wholly unconnected to their role as Members. Such allegations may not be investigated by the MPS, rather by the force covering the area where the offence took place, their constituency for example.

1.7 Where it is felt necessary, the MPS will facilitate communication between the Parliamentary Commissioner and other forces.

1.8 The MPS will investigate criminal allegations made against Members that are connected to their parliamentary duties, including any financial claims made.

## **2. Roles and Responsibilities**

2.1 The Metropolitan Police Service have responsibility for investigating criminal conduct within its jurisdiction, and for liaising with ACPO and other police forces to ensure that they are aware of this protocol. The police have sole responsibility for deciding whether to institute a criminal investigation into a Member's conduct.

2.2 The Parliamentary Commissioner for Standards is independent and is responsible for investigating complaints that MP's have breached the Code of Conduct, and for advising on the interpretation of the Code and Guide to the Rules. S/he is personally responsible for deciding whether or not to open investigations into a Member's conduct, for dismissing complaints, or for settling complaints. If the Parliamentary Commissioner considers appropriate to do so s/he will report the results of their investigation in a memorandum to the committee.

2.3 The Committee on Standards oversees the work of the Parliamentary Commissioner but is not involved with individual investigations, except that it may ask for further information or enquiries to be made when the Parliamentary Commissioner has submitted the results of their investigation. It considers the Parliamentary Commissioner's memorandum on an investigation and reports its views, including any recommendations as to penalty, to the House of Commons. The Clerk of the Committee supports the Committee; s/he advises it on the rules of the House and works closely with the Committee Chair.

## **3. Principles and Communication**

3.1 Except in the context of participation in proceedings in Parliament, Members are in the same position in respect of alleged criminal behaviour as any other person.

3.2 The Code on Conduct for Members is not part of the criminal law. Many actions prohibited by the Code fall far short of criminal behaviour; it is nonetheless possible that there could be overlap between the Parliamentary Commissioner's investigation into breaches of the Code and police investigations into criminal offences. As a general principle criminal proceedings against members should always take precedence over the House's own disciplinary proceedings.

3.3 It is agreed that principles of co-operation, honesty and transparency underpin this protocol. All parties are to be mindful of their actions or decisions impeding upon either a prosecution or disciplinary process.

3.4 The police will endeavour to inform the Parliamentary Commissioner if they are assessing or investigating a possible breach of the criminal law by a Member in order to establish whether the alleged conduct is also being investigated as a possible breach of the Code of Conduct. However, it is acknowledged that there may be occasions where police do not share this information for operational reasons.

3.5 The Parliamentary Commissioner for Standards and the police will communicate information to each other in confidence, except:

- if the Parliamentary Commissioner considers that their investigations have uncovered evidence of possible criminality which should be referred to the police s/he will consult with the Committee on Standards; and
- either the Parliamentary Commissioner or Committee may seek the advice of Speaker's Counsel.

3.6 The Committee will then decide whether or not to ask the Parliamentary Commissioner to refer the matter to the police, and whether or not to make any such referral public.

3.7 The Clerk of the Committee will be the channel for communications between the police and the Committee. The Clerk will also be the channel for any advice the police may seek on parliamentary privilege insofar as it relates to the interaction between police investigations and the Committee on Standards.

3.8 The police may inform the Parliamentary Commissioner if they consider a breach of the Code of Conduct may have been committed even though their investigations have not resulted in criminal charges.

3.9 Should the police inform the Parliamentary Commissioner that a formal criminal investigation is underway into the conduct of a Member who is under investigation by the Parliamentary Commissioner for a possible breach of the Code, the Parliamentary Commissioner and the police will discuss in confidence whether it is appropriate for the Parliamentary Commissioner's inquiry to be suspended.

3.10 The police will inform the Clerk of the Committee if they consider that any assessment of or investigation into possible criminal conduct by an MP will cause a significant delay to the Parliamentary Commissioner's work or if they wish the Committee to suspend consideration of any memorandum submitted to it by the Parliamentary Commissioner.

3.11 The police will be mindful of the need to avoid undue delay to the House's disciplinary process and undertake to communicate regularly with both the Parliamentary Commissioner and the Clerk of the Committee when appropriate to update them on ongoing investigations.

#### 4. Review and Signatures

4.1 This protocol will be reviewed at least once every Parliament or upon the request of any party involved.

4.2 Signed

<u>Name</u>	<u>Signature</u>	<u>Position</u>	<u>Date</u>
..... Mark Rowley		Assistant Commissioner MPS	29-11-2013
..... Rt Hon Kevin Barron MP		Chair Committee on Standards	02-12-2013
..... Kathryn Hudson		Parliamentary Commissioner For Standards	02-12-2013
.....			

# Formal Minutes

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**Tuesday 3 December 2013**

Members present:

Mr Kevin Barron, in the Chair

Mr Robert Buckland

Mr Tom Clarke

Mr Christopher Chope

Sharon Darcy

Mr Peter Jinman

Mr Walter Rader

Dr Alan Whitehead

Heather Wheeler

Draft Report (*The House of Commons Code of Conduct and the Criminal Law*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 8 read and agreed to.

One paper was appended to the Report.

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

None of the lay members present wished to submit an opinion on the Report (Standing Order No. 149 (9)).

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

[Adjourned till Tuesday 10 December at 10.00 am