House of Commons
Committee on Standards

The Standards System in the House of Commons

Sixth Report of Session 2014–15

Report, together with formal minutes and two appendices

Ordered by the House of Commons
to be printed 4 February 2015
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 Christopher Chope MP  (Conservative, Christchurch)
Rt Hon Mr Tom Clarke MP  (Labour, Coatbridge, Chryston and Bellshill)
Mr Geoffrey Cox MP  (Conservative, Tonbridge and West Devon)
Sharon Darcy  (Lay Member)
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Sir Nick Harvey MP  (Liberal Democrat, North Devon)
Fiona O’Donnell MP  (Labour, East Lothian)
Mr Peter Jinman  (Lay Member)
Mr Walter Rader  (Lay Member)
Rt Hon Sir John Randall MP  (Conservative, Uxbridge and South Ruislip)
Dr Alan Whitehead MP  (Labour, Southampton, Test)

Powers

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

Publications

Committee reports are published on the Committee’s website at www.parliament.uk/standards and by The Stationery Office by Order of the House.

Committee staff

The current staff of the Committee are Eve Samson and Alda Barry ( Clerks), Katya Simms (Second Clerk), and Cecilia Santi O Desanti (Committee Assistant).

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Summary

In January 2013 three lay members became part of a new Committee on Standards. As a result of the lay members’ reflections on the experience of their first year in office, reinforced by the evident misunderstandings demonstrated by the reaction to the Maria Miller case, the Committee on Standards decided to undertake a comprehensive review of the standards system in the House of Commons. The review was undertaken by a subcommittee chaired by Peter Jinman, a lay member.

The Committee is keenly aware of the changes elsewhere which have taken place since the current system was introduced in 1995. Other Parliaments have since followed Westminster’s lead, but at that time moving to a system in which investigations were carried out and advice given by an independent Parliamentary Commissioner for Standards was a radical change. Since then the regulatory systems for most professions have increased the extent of lay input, so that there is commonly at least parity between lay and expert members of disciplinary committees.

There has also been a decline in public trust, not just in politics but in other institutions. The expenses scandal played a significant part in reducing public trust, and we do not underestimate its impact. It still has an immense effect on how MPs’ activities are seen and reported. The majority of MPs carry out their tasks without any questions raised about the propriety of their actions. Most of the cases dealt with over the last two years have been minor.

The growth in constituency case work suggests that while the public may distrust MPs in general, in practice they are willing to bring individual MPs their problems. MPs have a complex and multi-faceted role, and one of the lessons of the last year has been that there is little understanding of what MPs do, the rules governing their conduct, and the ways in which those rules are enforced. This Report is intended to increase that understanding, as well as to propose improvements.

MPs are subject to the criminal law. Compliance with electoral law is regulated by the Electoral Commission, and IPSA sets expenses. Both are independent. The rules set out by the House of Commons and enforced by the Committee on Standards deal with matters which are not criminal. The inclusion of lay members in the Committee, though now common practice in professional regulation, is rare in Parliamentary disciplinary systems: it may even be unique.

The electorate have the right to choose their representative. The Committee was mindful that any standards system must not constrain that right. Once elected, complaints from the general public suggest many people are not clear about what it is reasonable to expect of an MP. This report sets out the range of functions that an MP undertakes. It describes the various aspects of MPs’ work and the limitations of their role. It acknowledges MPs need the freedom to decide their priorities within a potentially infinite workload. Equally, once the House has decided that certain standards should be upheld, it should be clear that those
standards will be effectively enforced.

Any regulation has to be proportionate. It also has to be comprehensible, fair, effective, and in line with reasonable public expectations. While being an MP may not be a profession, the report draws on evidence about professional self-regulation, while being mindful of the fact there are only 650 MPs, rather than the thousands in each profession.

We believe self-regulation, with external input, is the appropriate system. The current inquisitorial adjudication system is broadly appropriate; we reject proposals for an adversarial system with legalistic procedures which would be disproportionate, costly and slow. Our report proposes a number of reforms, some substantive, some experimental. Most can be implemented by the Committee on Standards itself, without Standing Order changes. The most important changes are set out below.

**Lay participation in the standards system**

The Committee should include an equal number of MPs and lay members as a strong statement of the equality of all members of the Committee on Standards. To ensure participation from across the House, we believe it will be appropriate to have 7 MPs and 7 lay members. The quorum of the full committee should be 3 lay members and 3 MPs. This new Committee should have more flexibility to use sub committees.

Currently, lay members are appointed for the duration of a Parliament plus a further period of up to two years. The principle of limiting lay members’ terms is correct, but the current system does not ensure good succession planning. It is also inflexible, and could cause difficulties if general elections followed one another in quick succession. We recommend that lay members be appointed for fixed terms of up to 6 years.

We understand the legal difficulties in giving lay members the right to vote, and the lack of such a right is not preventing lay members from participating fully in committee debates and in determining cases. The right to append an opinion is a very powerful weapon, and outweighs any disadvantage which may come from not having voting rights. However, it is not well understood. The Committee should change its reporting practice so that the body of any Report makes clear whether or not the lay members agreed with the Report.

**The Role of the Committee on Standards**

The Committee on Standards and its precursors have always had a wider role than simply adjudicating on complaints. They have considered policy, and have given general advice to MPs. This role has, if anything, increased since lay members joined the Committee. We consider that the Committee and the Commissioner together should consider their work programme at the beginning of each Parliament to identify priorities, and decide a broad strategy.

We recommend that, with the Commissioner, the Committee takes a clearer lead in standards matters and actively promotes good practice. Many of the rules which Members are expected to observe are set by other bodies within the House, such as the
Administration Committee. Both the Commissioner and Committee should be consulted by all those responsible for setting administrative rules which may ultimately be the basis of complaints made to the Parliamentary Commissioner for Standards.

The Role of the Parliamentary Commissioner for Standards

The independence of the Parliamentary Commissioner for Standards, who both oversees the system for registering interests and investigates breaches of the rules, has been a key feature in the Commons standards system. While the work of the Commissioner is overseen by the Committee, the Committee has no role in the day-to-day running of her office, and most particularly does not interfere in her investigations.

That independence should remain. The Commissioner, as now, should have discretion as to whether or not to accept a complaint for investigation, and control of the conduct of the investigation.

The Commissioner and her office have both the day-to-day experience of helping MPs register their interests, and advising them on propriety, and the experience of investigating complaints. The Commissioner should continue to play a key part in identifying where the rules may need to change, and in educating MPs about the rules.

Ensuring fairness

The subcommittee heard from a number of witnesses who were concerned about the extent to which the current system was fair to those members subject to it. While we believe the system is broadly fair, it is clear that MPs do not feel well supported, and that there can be confusion about what to do if there is disagreement over process.

- The existing ability to be supported by a colleague should be made clear;
- where there is a lack of clarity about the precise interpretation of a rule it should be referred to the Committee for decision before the investigation is concluded;
- currently, an MP’s name is released at the point where the Commissioner decides to launch an investigation, but the complainant’s name is withheld. We recommend that, unless there are sound reasons for keeping the name of complainant confidential, both be made public at the same time.

Increasing public understanding

We recommend that the House adopts the description of the role of an MP included in this report, and that this is printed as prefatory material to the Code of Conduct and used in House communications more widely. We do not wish to stop anybody approaching their MP, but we believe expectations should be realistic.

The media play a key part in increasing public understanding. In the past, the Commissioner and the Committee have been very circumscribed in what they have said to
the press on disciplinary matters, believing that their reports should speak for themselves. This has not always been effective.

The Chair of the Parliamentary Press Gallery made the point strongly to this Committee that there could be advantages in greater openness. If this produces better informed reporting it will be fairer to all concerned. We recommend that the Committee and the Commissioner trial arrangements to improve media understanding of reports, such as prepublication “lock-ins” at which the Chair or another Committee member might be available to answer questions.

**Political Leadership**

There can be genuine disagreement over ethical matters. One person’s breadth of experience is another person’s outside interest. The Code and the Guide are agreed by the House and this should continue. These votes should not be whipped. But once the rules have been set, it is incumbent on all those in leadership positions within the House, including those leading political parties, to demonstrate their commitment to the standards, and the rules through which they are mediated.

It is for the House to decide what rules should apply, but no good is done to anyone if Reports from the Committee are left in limbo. The Committee does an essential but sometimes unpopular task; if the House fails to engage with the Committee’s proposals it undermines the Committee’s position but, more importantly, the House’s own standards. Debates on Committee on Standards Reports, whatever their subject, should take place within two sitting months of publication.
1 The Inquiry

1. In January 2013, three lay members were appointed to the House of Commons Standards Committee. On 8 April 2014 the Committee published the lay members’ reflections on their first year on the Committee.¹ These reflections, together with recent concerns about self-regulation and developments in professional regulation since the establishment of the House’s system, prompted the Committee to set up a Standards Review Sub-Committee, chaired by one of the lay members, to conduct an inquiry which would examine the standards system of the House, and to consider improvements as required. MPs and lay members alike want to look at the current system with a fresh eye. The terms of reference were as follows:

- to improve confidence, among the public and MPs, in the systems for regulating MPs’ behaviour, including the Code of Conduct
- to ensure that the system supports and assists MPs in abiding by the Rules, maintaining high ethical standards and embedding the Nolan principles in the culture of the House of Commons
- to ensure the regime is fit for purpose
- to ensure the system for dealing with alleged wrong-doing is proportionate
- to ensure a fair process
- to provide clarity, certainty and coherence in the rules, guidance and processes (which should in turn improve awareness and compliance).
- We believe that the parliamentary standards system would benefit from a review once in each Parliament.

2. The Sub-Committee put out a paper for consultation on 24 June 2014.² The call for evidence received more than twenty replies. The Sub-Committee also took oral evidence from: Lord Bew, Chair, Committee on Standards in Public Life; Richard Thomas CBE, Committee on Standards in Public Life; Rt Hon Peter Riddell CBE, Director, Institute for Government; Rt Hon Andrew Lansley MP, Leader of the House of Commons; Ms Angela Eagle MP, Shadow Leader of the House of Commons; Dr Ruth Fox, Director and Head of Research, Hansard Society; Dr Greg Power, Director, Global Partners and Associates; Dr Elizabeth Dávid-Barrett, Director for the Study of Corruption and Transparency, Kellogg College, University of Oxford; Dr Melanie Sully, Executive Director, Institute for Co-Governance; James Landale, Chairman of the Parliamentary Press Gallery and Deputy Political Editor for the BBC; Rt Hon James Arbuthnot MP, Member for North East Hampshire; Mr David Howarth, Reader in Law, University of Cambridge, and Member for

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Cambridge between 2005 and 2010; Laura Sandys MP, Member for South Thanet; Rt Hon Jack Straw MP, Member for Blackburn; Mr Richard Caborn, Member for Sheffield Central between 1983 and 2010; Sir Bob Russell MP, Member for Colchester; Bill Wiggin MP, Member for North Herefordshire; Professor Sir Peter Rubin, Chair of the General Medical Council (GMC); Charles Plant, Chair of the Solicitors Regulation Authority (SRA) Board; Paul Philip, Chief Executive of the SRA; and Gordon Hockey, Head of Legal Services and Registrar of the Royal College of Veterinary Surgeons (RCVS). The inquiry was also publicised through targeted emails from the Parliamentary Outreach service, which reached over 3,040 people. All evidence has been published on the internet as the inquiry has progressed.

3. The Sub-Committee considered material on the standards systems in the devolved institutions in the UK and local government in England, both Houses of Congress in the United States of America, the Australian House of Representatives, the Parliament of New South Wales, the Canadian House of Commons and the Parliament of New Zealand. We are grateful to all those who helped us and especially to Dr Chris Ballinger, the Sub-Committee’s Specialist Adviser for his assistance.

4. Throughout our work we have been conscious that any regulatory system needs to be both fair to all parties and proportionate to the size of the regulated group. This has been particularly relevant when we have compared the House of Commons system with various systems of professional regulation: MPs number hundreds compared to thousands in the other groups. We have borne in mind that, despite the argument that a price should not be put on justice, an over-elaborate and costly system might not be justified in this case.

5. MPs have no general immunity from the criminal law, as has been amply demonstrated since 2011. Parliamentary privilege, which protects the House of Commons’ right to control its own proceedings and precincts, is limited. As the Joint Committee on Parliamentary Privilege recently said “the work of Parliament is central to our democracy, and its proceedings must be immune from interference by the executive, the courts or anyone else who may wish to impede or influence those proceedings in pursuit of their own ends.” Privilege is drawn as narrowly as possible to that end: the most important protection it gives is the right to free speech in official proceedings in Parliament, which applies to all those who take part in such proceedings, whether or not they are MPs.

6. Our focus has been on the structure of the system: who investigates, who adjudicates and what measures are or should be in place, both to ensure the probity of MPs and to ensure that the system is fair. It was not the intention to examine every detail of the rules, which are reviewed every Parliament. The House of Commons standards system is founded on transparency in respect of outside interests. Additionally, paid lobbying is forbidden and

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3 Appendix 1
4 Appendix 2
5 Dr Ballinger’s declaration of interests can be found in the Committee’s Formal Minutes, available on the Committee’s website.
6 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege HL30, HC100, Para 14
this prohibition will become yet clearer if the recommendations contained in the Standards Committee’s Third Report of this session are adopted.7

7 Some potential breaches of the rules, such as paid lobbying are very serious, but many of the complaints dealt with by the Commissioner deal with matters such as the inappropriate use of stationery, or inadvertent failure to register minor interests. The system must be robust enough to deal with the more serious cases properly, and flexible enough to ensure that complaints about minor or inadvertent breaches of the rules are resolved promptly and efficiently. It is also important that the regulatory system is proportionate to the type of complaints that may come before it.

8 We note that since the inception of the Standards Committee in January 2013 the Committee has considered seven cases relating to the conduct of members. In one of those cases the Commissioner considered no rule had been broken but submitted a memorandum to the Committee because it raised questions about the interest of Select Committee Chairs. 8 One was extremely serious and led to a Member’s resignation.9 Two other cases, one of which received extensive publicity, related to the previous expenses system.10 The three other cases11 have all been relatively minor matters relating to declaration and registration of interests. There was no question of financial misconduct. We note the Compliance Officer of IPSA’s view that “We have a pretty robust set of rules, and the fact is that MPs are adhering to those rules.”12

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8 Committee on Standards, Fifth Report of Session 2013–14, HC 849
9 Committee on Standards, Eleventh Report of Session 2013-14, HC 1225.
11 Committee on Standards Third Report of Session 2013-14, HC805; Committee on Standards Fourth Report of Session 2013-14, HC806, Committee on Standards; Committee of Standards Fifth Report of Session 2014–15, HC951
12 http://www.publications.parliament.uk/pa/cm201415/cmselect/cmstandards/773/77304.htm
2 Introduction

Trust in Politicians, Parliament, and Politics

9. One of the aims of this inquiry has been to improve confidence in the system: we do not underestimate the difficulty of that task. Public trust in MPs is low, and it was at the least not enhanced by the expenses scandal of 2009-10. Several witnesses addressed this question of confidence. Three themes emerged: the difficulty of measuring “trust”; the perceived decline in “trust”; and the challenges in increasing “trust”.

10. The academics who gave evidence to the inquiry were deeply sceptical about the value of trying to measure “trust”, whether in Parliament or in MPs, let alone of using it as an indicator of the health of a democracy. Ruth Fox warned the inquiry:

Every year we [the Hansard Society] publish our annual audit of political engagement. We rarely ask about trust, because it is such an amorphous concept and means different things to different people. In a lot of the research, when people talk about trust they are actually talking about other things. Sometimes, we might ask other survey questions that are much more about confidence, honesty, reliability and effectiveness, rather than using the word ‘trust’.

Liz Dávid-Barrett and Greg Power answered in similar terms. Other witnesses argued, like Melanie Sully, that whatever the difficulties in measuring trust there was a lack of trust or declining trust not just in Parliament but in politics generally. Richard Thomas noted that the Committee on Standards in Public Life’s research “has revealed there is quite significant public malaise and declining confidence and trust. I think we would say that there is really quite an urgent need for swift, demonstrable steps to be taken”.

11. Some of the witnesses, however, urged caution in over-emphasising the decline in trust. For example, Jack Straw argued that politicians were rarely trusted:

It is important that we do not get ourselves into a gloom about this. Politicians have never been trusted. In a sense, in a democracy that is quite healthy. [...] In the middle of the [Second World] war, Gallup surveyed public trust in politicians and it was pretty low.

Ruth Fox and Greg Power noted that people hold MPs and institutions in different levels of esteem, Greg Power saying:

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13 Q58
14 ibid
15 ibid
16 ibid
17 Q5
18 Q148
In terms of ethics, ethical standards and the behaviour of individual MPs, although trust in parliamentary institutions is quite low, trust in individual Members of Parliament and especially ‘your local MP’ is quite high. You can see demand for constituency service in particular increasing dramatically right around the world. Therefore it is not a simple equation that people don’t trust Parliaments or politicians. They are expecting different things from Parliaments.19

12. Most witnesses took a pessimistic view of the likelihood that action by the House could improve the public standing of MPs. Some, indeed, suggested the reverse. Jack Straw noted that, compared with the time when he became an MP at the general election of May 1979: “These days MPs are much more effective, are much more likely to be full time and are certainly much more subject to accountability to their constituents, yet apparently they are held in less high esteem. It is complicated.”20 Peter Riddell, in a similar vein, pointed out that, notwithstanding the work of the Committee on Standards in Public Life over two decades, “increased transparency has produced no increase in public confidence at all.”21 The implication of this for the current inquiry is, in Peter Riddell’s view:

You can make perfectly sensible, desirable suggestions … but I remain sceptical about whether they will necessarily make a difference to public confidence. There are some inherent problems, some of which have just been raised, on the borderlines of sanctions and also on some conduct that does not come within your remit, but it does in the eyes of the public.22

Jack Straw’s view was:

Over time, memories of the expenses scandal, which completely consumed this place five or six years ago, will gradually fade. As one colleague has already said, IPSA [the Independent Parliamentary Standards Authority] will bed down; it is already bedding down, and it is here to stay.23

13. It is ironic that despite public scepticism, many observers believe the UK Parliament operates to high standards. Tellingly, Greg Power observed that a delegation from the Middle East found the response to the expenses scandal out of proportion:

It [the scandal] was so piddling by international standards. There was clearly wrongdoing by certain individual MPs, but the coverage was way out of proportion to the level of wrongdoing discovered here. There was no buying of influence in the way that is commonly found in many other countries.24
Greg Power and Melanie Sully each suggested that there was an argument that the more work was done on creating Codes of Conduct and carrying on investigations the more the likelihood was that people would assume there was a problem. The importance of perception may be seen in Lord Bew’s remark that the Committee on Standards in Public Life’s “polling shows [...] that the British are 20% more likely than the Dutch to believe in corruption in their public life, although their actual experience of it is the same as that of the Dutch”.

Whatever the complexities in public trust, the expenses scandal was clearly hugely damaging. Moreover, we accept Lord Bew’s assessment that, though not fully fair or accurate in its representation of how the standards system works, the perception that MPs “mark their own homework” is damaging to public confidence in the system, and therefore to the standing of MPs and of the House. But a knee jerk reaction “to improve public trust” will not, in itself, be effective. Indeed it could be counterproductive. Ruth Fox thought that the focus should be on building the efficacy of Parliament (and its MPs) rather than focusing on “trust” as an end in itself. Our aim is to improve the efficacy and knowledge of the standards system. We will recommend changes where we believe them to be necessary and right. Our work is intended to improve confidence in the system, which will increase over time.

Notwithstanding the difficulties, some witnesses were keen to advocate ways in which they believed that public trust in Parliament and politicians could be improved. “The key thing for public trust”, Angela Eagle told the inquiry, “is not only the involvement of lay members, with their right to have a say if they want to draw the attention of the public to something nefarious, something they disapprove of or some insider thing, but that there should be no Government majority.” Laura Sandys told us:

There is a very big problem. First, your confusion issue is a huge one. I want to be able to knock on a door and to have a conversation with a constituent in two sentences, telling them how my conduct is being so-called monitored, what I am complying with and how that works. What we had recently was absolute confusion, from everybody’s perspective, about who was in control of what. There was no ability for me to make that message clear on the doorstep. We need clarity.

Laura Sandys’s comment drew our attention to a problem, also mentioned in the Report of the lay members and by Angela Eagle, who said:

We have to be careful about the proliferation of bodies and arrangements that have a locus in this area. We have already talked about the Electoral Commission, which has a partially overlapping locus with different expectations and rules—IPSA, the

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25 Q68
26 Q5
27 Q68
28 Q53
29 Q145
Standards Commissioner, the Commissioner for Standards in Public Life. We have to be careful about the proliferation of bodies and arrangements that have a locus in this area.\textsuperscript{30}

In addition, MPs and Members of the House of Lords who are government ministers are subject to the Ministerial Code. Although these bodies perform different functions, the distinctions between them are not necessarily clear to the general public. While addressing this is beyond the scope of the current Committee, we believe that a key to increasing public confidence is clearer information to the public about who is accountable for what. There must also be a question as to whether there would be merit in combining some of the functions.

**The current House of Commons standards system**

17. In view of the wide-spread ignorance, spreading to the highest level of Parliament and Government\textsuperscript{31} about the existing House of Commons standards system we give a brief account of it here, returning as necessary to its components in later chapters. It is no part of our role to consider the separate provisions in force in the House of Lords.\textsuperscript{32} We note also that behaviour in the Chamber is regulated by the Speaker.

*Background: from pure self-regulation to independent and external involvement*

18. For hundreds of years before the Nolan Committee and the creation of the role of the Commissioner, the House of Commons and its MPs were entirely self-regulating. Indeed, for most of that time there was little to regulate: the House started actively to codify its rules—though still under a system of pure self-regulation—in 1975, when the Register of MPs’ Interests was introduced in response to the Poulson affair.\textsuperscript{33} This system of registration was, though, substantially undermined by the persistent refusal of some MPs, most notably Enoch Powell MP, to comply with its requirements.\textsuperscript{34}

19. Following the 1987 general election and a scandal involving John Browne MP in 1990, the operation of the rules was tightened. That tightening was not enough to prevent further scandals, and cases of “cash for questions” in the mid-1990s precipitated the invention of the Commissioner’s office. Since 1995 the core of the system has been that investigations are conducted by an independent officer, who receives all complaints, and who decides which merit investigation, without reference to the Committee.

\textsuperscript{30} Q66

\textsuperscript{31} The Prime Minister was apparently unaware in April 2014 that the lay members on the Committee on Standards had a vote.

\textsuperscript{32} SSC0023

\textsuperscript{33} The same affair led to the imposition of a Code of Conduct for elected Members of local authorities; but not for MPs.

\textsuperscript{34} See also Select Committee on Member’s Interests, Third Report, Session 1987–88, on the actions of Keith Best MP and Eric Cockeram MP in relation to the BT share issue.
20. Over the past two decades, external organisations have added to the accountability of MPs. There are two bodies independent of the House of Commons involved in regulating matters relating to MPs: MPs’ expenses are regulated by the Independent Parliamentary Standards Authority (IPSA) and donations to MPs and their parties are regulated by the Electoral Commission. Criminal matters are the remit of the police in conjunction with the Crown Prosecution Service. There are arrangements in place to ensure that the Committee and the Commissioner refer matters to the police if appropriate, and to ensure that matters can be referred to the Commissioner by IPSA or the police. MPs are not exempt from prosecution for criminal conduct; their electoral conduct is regulated by the Electoral Commission and their expenses (and therefore the sensitive matter of taxpayer funds) are regulated by the Independent Parliamentary Standards Authority. Any consideration of the Commons system has to take this into account.

21. The current Commons system is one of self-regulation with strong independent elements in the shape of the Parliamentary Commissioner for Standards and the lay members of the Committee on Standards. The authority ultimately responsible for setting and maintaining standards in the House of Commons is the House itself. The other elements of the formal system are the Code of Conduct and Guide to the Rules relating to the conduct of Members, the Commissioner for Standards, and the Standards Committee.

**The Code of Conduct**

22. The Code of Conduct is based on the Seven Principles of Public Life, formulated by the Committee on Standards in Public Life in 1995, to which everyone holding public office is expected to adhere. These principles (also known as the ‘Nolan Principles’ after the first Chair of that Committee) are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Code is part of the rules the House makes to govern its own proceedings. These rules can be broadly divided into two sorts. In the first place there are the rules which govern the orderliness of proceedings, which range from the rules about the permissible content of Parliamentary Questions to the way in which MPs should conduct themselves in the Chamber. The sanctions for breaches of these rules are ultimately in the hands of the Speaker, who may, for example, rule a Question out of order or may, in extreme cases, invite the House to suspend an MP who seriously disrupts proceedings. Rules of the second type relate to ethical matters, and are largely contained in the Code of Conduct and the related Guide to the Rules relating to the conduct of MPs, although some guidance is also found in other rules relating to the use of resources. Allegations that these rules have been breached are investigated by the Parliamentary Commissioner for Standards and, if she considers there may have been a breach, are considered by the Committee on Standards. It is the system for dealing with these rules which we consider in this report.

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35 The Code of Conduct together with The Guide to the Rules relating to the conduct of Members, HC1885

36 Eg Rules for the use of stationery and postage-paid envelopes provided by the House, and for the use of the Crowned Portcullis
The Parliamentary Commissioner for Standards

23. The Parliamentary Commissioner for Standards (‘the Commissioner’) is an independent official appointed by the House and from outside the House, with no previous connection with the House, following open competition. Her independence is the core of the system, and is strengthened by appointment on a five year, non-renewable contract.

24. The Commissioner’s current functions as set out in Standing Order No 150 are: to maintain the various Registers of Interests, to give confidential advice to those required to register, to advise the Committee on the interpretation of the Code and on questions of propriety, to monitor and make suggestions about the operation of the Code and Registers, and to investigate and report to the Committee on specific matters relating to the conduct of MPs. This last function relates essentially to complaints that individuals have breached the Code or Rules.

25. The bulk of the inquiries conducted by the Commissioner result from complaints received by her Office. Only if a complaint is within remit and supported by appropriate and sufficient evidence will the Commissioner open an inquiry. She can, however, undertake inquiries on her own initiative, and sometimes MPs refer themselves to her. It is for the Commissioner to decide whether or not an inquiry is merited and whether or not to submit a memorandum to the Committee. There is no political interference in the process.

26. The Commissioner’s current establishment is 5.5 (full-time equivalent) staff broadly divided between a registration and advice team and a complaints-related team, with some overlap in roles. The annual cost of the office is a little under £450,000.

27. In 2013-14 the Commissioner received some 93 formal complaints, though the majority of them were outside her remit. As with any complaints system, complaints range from the well-founded to the misconceived and even mischievous.

28. If the Commissioner finds that the Code or Rules have been breached, and the matter is not serious, she may agree that the MP concerned may rectify the matter by repayment (if resources have been misapplied), apology or, if interests have not been declared, an apology for the failure to declare by a point of order on the floor of the House. If, in her opinion, the matter is more serious or raises general questions, she will prepare a memorandum for the House of Commons Committee on Standards, which oversees her work. The system is designed to ensure transparency. Correspondence relating to rectifications is published on the Commissioner’s website, complainants are always informed of the outcome of a complaint and the Commissioner’s memorandum is always published with the Committee’s reports, which must always explain the reasons for any difference of views between the Committee and the Commissioner.

37 SSC0022
38 Parliamentary Commissioner for Standards Annual Report 2013-14, HC354
The Committee

29. The Committee on Standards is set up under Standing Order No 149. Its functions are:

- 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 MPs’ Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; and

- to consider any matter relating to the conduct of MPs, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee’s attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary.39

30. The Committee comprises ten MPs and three lay members. The Committee cannot meet without at least one lay member being present. Lay members cannot vote in divisions or move motions or amendments but they participate fully in all discussions leading up to these points and can and do suggest changes to draft Reports. Those lay members present are entitled to append an opinion to any Committee report and, if they do so, the report cannot be published without that opinion. No such opinion has yet been necessary.

31. The Committee may seek additional evidence itself or ask the Commissioner to do so. It may require the MP to give evidence and the Member may also ask to be heard.

The House

32. If the Committee finds, following discussion of a memorandum from the Commissioner, that a breach of Code or Rules has been committed, it reports accordingly to the House. Penalties range from an apology in the House through repayment of any moneys wrongly claimed, or withholding of salary for a period, to suspension for a number of sitting days (which results in withdrawal of salary with knock-on effect of pension rights), to expulsion. The MP has the right to be heard in the House. If the Committee proposes a penalty which goes beyond apology to the House, the House itself considers the Committee’s report—i.e., it is for the Committee, not the Commissioner, to recommend any penalty, and for the House to impose it. While the House may, in principle, amend any penalty recommended, it has not done so in any recent cases.

33. This system is likely to be affected by any Act resulting from the Recall Bill, currently passing through Parliament, which proposes to allow an MP’s constituents, in certain circumstances, to institute a petition for his or her recall. At present this will apply if an MP is suspended from the House for more than ten days. The Bill has not yet completed its passage and this may change.

39 Standing Orders of the House of Commons, No 149
34. A number of criticisms are levelled at the House of Commons disciplinary system both by outside observers and parliamentary insiders: MPs sit in judgement on themselves; the Commissioner is not truly independent; there is incomplete separation of powers with the Commissioner acting as investigator, prosecutor and to some extent adjudicator; the system is disproportionate; the rules are not clear; MPs cannot get advice; the sanctions are insufficient. It is these criticisms which this Report considers and, where appropriate, makes recommendation for addressing.
3 Regulation of MPs

35. Among the causes of disquiet surrounding the publication of the Committee’s Tenth Report of session 2013–14 in April 2014 were the perceptions that MPs were judging the conduct of other MPs, and that the system for regulating MPs conduct was weak in comparison with the regulatory systems for professions, or for other legislatures. In consequence of this, and of the Report of the lay members on their first year experiences, which pre-dated the Tenth Report and the reaction to it, a large part of our inquiry was spent in considering the way in which professions were regulated, and considering domestic and international comparisons, to enable us to assess the current regime, and make recommendations for improvement.

What is an MP?

36. If the public are to form a reliable opinion of the conduct of their MPs, they must know what is currently expected of those MPs, in terms of performance as well as conduct. It is clear that many people do not. In the following paragraphs we attempt to clarify the nature of the position and how MPs may differ from professionals such as doctors and lawyers.

37. If they are professionals at all, MPs differ from other professionals in a number of ways. Professionals are admitted into professions following specialised and organised study and assessment and can expect to hold their posts provided they remain competent and the business can support them. Their duties will be reasonably clear, and their competence can be assessed. They may well have an employer.

38. Professions have Codes of Conduct which usually have a dual base of professional and ethical standards which inform both more general standards and specific rules. They usually include ‘professional competence’, which includes the obligation to maintain professional knowledge at an appropriate level. Profession-specific rules are often included, for instance the General Dental Council’s rules regarding obtaining patient consent and managing pain and fear. Professional regulation also extends to ethical matters which are not directly related to professional competence, but which will affect public confidence in the individual or the profession.

39. MPs have to be highly competent communicators, able to understand policy and deal with a diverse workload. Nonetheless they are elected not on the basis of specific skills, centrally determined and tested, but of party and electorate’s will. These may value attributes which would make an HR department blanch. That is the prerogative of the electorate. MPs may be removed because their party decides not to reselect them, or because the electorate rejects them – either because of their individual conduct or because of the declining fortune of their party.

40 Committee on Standards, Tenth Report of Session 2013–14, Maria Miller, HC 1179
42 General Dental Council, Standards for the Dental Team
40. MPs are elected for a single parliament. They have no contract of employment and no formal job description. While electors may try to influence what MPs do or say in that capacity they must not offer threats or inducements to achieve their aims. This freedom from a job description and from the instructions of an employer or client seems at first glance enviable. But it is a mixed blessing. Where there is no clear description of the duties on an MP their constituents are likely to fill the vacuum with their own definitions and these can be exacting or irrational or unrealistic. But every elector has the right to judge the MP against both their own standards and their own, more or less articulated, job description.

41. While MPs have freedom to perform the role in the way in which they consider best, there are limits to that freedom. Apart from the protections of parliamentary privilege, the House is not a haven from either criminal or civil law.

42. It is clear from the above that there can be no simple equivalence between membership of the House and membership of a professional body, but even if being an MP is not in itself a profession there are enough similarities with a profession for it to be appropriate for us to measure the House’s system against that used in a variety of professions. Further, many MPs do come to Parliament from the professions, and expect a formal requirement to maintain certain standards.

43. If MPs are to be regulated as if they were members of a profession, there needs to be some common understanding of their role. Although, as we have described, MPs do not have a formal job description there is a broad consensus about the range of functions they undertake. As the Modernisation Committee put it:

   for all the different approaches to being a Member it is possible to discern a number of commonly recognised tasks, including:

   • supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition);
   • representing and furthering the interests of their constituency;
   • representing individual constituents and taking up their problems and grievances;
   • scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;
   • initiating, reviewing and amending legislation; and

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43 Of the 621 MPs from the three main parties in the 2010 Parliament, 252 (40.6%) had backgrounds in regulated professions or had senior positions used to taking responsibility for regulatory compliance, including 38 barristers, 48 solicitors, 9 from the medical professions, 115 company directors or executives, 18 from the civil service or local government, 24 schoolteachers. A further 90 (14.5%) had been in politics before entering Parliament. (Source: Byron Criddle, ‘More Diverse, Yet More Uniform: MPs and Candidates’, in Dennis Kavanagh & Philip Cowley, The British General Election of 2010 (Basingstoke, Palgrave Macmillan, 2010), 327.)
• contributing to the development of policy whether in the Chamber, Committees or party structures and promoting public understanding of party policies [...] 44

44. One of the elements of the work of an MP which is frequently misunderstood is constituency casework. The evidence from the Commissioner indicates that many of the out of remit complaints relate to this. 45 It would appear to be a common misunderstanding that an MP is *obliged* to take up any constituency case or support any view put forward. Rather, he or she is someone who will have an interest in constituents’ views on matters of local and national policy, whether or not he or she agrees with the point raised, and someone who might, as a last resort, help with an individual constituent’s problems.

45. Constituency work has become increasingly important and there are few, if any MPs who do not value it. In addition to directly helping constituents, it is reasonable to assert that it is a way of assessing whether government policy is addressing the problems they face. It can also form a crude performance measure for institutions: if a local or national institution generates a great deal of casework, it is possible, or even probable, that it has systemic problems. Nonetheless while casework can inform MPs in their performance of the other functions, it should not crowd out those functions.

46. It is also worth noting that there are many tasks which it is unreasonable for the public to expect MPs to undertake, at least at first instance, since many other bodies exist precisely for such purposes. As the House of Commons website makes clear there are cases when others should be approached first:

**When you should contact someone else first**

Some issues are not the direct responsibility of Parliament or government. In these instances, you should first contact either your local council or your nearest Citizens Advice Bureau before considering contacting your MP.

These are issues such as:

• Council tax.

• Private problems with neighbours, landlords, employers, family; or companies who’ve sold you faulty goods.

• Decisions made by the courts.

• Issues that are the responsibility of your local council, ie, dustbins or street repairs.

**When you should contact the government**

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44 Select Committee on Modernisation of the House of Commons, First Report of Session 2006-07, Revitalising the Chamber: the role of the back-bencher, HC337

45 SSC0022
If, for example, you have a question about government policies on the National Health Service, this should be directed to the government department that deals with that subject - in this case, the Department for Health.

**Contacting a government minister**

If you wish to contact a specific government minister in connection to their ministerial responsibilities, please use the contact facilities on their departmental website.46

47. Indeed, we consider that the Parliamentary website is unhelpful in implying the MP should be immediately approached for the issues below, without making it clear that in many cases there are established avenues for help which should be the first port of call, such as the Local Government Ombudsman for complaints about services provided by local authorities.

**When you should contact your local MP**

MPs are more able to help you with issues that Parliament or government are responsible for, such as:

- Tax (but not council tax as this is set and paid to your local authority).
- Hospitals and the National Health Service (not local social services).
- Benefits, pensions, national insurance.
- Immigration.
- School closures and grants (not day-to-day school problems like governors or the local education authority).47

We note that the website does not mention the fact that some issues fall properly to members of the devolved legislatures rather than MPs.

48. We recommend that the parliamentary website be amended to give a clearer picture of the functions of an MP, one which is not so focused on the constituency role. The danger is that by raising expectations which cannot in fact be met, the House service is inadvertently increasing the risk of public disillusion. While it is sensible for the public to be given guidance on how an MP might be contacted by constituents, there should be more information about the circumstances in which this would be appropriate, and on the limits on MPs’ ability to help. We expect the Committee on Standards to be consulted on this revision.

49. While we do not believe that it would be appropriate for the position of an MP to be subject to a formal job description, and there is no written contract in the context of which

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46 [http://www.parliament.uk/get-involved/contact-your-mp/when-to-contact-your-mp/](http://www.parliament.uk/get-involved/contact-your-mp/)

47 ibid
such a description can be included, it would be beneficial if wider public understanding of the role could be achieved. **We recommend that the various functions which an MP performs should appear on the website, and preface the Code of Conduct, accompanied by an explanation that it is for the individual MP to decide what priority to give to each and how to perform them.** Such a description should also appear prominently on the House of Commons website and consideration should also be given to some text covering this ground appearing in the voting booth at election time. The following wording might be used in the Code.

### THE ROLE OF AN MP

MPs have a multi-faceted role. It includes, but may not be limited to:

- supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition);
- representing and furthering the interests of their constituency;
- representing individual constituents and taking up their problems and grievances;
- scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;
- initiating, reviewing and amending legislation; and
- contributing to the development of policy whether in the Chamber, Committees or party structures and promoting public understanding of party policies.

It is for each MP to decide how best to balance these tasks. Unless their actions damage the reputation of the House as a whole or of MPs in general, MPs have complete discretion in

a) policy matters;

b) expressing views or opinions;

c) the handling of or decision about a case (whether or not anyone involved is a constituent of the Member);

MPs represent individual constituents with intractable problems in a variety of ways, from making private enquiries on their behalf, to raising matters publicly in the House of Commons, but there are many matters where other bodies will be better able to help, especially in the first instance. This is particularly so when matters are not within the responsibility of Government or Parliament, such as:

- private problems with neighbours, landlords, employers, family; or companies who **have** sold you faulty goods.
- decisions made by the courts.
• issues that are the responsibility of a local council, such as council tax, dustbins or street repairs.
• questions about government policies should be directed to the government department that deals with that subject.

50. Where the Commissioner receives a complaint which would appear to be better directed to another authority she will, as with complaints of criminal conduct, advise the complainant as to who best to approach.\footnote{SRS0023} We are grateful for the effort she and her staff put into this aspect of her work, which is not within her remit (a matter which may in itself merit attention). We deplore the fact that there seems to be no comprehensive and easily comprehensible guide to complaints on the government website. We consider it would be helpful if material on Government and House websites was reviewed so it provided as clear a signpost as possible for those wishing to complain to the appropriate authorities about services and other matters. The aim should be to direct those with problems to the organisation which is best able to help them.

**Rules vs principles in regulation**

51. Once there is understanding of the role of an MP, the question arises as to how the House should set out the rules it makes. Codes of Conduct and professional rules usually consist of two elements: principles, which give an overview of acceptable behaviour, and rules, which detail specific actions or modes of behaviour. One question in designing a standards system is whether it should be a principles-based system (which relies to a great extent on integrity to ensure the appropriate application of these principles to ethical difficulties) or a rules-based system (in which appropriate behaviour is spelled out in specific detail).

52. In its report *Standards Matter: A review of best practice in promoting good behaviour in public life* (January 2013), which looked at standards matters across the public sector, the Committee on Standards in Public Life took the view that a set of broad-based principles—which “should be aspirational, rooted in the core purposes and values of an organisation or profession and easy to communicate and understand”—were the starting point of an effective standards system.\footnote{Cm 8519 \url{https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf}}

53. However, the Committee on Standards in Public Life emphasised that, because of the broad nature of the concepts expressed in such principles, differences of interpretation can reasonably arise. Therefore clear rules—rather than broad principles—were key to ensuring appropriate standards of conduct, and a Code of Conduct complements and reinforces the principles, by elaborating on detail and applying them to the specific institutional context in hand. Codes “need to be sufficiently detailed to provide helpful guidance. But if they become too elaborate people can lose sight of the principles on which
they are based, and fail to exercise their judgement or take responsibility for their decisions.”

54. Our evidence indicates that, whereas the detailed provisions of the Code of Conduct may be difficult to memorise, ethical principles are well-understood. Angela Eagle told the Committee: “It is not said often enough, but I think the vast majority of MPs know and abide by the rules and understand them. [...] not least because of the induction processes that have increasingly come to feature at the beginning of Parliaments. [...] We only hear about the ones that don’t. Sometimes I think it is important for us to remember that the vast majority of Members of Parliament do.”

The then Leader of the House, Andrew Lansley, agreed: “the overwhelming majority of individual MPs display those [Nolan] principles in the way in which they go about their work”.

55. From the professions, the Solicitors’ Regulation Authority told the Committee that they have recently moved from regulation of solicitors’ conduct through the application of detailed rules to focusing instead on core principles. Charles Plant said:

In 2011 we introduced a new code of conduct. The previous approach, which had been very rules-based, so we had a code of conduct that was 600 or 700 pages long, has now been substantially reduced. It starts with 10 principles. … These are the core 10 principles. We also have the statutory objectives that are contained in the 2007 Legal Services Act. The combination of the two quite succinctly says what we expect of solicitors in the way they perform.

The 10 principles pervade the more detailed solicitors’ Code, and are the starting point for a solicitor who needs to think through any ethical dilemma.

56. However, Gordon Hockey, from the RCVS, pointed out that the desire for brief principles and the wish for detailed guidance are not always separate: “Everybody has been on a journey towards principle-based regulation, but, in my experience, everybody also wants detailed rules to know that they are okay and out of trouble.”

57. In the USA, the Code of Ethics for Government Service, which includes eight key principles, applies to members of both Houses of Congress. In the House of Representatives, the principal document is an 18-point Code of Official Conduct, which sets

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50 Cm 8519, 7.
51 Q45
52 Q46
53 Q197
54 The 10 Principles are obligations to: (1) uphold the rule of law and the proper administration of justice; (2) act with integrity; (3) not allow your independence to be compromised; (4) act in the best interests of each client; (5) provide a proper standard of service to your clients; (6) behave in a way that maintains the trust the public places in you and in the provision of legal services; (7) comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner; (8) run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles; (9) run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and (10) protect client money and assets. Source: http://www.sra.org.uk/solicitors/handbook/code/part1/content.page accessed December 2014.
55 Q198
out some overarching principles. It also issues a 456-page ethics manual. The Senate’s *Official Code of Conduct* is 63 pages long, and is supplemented by a 542-page ethics manual. The existence of principles does not extinguish a parallel reliance on detailed rules.

58. Having a system based around a few principles, rather than a series of detailed rules, is superficially attractive. Principles can easily be memorised, and, so long as the question of the application of principles is adequately addressed, the need to think through how to apply principles to specific situations can promote ethical behaviour. Principles require a certain base level of shared ethical culture if they are to have impact, and it may be more difficult to bring complaints for a breach of a principle than of a rule. They require, moreover, guidance on methods which can be applied to resolve an apparent conflict between two principles.56 Detailed rules provide certainty about what is, and is not allowed; but, in doing so, they risk promoting technical compliance over ethical behaviours.

59. We accept the evidence that principles are helpful in promoting appropriate standards, but they need to be underpinned by supporting guidance in the form of training and detailed rules.

**Regulation vs self-regulation**

**Status quo: the problem**

60. The accusation that MPs ‘mark their own homework’ is frequently made and undermines public confidence. As Lord Bew told the Committee: “It is an awful cliché… It does not represent in certain important respects the truth of the matter, but the fact remains that that is the public perception.”57 It is worth remembering that in the mid-1990s the proposals of the first Nolan Report were regarded by MPs as a substantial attack on their then wholly-internal system of self-regulation, and yet the system adopted by the House, of which the Commissioner was a key part, was stricter than the proposals which had been recommended by the Nolan Committee.58

61. The truth differs from the cliché because, for the past two decades, the system of MPs’ accountability has involved a strong independent element, in the person of the Parliamentary Commissioner for Standards, as Sir Philip Mawer, a former Commissioner, reminded the Committee in his written evidence.59 MPs on the Committee on Standards adjudicate on standards matters; but the Commissioner investigates and the Commissioner reports. Since it was set up in 2013 following the split of the Standards and Privileges Committee into two separate bodies, the Committee on Standards has included independent lay members.

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56 This was pointed out to the Committee in the written evidence from the Solicitors Regulation Authority.

57 Q2


59 SSC0006
62. James Landale argued that the creation of IPSA had created a precedent which showed that external regulation is possible.\textsuperscript{60} We recognise that IPSA has addressed many of the causes of complaint and so reduced the workload of the Committee. However, Andrew Lansley took the view— with which we agree—that IPSA had “a very specific role” and was not therefore, of itself, the thin end of the wedge for more to be regulated externally.\textsuperscript{61} Indeed, James Landale’s overall view of self-regulation versus external regulation was that “On the question of self-regulation, there will be many people in my profession [journalism] who have very strong views either way on this, but whatever they think about it, ultimately it will come down to the decision: has that person been given a fair hearing, and if they have done anything wrong, have they had the right punishment?”\textsuperscript{62} The press were focused on outcome over process and, of course, are generally fiercely protective of what they see as their own right to self-regulation.

63. On the role of the police and the Crown Prosecution Service (CPS), Peter Riddell noted that:

An interesting point is that if you go back 20 years to when the Committee on Standards in Public Life was set up, it would be terribly rare for any criminal action to occur against a Member. … In many respects, because the CPS has been more vigorous than it would conceivably have been 20 years ago, it has addressed some concerns but not all.\textsuperscript{63}

64. Richard Thomas of the Committee on Standards in Public Life, who has been engaged with questions of optimal regulatory regimes for three decades, set out clearly the task that was before us:

The challenge for this inquiry is to ask what the right balance is, so as to respect the traditions and position of elected democratic representatives, and the party machine, and so on. It is about how to get that balance right in this context.\textsuperscript{64}

Models of regulation in other jurisdictions

65. Greg Power has identified three main models for the regulation of Parliamentary standards:

The first is entirely external regulation, as used in Taiwan. The second is to rely solely on regulation within the legislature itself, as practised in the USA. The third is to combine an external investigative commissioner with a parliamentary committee to enforce sanctions, which is the system adopted in the UK and Ireland.\textsuperscript{65}

\textsuperscript{60} Q98  
\textsuperscript{61} Q49  
\textsuperscript{62} Q98  
\textsuperscript{63} Q2  
\textsuperscript{64} Q7  
\textsuperscript{65} Greg Power, \textit{Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians} (Global Organization of Parliamentarians Against Corruption and Westminster Foundation for Democracy, 2009), 23. Dr Power’s study was
The first model not only criminalises any breach in standards, it also takes away from parliamentarians any sense of ownership of their own ethics and standards and thus does not reinforce good behaviour. The second model, in Greg Power’s assessment, “has come in for considerable criticism, as it turns legislators into investigators, judges and juries, rather than maintaining them as a body which ratifies a judgement reached by an impartial adjudicator.”

The third model, which is the one that the House of Commons has operated in the current Parliament, combines elements of both of the other models: independent investigation, with adjudication and sanction resting predominantly with MPs.

66. “Self-regulation”, Melanie Sully told the Committee, “is common to a lot of parliaments.” It is also, she advised us, “something which most parliaments would like—that is the priority, in effect, because the parliamentary arena is jealously safeguarded. External can help, but it has to be dealt with very well.” However, the general trend in parliamentary regulation, she noted, is towards external involvement in regulation, and outside legal experts can now be involved with parliamentary commissions of inquiry in Austria, although “There was caution about how that would work and what kind of influence they would have.”

67. During our inquiry, we have looked at a number of other parliamentary standards systems outside the UK. The Australian House of Representatives has a Committee of Privileges and MPs’ Interests, which is composed solely of MPs and on which the government has a majority. The New Zealand Parliament has a somewhat similar system to that of the Australian House of Representatives, albeit with the external input from the Office of the Auditor-General (OAG), who is an Officer of Parliament: only an MP may request an inquiry by the Auditor-General. The Canadian House of Commons has a system which bears some resemblance to that of the UK: the Conflict of Interest and Ethics Commissioner, an Officer of the House, has a pro-active role in providing confidential advice to elected MPs, as well as investigating possible contraventions of the rules.

68. The self-regulation system of the U.S. House of Representatives has two limbs: the Office of Congressional Ethics (OCE) and the House Committee on Ethics. The OCE, which was established in 2008 in response to criticism of the House’s ability to investigate allegations into the conduct of its own members, describes itself as “an independent, non-partisan entity charged with reviewing allegations of misconduct against elected members, officers, and staff of the United States House of Representatives and, when appropriate, conducted the year after the Office for Congressional Ethics was created to introduce an independent element into the reception and investigation of complaints against Members of the House of Representatives."

67 Q79
68 Q79
69 Q84
70 Q79
71 See Appendix 2
referring matters to the House Committee on Ethics.”72 Though the OCE investigates, it does not adjudicate: inquiries into alleged breaches of the Code are conducted by the House Committee on Ethics, a non-partisan committee of ten members (five Democrat, five Republican), which also provides advice and training to Representatives. The U.S. House system has, since 2008, therefore borne resemblance to the House of Commons’ system, although in the U.S. the OCE’s remit, and not that of the Representatives themselves, includes setting the rules in their Code. The U.S. Senate’s Code is administered and enforced by the Select Committee on Ethics, a non-partisan committee of six members (three Democrat, three Republican). The remit of the Committee on Ethics is to receive and investigate complaints or allegations of improper conduct in their duties made against Senators, or officers or employees of the Senate. It can, also, provide advice on the interpretation of the Senate rules to senators, officers, and employees. There is no lay or external input into the U.S. Senate’s system, and no lay or external involvement into the adjudication of complaints against Members of the House of Representatives or into the determination of sanctions on Representatives who have committed misconduct.

69. We have also looked at standards in the devolved legislatures within the UK. Each of the devolved legislatures has its own Code of Conduct and regulatory system, modelled on that of Westminster, although some Commissioners are statute-based and may have a wider remit than members of the legislature. Devolved assemblies do not have the power to expel members. Regular meetings between the officials (including from the Dáil Éireann) enable best practice to be shared. A Code of Conduct for elected members of local authorities was introduced from 1975, and Parliament gave this a statutory footing in 1990. The Local Government Act 2000 set out a new ethical framework for members of local authorities in England and Wales, and from 2008 a somewhat slow and cumbersome system was turned into a swifter one in which the investigation and adjudication of complaints operated locally, with substantive involvement of lay members. Since 2012, the Localism Act 2011 has abolished this regime in England: local authorities are now required to devise their own Code based on the seven principles of public life; the role of lay members of standards committees has been replaced with a requirement to consult an independent person; the power to suspend elected members for breaches has been removed.73

70. We took evidence from current and former MPs on the question of self-regulation versus external regulation, and received a range of views. Richard Caborn argued the case for self-regulation; but argued that a select committee was not a suitable structure for a disciplinary function.74 Sir Bob Russell MP was relaxed on the question of self-regulation versus external regulation, preferring to focus on the timeliness of the outcome of investigations.75 Mark Field MP argued strongly in his written evidence that “the restoration of public confidence in politics and trust for parliament/parliamentarians has

72 http://oce.house.gov/about.html
73 On the reservations about these new sanctions expressed by the Committee on Standards in Public Life, see: Committee on Standards in Public Life, Annual Report 2012–13 (August 2013), 15.
74 Q163
75 Q162
demanded independent regulation.” Likewise, Laura Sandys MP supported the regulation of standards being taken out of the hands of MPs by an “independent non-parliamentary standards committee”, to increase clarity. Bill Wiggin MP wished that MPs were treated like any other job-holder and that wrong-doing went to the courts and that proceedings were judicially reviewable. The Committee understands that most employees’ disciplinary matters are resolved, within the workplace. Only if the matter cannot be settled in the workplace is the matter referred to a legally-constituted tribunal.

Regulation of MPs’ conduct could be left to existing external bodies without raising difficult questions about parliamentary privilege. As we have described, MPs are generally subject to the law of the land, and external bodies (IPSA and the Electoral Commission) regulate MPs’ expenses and compliance with electoral law. The standards which these external bodies enforce are those set out in law. Self-regulation would be limited to the Chair’s regulation of conduct in the Chamber and Committees. The Commissioner and the Committee could be abolished. There would no longer be any implication that MPs were judging themselves. The corollary of this would be that if the House chose to approve a Code of Conduct which demanded higher standards than simple adherence to the law, there would be no mechanism to force MPs to comply. The alternative would be to set up a statutory body to police this. Such a body would be judicially reviewable. It would be unelected, and questions immediately arise about who should appoint it and who would dismiss it.

We have already alluded to the importance of MPs and Parliament having the freedom to speak and act, within the law, as they consider best. One key benefit of some form of self-regulation—rather than full external regulation—is the avoidance of the risk that the courts might come to claim jurisdiction over Parliamentary issues. Jack Straw argued strongly that the regulation of Parliamentary standards required continued MP involvement.

Where you are dealing with this very subtle area not of criminality or breach of financial regulations but of behaviour, the norms have to be established by MPs as a whole. If you do not accept that, you will end up in the courts. It is not a job that the courts want and they are not particularly equipped to deal with it.”

David Howarth, a former MP, took the view that

If that power [to regulate] were to go outside the House in any way at all, I cannot see how you could resist having the courts come in to control by judicial review decisions that are of such importance in the lives of MPs and in terms of the constitutional system. It may well be that people are prepared to see the court system

76 SSC0009
77 Q156
78 Q163, Q166
79 Q148
all over the House’s procedures, but my experience as an MP tells me that that is not really what you want.  

73. Both the then Leader of the House, Andrew Lansley, and the Shadow Leader, Angela Eagle, emphasised the benefits of including in the regulation of MPs’ conduct those who possess contextual knowledge of the House and its proceedings. Andrew Lansley told us that

It is quite difficult, to be perfectly honest, to envisage what is essentially an independent body trying to interpret many of the other cases that come forward, because they tend to require quite intimate knowledge of how the House works, in order to understand what MPs have done and why they have done it, and the Standards Committee—by its nature, because of the involvement of MPs themselves—enables a proper understanding of the environment within which MPs have to work.  

Angela Eagle emphasised the need to work with, rather than against, the practices of the House:

We do have our own ecosystem in the House. I would never make the assumption that just because we have always done it that way, it should always be done that way, but we have to be careful about the proliferation of bodies and arrangements that have a locus in this area… If you were to create another it would make our ecosystem even more interesting, but I am not sure that it would help clarity.”

Melanie Sully also advocated the retention of MP involvement in the regulation of parliamentary standards, telling us that keeping an element of self-regulation is “the best way of creating something aspirational”.

74. One criticism of the current system of quasi self-regulation is that the adjudication function and decisions on sanctions rest primarily with MPs. We heard powerful evidence that the final say on sanction resting with MPs was indeed appropriate. David Howarth and Andrew Lansley each expressed strong reservations about sanctions against MPs—especially the most severe sanctions—being taken out of the hands of MPs. David Howarth told us:

The penalties of suspension and the ultimate penalty of expulsion are powers that it would be very dangerous to hand over to a body outside the House. The reason for that is political and constitutional. Do you want people outside the House—people who are not democratically accountable—to have the power to affect the majority in the House, and maybe even to affect who forms the Government? 

80 Q145  
81 Q49  
82 Q66  
83 Q79  
84 Q145
Similarly, Andrew Lansley told us:

I cannot see how we can move to a situation where some independent body determines, for example, a penalty that would include excluding a Member from participation in the House—it is the House’s responsibility to do that.85

A recent judgement of the European Court of Human Rights confirms this view.86 We agree that there are strong constitutional reasons against pure external regulation of standards issues. This is particularly the case given that MPs have no immunity from the criminal law.

75. Rejecting pure external regulation does not mean rejecting all outside input into the system and a combination of external and internal regulation is common in the professions. Richard Thomas told us that:

in the whole debate during the ‘80s and ‘90s with the medical and legal professions and the insurance and financial services community one saw a shift away from pure self-regulation to what we describe in this report as much more of a co-regulation approach, which is where the people being regulated are very much involved and actively engaged with the process, but a strong external element is present, sometimes mandated by law.87

76. The evidence from the professional bodies demonstrates that the expertise of professional insiders and that of independent (or lay) outsiders is complementary. Paul Philip, who has expert knowledge of the function of not only the SRA’s regulatory procedures but also that of the GMC, told us:

I honestly think that it is a genuine partnership between those who practise the profession and understand the nuances and the detail of it, and people who don’t and can bring objectivity. At times they can bring a user’s perspective, or in [the case of the GMC], a patient perspective, so they have come together. That has been my experience in the governance framework in these organisations. It has also been my experience in the disciplinary frameworks within the organisation that the sum of the parts is bigger than the constituent parts. They are better organisations for having genuine lay input and lay challenge. The Solicitors Disciplinary Tribunal, the Solicitors Regulation Authority or the GMC could not make the decisions—they could not perform—without the expertise of people who exercise those traits. You need that expertise.88

We agree: the optimal form of regulation comes through a genuine partnership between those who are regulated and those who can bring independent input from outside.

85  Q54
86  Hoon v The United Kingdom (application no. 14832/11)
87  Q2
88  Q220
**Squaring the circle: self-regulation with a strong external element**

77. The standards system, and the Code of Conduct, in the House of Commons are regulated by the Committee on Standards, which now includes independent lay members, in conjunction with the Parliamentary Commissioner for Standards, which is an independent role, although one whose holder is an Officer of the House of Commons. MPs are, therefore, subject to a system of co-regulation, which combines elements of self-regulation with strong pillars of external involvement.

78. A report for the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which classified the House of Commons’ system as one of “co-regulation”, a hybrid between self-regulation and external control, noted that the (then forthcoming) proposal to appoint lay members to the House of Commons Committee on Standards “would go some way to addressing concerns that self-regulation is prone to an inherent conflict of interest, as well as to complaints that Parliament is sometimes remote and out of touch with public expectations”. Greg Power told the Committee that on an international spectrum which ranges from quasi-judicial regulation to a wholly internal process, the current House of Commons arrangements were robust: “I think what we have here is a very good balance… I think what you have is a very strong model.”

79. Evidence put to us by the media and the professions emphasises that the question of whether something is self- or externally-regulated is of lesser importance than whether the process is seen as clear and the outcome seen as fair—therefore, whether the system can command the respect of those involved and the public at large. We have heard that independence and professional involvement complement each other and strengthens the standards system. We have heard that clearer explanations of process and outcome, along with clarity about the role and remit of the independent lay members of the Committee on Standards in adjudications, can help command the confidence of media and the public alike. As Richard Thomas told us at the beginning of our inquiry, “It is not self-regulation or something else; it is about what point you choose on that particular spectrum.”

80. We endorse the current system of “self-regulation with strong independent elements” as the correct one, but believe that the role and strength of influence of these independent elements need to be made clearer, and the process itself also needs to be explained better. We note that it is easy for those in a completely self-regulatory system to dismiss or ignore criticisms from those who not well informed about the process. The introduction of lay members of the Committee on Standards means that there are now non-MPs, who have limited terms and so are unlikely to be absorbed into the shared culture of the House of Commons, engaged with the standards regime, and their views command respect. While the regular review of the Code and Guide meant that the system was already under regular

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89 OSCE/ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians* (OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, 2012), 63
90 OSCE/ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians* (OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, 2012), 67
91 Q86
92 Q2
scrutiny, that scrutiny is now better sustained and better informed. However, this will be of no value if the House does not address the matters raised (see paragraph 199).
4 The Committee and the Commissioner

81. Although we consider that self-regulation with a strong independent element is the appropriate model for the House of Commons, we believe there are ways in which the system could be strengthened. In this chapter we consider the interlocking questions of the relationship between the Commissioner and the Committee, and the composition, size and working methods of the latter.

The Committee

82. The Committee currently comprises ten elected and three lay members. The quorum of the Committee is five MPs and one lay member, the quorum of any sub-committee three MPs and one lay member. The Chair is, under the Standing Order, a senior Opposition MP. Unlike Departmental Committees (which scrutinise government departments) its members are not elected by other MPs but are appointed after discussion between the business managers of the various parties. Unlike other Select Committees, again, it was set up to have no Government majority, but the current representation of parties in the House has given it a majority from the parties of the governing coalition.

Angela Eagle argued strongly for there to be guarantees that there could not be a Government majority on the Committee on Standards, but Andrew Lansley rebutted the notion that the public worry about the political balance on the Committee on Standards—“Clearly, MPs can, should, and do leave their party allegiance at the door”—though he suggested that the size and composition of the committee, including the number of lay members, should be revisited “in order to maximise public confidence”. At a time of intense electoral uncertainty, we do not think it is possible to stipulate that there should never be a majority from a governing coalition but the convention that no one party should have a majority on the Committee should be preserved.

Position of lay members

83. The current position of the lay members on the Committee—in that they cannot vote, but nonetheless carry influence—is not widely-understood. Lord Bew, who favours giving the lay members a vote, said that:

The most revealing moment in the Maria Miller case was when the Prime Minister said, incorrectly, that the lay members had voted a certain way. That tells you that we would all be in a better position if he had been able to say it correctly. He obviously thought that—I understand that it was an error—so in other words it tells you that, in principle, it would have been desirable to be able to make that statement from his
point of view, regardless of the actual detail at the time not being correct, in my opinion.96

84. Witnesses from the professions told us that there is rarely—or never—a split in the vote with lay members on one side and professional members on the other.97 However, Professor Sir Peter Rubin (from the GMC) did note that, in questions of adjudication, sometimes the lay members took a more compassionate view of misconduct than their professional counterparts: “Actually, it was the doctors going for the jugular. It was the lay members who were saying, ‘Oh, we are all human. Give the guy a chance.’ The perception that we were a doctors’ club is rather misplaced.”98

85. The Joint Committee on Parliamentary Privilege considered the question of whether lay members should be given a vote. It noted the difficulties in giving the House of Commons statutory authority to decide who voted in its proceedings and concluded against this. It also noted the risks identified by the Procedure Committee if the House gave lay members a vote without statutory authority:

The Procedure Committee of the House of Commons, in considering the issue of lay members, heard arguments suggesting that the addition of lay members would not call the Committee’s privileges into question, or that the courts would not take such a case. Nevertheless, the Committee concluded that if lay members were to be given voting rights, legislation should set the matter beyond a doubt. The Committee believed that appointing lay members in the absence of such legislation would carry a “strong element of risk”, in that it 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”.99

86. As we have already described, in practice the lay members have powers stronger than a simple vote. For a start, the Committee cannot meet unless a lay member is present, and it would be open to lay members simply to withdraw from any proceedings which they considered unfair, and so prevent their continuation. More significantly, the lay members have power to append opinions to reports, setting out their views in extenso. Andrew Lansley was correct to speculate “Given the way in which the Committee works, it may well be the expectation of the Committee that no report would be agreed that did not command the support of the lay members.” As he also said “It is difficult to get that message across, but in the context of your current inquiry it would be helpful to look specifically at whether in the rules—the Standing Orders that apply to the Committee—we make explicit the lay members’ veto, which is presently implicit.”100 Lay members have also suggested that they might wish to offer comments relating to matters beyond the immediate subject of a Report. There is no current prohibition on their doing so.

96 Q20
97 Q196
98 Q207
99 Joint Committee on Parliamentary Privilege, Session2013–14, Parliamentary Privilege, HL Paper 30, HC 100, para 102
100 Q51
87. The existing position of the lay members is strong, contrary to some external portrayal. Consequently, giving them the right to vote would not have sufficient benefits to outweigh the risk. Instead, we recommend that on those occasions when no lay member wishes to append an opinion this should appear in the body of the Report, not simply in the minutes. Should any lay member present dissent this could also be recorded, with a reference to any opinion presented. We also hope that lay members will not feel inhibited from including in their opinions comments on wider issues arising from the Commissioner’s memoranda.

**Lay member term length**

88. The lay members were appointed following open competition, they are 'lay' because they had not held positions in either House of Parliament. An appointment panel recommended six names to the House of Commons Commission, which chose three names to put to the House of Commons. In addition to advertisements on the Parliamentary and other websites, a search agency was used. We consider this was an appropriate way to identify lay members, and do not recommend any changes to the processes.

89. Lay members are currently appointed until the end of the Parliament but their appointments may be renewed for no more than two years in the succeeding Parliament. There is no Standing Order provision that reappointments can be staggered and it is currently for the House of Commons Commission to decide what reappointment terms to recommend to the House. This places the Commission in an invidious position in that if all lay members are willing to be reappointed it has either to impose reappointments of different lengths, to ensure a regular turnover of lay members, or accept that new lay members will take up their posts without the experience of working alongside more experienced peers. The procedures for appointment and reappointment of lay members prevent the constitutional oddity of there being lay members in place when Parliament has been dissolved or before a Committee is in place in the new Parliament. But this system has considerable disadvantages. The lay members have no clear term of office. If two elections follow in swift succession the experience of lay members may be lost, even if they have served only a short time. It should be possible to recast standing orders in a way which makes clear that lay members have their status only at times when the Committee is itself in existence. If this were done, it would be possible to provide for fixed terms. Lay Members need to understand the House without being in place long enough to be “captured” by it. Given the relative infrequency of Committee meetings, and the fact of suspension of all business for elections, we consider terms of up to six years would be appropriate, and that these terms may extend into the subsequent Parliament. We make further observations on the appointment of lay members below.

**Committee size and composition**

90. We accept that parity of numbers between lay and elected members would be a strong statement of the equality of all members of the Committee on Standards. This would have a number of other consequences. The first is financial. Lay members receive a payment per
day worked, plus their expenses for attending each meeting. The average cost of attendance at a meeting by a lay member is just over £500. This will vary in future as new lay members are appointed, but we would expect the current policy of recruiting them on a UK-wide basis will continue so the figure is unlikely to change substantially. More lay members would increase the cost per meeting. Another consequence will be in terms of Committee size: experience suggests that too large a Committee becomes unwieldy. **After considering various Committee sizes we recommend a marginal increase in Committee size from thirteen to fourteen, with seven lay and seven elected members.** We believe that such a distribution would help to allay public concern, while still allowing MPs to be appointed in rough proportion to representation in the House.

91. If Committee size changes the quorum will need to be reconsidered. The Committee cannot currently meet unless a lay member is present, and the current requirement for both lay members and MPs to participate should continue. The Committee on Standards, like the Committee on Standards and Privileges before it, can meet only if five members are present. That is a quorum of half the membership, rather than the third which is typical in most Committees. The minimum quorum for a Commons Committee, of any size, is normally three. Stipulating that three lay members and three members were needed for a quorum would mean that the normal rules applied to each “part” of the Committee, but that the Committee would need nearly half its total membership to be present at any meeting. We think this is appropriate. **We recommend that the quorum be three lay and three elected members for the full Committee.**

92. We accept that these changes are likely to result in further developments in the way the Committee works. It is possible, or even likely, that lay members will be the majority of those present at any given meeting. Lay members will be taking time away from their normal working place or places, and will be unlikely to have other calls on their time while they are within the parliamentary precincts. Experience has shown that the demands on MPs’ time are such that they cannot always attend Committee meetings.

93. If there are to be seven lay members, then the current arrangements for reappointment need to be reconsidered. Too great a turnover among lay members would impose considerable recruitment costs. The Standing Order is expressed in terms of appointment and reappointment because a fixed term would have meant that lay members of the Committee on Standards continued in post between elections even when there was no Committee in existence. **If the House accepts our recommendation for seven lay members we believe fresh appointments should be made in two tranches, comprising four and three members respectively, each Parliament.** If the current system persists, and the House is unwilling to make fixed term appointments there needs to be scope for flexibility if a Parliament ends suddenly. The presumption would be that lay members of longer standing would be reappointed for a two or three year period, while those most recently appointed would be reappointed for three or four years. The restriction on reappointment in more than two successive Parliaments should be replaced by a cap on the number of years a lay member may serve, or that may elapse from his or her first appointment. That would allow orderly recruitment of replacements,
and ensure that new lay members had the opportunity to work alongside more experienced colleagues.

94. A larger committee might also wish to work through sub-committees more than is done at present. Sub-committees may be more cost-effective and more flexible in their timing. As this inquiry shows, lay members can take the chair for at least part of their proceedings. It will be for future committees to decide how to use sub-committees, but we consider they offer a welcome flexibility. Just as now, they could be used to take forward policy. A sub-committee might also be used to support the Commissioner, for example in cases where the Commissioner needs to ask for the Committee to use its powers to order the production of persons, papers and records. Currently, the Commissioner can discuss difficult matters informally with the Committee Chair or with the entire Committee—a sub-committee might also provide a useful informal sounding board, with the advantage that there would, by definition, be lay input into discussions. In any such cases, of course, the Commissioner would retain the final decision.

95. Currently no more than seven MPs can serve on any sub-committees, and the quorum is three MPs and one lay member. **We recommend that the quorum for sub-committees should be reduced to three, of whom one must be an MP and another a lay member. We also consider there should be no restrictions on the number of members of a sub-committee.** We are confident that the good sense of the Committee will ensure that a sub-committee is appropriate for the task it is to undertake.

**The investigatory panel**

96. Standing Order No 150 currently provides for the Commissioner on her own volition or at the request of the Committee, to appoint an investigatory panel to help her establish the facts of the case. The panel is to consist of the Commissioner, in the Chair, and two assessors, one of whom shall be a legally qualified person appointed by her and the other an MP who is not on the Committee. This provision has never been invoked, and therefore its procedures, which are to be set by the Commissioner, have not been established. We understand that the panel might be useful in providing a fresh but legally expert perspective in the event of a case where the facts were seriously disputed. Nonetheless, we question whether it remains necessary. No Commissioner or Committee has found the need to invoke it and we recommend that this need for an investigatory panel should be reviewed in the light of the lay membership and our recommendation on sub-committees.

**Appointment of MPs and Chair**

97. The members to be appointed to the Committee on Standards by the House are nominated after discussion between the party authorities rather than being nominated after being elected by the members of their parties in the House as is the case with many other committees. There are good reasons of principle why they should be elected, but there is also a question as to whether the best-qualified candidates would put themselves forward. Unlike the Chairs of Departmental Select Committees and of the Political and
Constitutional Reform Committee, the Environmental Audit Committee, the Select Committee on Public Administration and the Public Accounts Committee, the Chair of the Committee is elected by the Committee from among the MPs appointed to it. **We recommend that the Chair of the Committee be elected by all MPs as we believe this would enhance the confidence of the House in the Committee.**

**Role of the Commissioner**

98. The role of the Commissioner, as Sir Philip Mawer reminded us, was introduced to be a crucial part of the independent voice within the standards system;\(^{101}\) indeed, the Commissioner was from 1995 to 2013 the only independent voice. The introduction of a new element into any system has implications for the interrelationship of all the parts and that the introduction of an additional independent element in the shape of the lay members must inevitably affect the Commissioner’s role and relationship to the Committee. This relationship is, as she says, based on mutual trust, and nothing we say in this part of the Report is intended in any way as a reflection on the way in which she and her predecessors have carried out their functions.

99. An independent Commissioner with security of tenure is, and must remain at the heart of the system. Her right to publication of her memoranda in full is crucial to the transparency of the system and her Annual Report on her work provides a useful picture of the actuality of the situation and trends in her work. Her independence is separate from the lay members. It should not be reduced as a consequence of their introduction.

100. The Commissioner rightly prizes her independence very highly and it is crucial to her performance of her role. The Commissioner explained the relationship between herself and the Committee as being one of oversight but not direction. She wrote:

> ‘Oversight’ is not defined anywhere but when the two standing orders (No’s 149 and 150) are read together, it is clear that the Commissioner makes his or her own decisions on whether or not to begin an inquiry (subject to certain specific provisions about consultation with the Committee) and that his/her conduct of investigations is a matter for the Commissioner to determine. The Commissioner is required to make certain reports to the House (and does so via the Committee). It is, of course, for the Committee to consider whether the provisions of the two relevant standing orders provide sufficient clarity about the respective roles. From my perspective, the relationship is one of co-operation rather than collaboration and that is as it should be. It is fundamental to a good working relationship that there should be both trust and respect on either side. The loss of such a relationship would be very damaging to the standards process.\(^{102}\)

101. The Commissioner has complete discretion, within her remit, as to whether or not to accept a complaint, though she regularly reports informally to the Committee on the

\(^{101}\) SSC0006

\(^{102}\) SSC0022
numbers and kinds of complaints received. She can also impose certain sanctions by her own decision. Where she finds that there has been a breach of the rules but that it is minor, she may agree rectification herself: (see paragraph 28). It is in keeping with the Commissioner’s independence of action that she has freedom to accept or reject complaints, and we consider that her authority to agree rectification in minor cases is proportionate.

102. The Commissioner cannot compel someone to appear before her or produce documents, The Committee can require the production of documents and can—unlike other House of Commons Committees—compel (rather than request) the attendance of an MP. The Committee on Standards is willing to require production of documents or even compel the attendance of an MP, should the Commissioner require it: her lack of such a power has not hitherto been a problem.

Remit of the Commissioner

103. Paragraph 105 of the Guide to the Rules sets out the areas which are outside the Commissioner’s remit: She is unable to accept complaints about

- policy matters or a Member’s views or opinions
- a Member’s handling of or decision about an individual case (whether or not the individual is a constituent of the Member)
- the funding of political parties
- alleged breaches of the separate Code governing the conduct of government ministers in their capacity as Ministers (the “Ministerial Code”)
- what MPs do in their purely private and personal lives.

104. The Commissioner will not entertain anonymous complaints. Conduct in the Chamber is a matter for the Speaker. If the allegation is of criminal misconduct which may more appropriately be investigated by another agency, the Commissioner will advise the complainant to approach that agency.105

105. Most of the complaints the Commissioner receives are outside her remit. She told us, for example, that in April to July 2014, of 165 complaints received:

- 6 were accepted
- 159 were declined
- Over 80% of those declined were out of remit
- Well over 80% of out of remit complaints were about MPs’ handling of individual cases and constituents’ problems

103 Code of Conduct and Guide to the Rules relating to the conduct of Members, para 105
In addition to the 124 complaints about how a MP had handled an individual case or problem, out of remit complaints included: 5 about Ministerial/Prime Ministerial action or behaviour; 4 about proceedings in the House; 2 about an MP’s manner (specifically about allegedly abusive behaviour witnessed/experienced); 8 about MPs’ views and opinions (including some expressed through social media); 2 alleged data protection breaches and 2 about MPs as employers. The balance were ‘one-off’ complaints.\textsuperscript{104}

106. Peter Riddell, speaking of the system as a whole, was concerned that so many complaints fell outside the scope of the system. He raised the question of personal conduct, saying:

There are two acute problems. One comes within the domain of your Committee and the public think that the other one should. The one that comes within the domain of the Committee is where there are no criminal issues, but where issues still relate to the code of conduct and so on. That has not led to criminal action, but has led to sanction and criticism from the Committee. The other one, about which the public are concerned—you are basically concerned with financial disclosure—is what is regarded as bringing the House into disrepute or unethical or immoral behaviour, which does not fall within the remit of the Committee, but the public think ought to. There are not many cases, but that is where the problems arise.\textsuperscript{105}

107. The question of what the Commissioner’s remit should be does not go unexamined. The House takes its decisions on this after advice from the Committee, which is itself advised by the Commissioner, who has detailed knowledge of all complaints. It has been one of the indicators of the Commissioner’s independence that she has not hitherto generally shared rejected complaints with the Committee, though her last annual report contained more information about these than its predecessors.\textsuperscript{106} We understand that the Commissioner would be willing to share more information with the Committee about rejected complaints, and we believe that the introduction of the lay members means that this would now be appropriate.

108. The Commissioner does not currently always tell an MP about the receipt of an out of remit complaint made against them. We have some sympathy with the view that MPs should not be troubled by being told about complaints against them that are not within remit. As in most complaints systems, the Commissioner receives a number of repeated or vexatious complaints or complaints about which it is not necessary for the MP concerned to know. There is, however, a counter-argument that where none of the above apply, MPs would prefer to be fully informed about complaints (especially those about their level of service to their constituents), not least to ensure that they receive feedback which shows whether their offices are working efficiently. We note that the Commissioner does sometimes alert an MP to the fact that such a complaint has been made about them, especially where a pattern emerges. \textbf{We recommend that the Commissioner should}

\begin{footnotesize}
\begin{itemize}
\item 104 SSC0022
\item 105 Q2
\item 106 Parliamentary Commissioner for Standards Annual Report 2013-14, 354
\end{itemize}
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consider more often informing MPs about out of remit complaints which relate to them.

**The investigatory role**

109. The Commissioner’s most high profile role is as the investigator whose findings come to the Committee. One of the criticisms frequently levelled at the system is that there is insufficient separation between the advisory, investigatory and adjudicatory functions.

110. When the Commissioner prepares a memorandum to the Committee she goes beyond setting out her findings as to the facts of a case; she also provides the Committee with a view as to whether the Code or rules have been broken. This was clearly appropriate when there was no independent element on the Committee, but some witnesses argued that the case for that is now less clear, and the argument for a clear separation of powers stronger. Richard Caborn suggested that “you have to distinguish with the Commissioner that he is either a prosecutor or he is not.”

107 The Committee on Standards in Public Life recommended that the Commissioner focus on the role of investigator (and should be able to draw inferences) but that role of decision-maker (adjudicator) be given over to a sub-group of the Committee on Standards, in the interests of fairness.

111. In our view, since as a general rule by submitting a memorandum to the Committee the Commissioner is expressing a view as to whether the rules have been broken, there is little point in preventing her explaining her reasoning for the conclusion.

112. It is also suggested that the Commissioner should not be both advice-giver to MPs and investigator. The confusion has arisen because of the Commissioner’s role under Standing Order No 150(2) (c):

a) To advise the Committee on Standards, its sub-committees and individual MPs on the interpretation of any code of conduct to which the House has agreed and on questions of propriety.

113. We consider the Commissioner’s advice-giving role is appropriate. She has an overview of the rules, and of the way in which cases have been decided in the past. However, there is a difference between advising on the interpretation of the rules in general terms, and interpreting the rules in the context of a contested case. We believe the reported confusion between the Commissioner’s role as investigator and the Committee’s role as adjudicator has arisen from disputes about interpretation.

114. There have been occasions when the Commissioner and an MP under investigation have held differing interpretations of the rules. In such cases, the current Commissioner has advised MPs that they may bring this matter to the Committee before she completes her investigation, or has offered to do so herself. No MP has yet taken up this offer, but much time and trouble might be saved if this were to be done. While we fully understand

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107 Q168
108 SSC0014
the Commissioner’s reluctance to invoke the Committee before the conclusion of an inquiry we do not think she should necessarily wait for the MP’s assent before she brings such a question of interpretation to the Committee; it should be sufficient for her to inform him or her that she will do so. We recommend that in cases where there is dispute about the meaning of the Code or the rules, the Commissioner should be free to bring the matter to the Committee before she submits a memorandum. In some cases, the Committee will need to see a memorandum before it can decide on the matter, but in others it may be able to give guidance on principle at an early stage. It should be for the Commissioner to decide whether there is indeed a matter which the Committee should resolve in principle; otherwise there would be a danger the interpretation of the rules would be challenged in every case.

115. As is usual with Select Committees, the Chair holds briefing meetings with Committee staff in advance of all meetings, and the Commissioner attends these. She is also present in the Committee room when the Committee considers her memoranda. This was perceived by one witness at least as unfair. Mr Caborn said “you have the Commissioner meeting the Chair before the Committee” and “The Commissioner sits in the Committee; as I understand it he sits there by invitation, but more by custom and practice, in just about all the meetings. When I tried to argue the tariff with the Committee, the Commissioner was sat at the side of the Chair”.

116. As we said in paragraph 112, the Commissioner’s role is to advise the Committee and also to advise individual MPs. Her meetings with the Chair and her presence in Committee meetings are a function of this, and are necessary to ensure a timely and proper process. The Chair does not see memoranda on cases in advance of the rest of the Committee. While the Commissioner is present in the Committee room during consideration of memoranda, it is not as prosecutor but to answer questions on the memorandum. The Committee would have no hesitation in asking her to leave the room during questioning of a witness if they felt her presence was likely to be misinterpreted. In any case the presence of the lay members should allay any questions about propriety.

**Role of the Committee in general standards matters**

117. One consequence of the strong external element on the Committee is that it is in a position to work with the Commissioner to play a more creative role in setting standards. The view of the then Leader of the House was that the MPs would value this input:

> It seems to me, on the face of it, that the House looks to the Standards Committee to be a source of that kind of impetus. It might be that you would think in terms of the Standards Committee not only imparting a view about what standards are expected, and about what the consequences would be where people fall down on that in individual cases, but about a continuous process of engagement with Members of the
House in terms of what standards are expected, to avoid having cases that illustrate it by virtue of breaches. ¹¹¹

¹¹８. While the Committee already does some policy work on its own initiative at present, for instance on All-Party Parliamentary Groups¹¹² (and in the case of the present Standards Review Sub-Committee), its main work is reactive to the inquiry work of the Commissioner. Unlike other scrutiny committees it does not regularly carry out inquiries into general topics. There would be advantages in the Committee and Commissioner working together to identify topics for consideration and who would lead on each. **We recommend that our successor Committee, in discussion with the Commissioner, sets itself a theme-based work programme at the beginning of each Parliament.**

¹¹９. Gordon Hockey offered a suggestion whereby the Committee could exercise greater leadership:

> We [at the RCVS] will use our complaints and disciplinaries as a means to promote guidance; people like nothing better than to look at the misfortune of others, so the website hits for the DC [Disciplinary Committee] pages are very high. We will craft press releases and we will try and get the message out. It is twofold. First of all, you get the message about the rule out. It was sufficient to take forward and, therefore, the profession knows. It also allows confidence from the public. They can see that something is happening.¹¹³

In this way, the RCVS explains its work and its impact, engenders higher confidence on the outside, and promotes engagement with and understanding of appropriate conduct on the part of their members. The Committee on Standards already asks the Chair to write to all MPs drawing lessons from cases, where appropriate. The Commissioner also regularly issues guidance. We will consider whether these communications can be made more effective and put in the public domain.

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¹¹¹ Q47
¹¹³ Q199
5 The detail of the system

120. We turn now to some matters of detail. If any system is going to work:

- Rules must be clear
- Reliable guidance should be available to individuals in cases of doubt
- Investigations should be fair
- There should be an appropriate appeals mechanisms
- Sanctions should be proportionate

In our view, the current system broadly meets these requirements, but we have some suggestions for improvement.\(^{114}\)

Clarity and availability of rules and guidance

121. The percentage of serving MPs who were elected before 1997 is only 21%. Therefore an overwhelming majority of MPs have never known the House of Commons without the Code and Commissioner. A third entered it in full knowledge of the expenses scandal. Given that the vast majority of MPs have been subject to the system for their entire parliamentary careers, it might be expected that they would be familiar with it.

122. Peter Riddell could not understand why any MPs might not be aware of the Code: the rules are long-standing, and clear. “Indeed”, he said, “the breaches that there have been in this Parliament have been blatant.”\(^{115}\) “I cannot see, of the cases we have had in the current Parliament, that there is any ambiguity about any of them.”\(^{116}\) The evidence is, indeed, that the great majority of MPs do comply with the required standards. As Angela Eagle said:

> We only hear about the ones that don’t. Sometimes I think it is important for us to remember that the vast majority of Members of Parliament do.\(^{117}\)

123. Angela Eagle believed that some issues—e.g. the ban on paid advocacy—were very clear now, and that the culture of compliance on these issues had improved over time; but that an MP’s involvement in public life threw up complexities which need to be understood.\(^{118}\)

124. Despite the publication of Code of Conduct and Guide to the Rules in both hard copy and electronic format (which is sent to all MPs after election), and the fact that that induction is provided for MPs after election and that their attention is also drawn to any
revisions of the Code and Guide, we received evidence that some MPs were unaware of the documents.119

125. Not all the rules are as accessible as the Code and Guide. The Commissioner can investigate complaints about breaches of certain rules drawn up by other House authorities, for instance about the use of stationery and catering facilities. The rules regarding the catering facilities are to be found on the parliamentary intranet under ‘catering and outlets’, then ‘banqueting’ (sub-head ‘House of Commons’ and then as ‘Conditions of hire’ at the bottom of the page). On the main parliamentary website they appear under ‘Visiting Parliament’. The rules relating to stationery lie with the Department of Facilities and can be found by searching the indices of the external and internal websites. We share the Commissioner’s concern that the rules regarding use of stationery, refreshment facilities and other matters are not as easily found as the Code and Guide, and welcome her efforts to collate all the applicable rules in one place. Modern technology should facilitate the provision of them to all MPs as an app.

**Guidance to individuals**

126. To win the active assent of those subject to it, any regulatory system must provide for reliable advice to individuals seeking guidance in respect of particular circumstances. Judging from the evidence of the MPs and former MPs to whom we spoke, there is an unmet need for guidance to individual MPs, both in respect of individual circumstances and when an MP is the subject of a complaint. However, we also recognise that advance guidance is always given on the basis of the precise language of the question. The subsequent activity may not actually match the original question and the original advice.

127. MPs who were unsure of the rules reported falling back on a number of expedients. Concern about how behaviour might be reported in the media was reported as being a powerful incentive to good behaviour. Laura Sandys said:

> I would say that the best form of individual self-regulation is whether you are happy for what you are about to do to appear on the front page of a newspaper. That happens to be the ultimate code of conduct. Anything else is just words that can be moved and spun in any way that the Express or any other newspaper wants to.120

James Arbuthnot concurred: “Absolutely”.121 MPs also reported falling back on what they knew to be right.122 And, though no witness mentioned them, the Speaker’s Chaplain and duty Roman Catholic priest, whose details appear on the parliamentary website (a Methodist minister also attends once a month) list pastoral work in the House as one of their duties. MPs also naturally turn to their party whips for advice and absorb the ethos of

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119 e.g. Laura Sandys (Q149) stated that: “The first time I have seen or have been conscious of the code of conduct has been in preparation for this meeting, so I am not sure that it is embedded anywhere.”

120 Q149

121 ibid

122 ‘your own education, upbringing and background’ Q149
Parliament from more experienced colleagues; the latter may be risky if the knowledge of
the ‘experienced colleague’ concerned is out of date.

128. We are conscious that pressure of work leads MPs to rely heavily on assistance from
their staff. While it is the case that MPs are responsible for the work done by their staff, it is
important that senior staff in particular are enabled to understand and apply the standards
expected of the MPs.

129. The Commissioner’s Office is the main source of official guidance in relation to the
Code of Conduct and the Guide to the Rules but the relevant House authorities are
responsible for giving advice on other sets of rules such as those relating to stationery. As
the Commissioner says, MPs seek advice mainly in relation to specific issues. There is,
however, an acknowledged tension between the Commissioner’s advice function and her
investigatory function (see paragraphs 131 and 132); to assuage this, the day-to-day advice
is given by the Registrar of Members’ Financial Interests.123 Nonetheless the Commissioner
is available to speak in confidence to individual MPs and accepts such requests several
times a year.

130. Some of the MPs and former MPs to whom we spoke expressed concerns about the
advice function of the Commissioner’s office. These concerns included apparent
retrospective reinterpretation of the rules and a perception that advice acted on in good
faith could be found to have been incorrect. As James Arbuthnot explained:

MPs have experienced the problem that if they ask for advice, they get it and they
take it, that proves not to be conclusive. It is quite difficult to obey not only the rules
that exist but the rules that you ought to have known should have existed—and to do
that retrospectively. If you are looking for advice and you then cannot rely on it, it
may tend to propel you towards not bothering with taking that advice.124

David Howarth made a similar point:

To me, as someone now on the outside, it still seems quite often unfair to offer advice
but with the caveat that you cannot rely on it—even the Electoral Commission does
that—and for the authorities then to turn round later and say, “Well, you should
have worked that out yourself”.125

131. Of course, no advice system which separates the advice function from the
adjudicatory one can provide an absolute guarantee that taking advice will protect the
seeker from criticism: at best it can provide a mitigation if a breach of the Code or Rules is
later identified. To that extent James Arbuthnot is right.
132. The tension between the Commissioner’s advice and investigatory functions becomes acute when a complaint arises, and this has led to suggestions that they should be separated. The Commissioner opposes such separation:

I consider that interpretation of the rules and advice on ethical issues is a fundamental part of my role. It is not unusual in complaints handling organisations for there to be an advice-giving function alongside a responsibility to investigate individual complaints, and with care the two roles can be managed.

It is, I think, almost inevitable that Members would still wish to consult with the Commissioner and his/her team about how the Commissioner will interpret the rules in any given set of circumstances, since it is the Commissioner who will make the determination in the event of a complaint. That might make it impractical to separate the roles on a day-to-day basis.

Without first-hand knowledge and experience of complaints and Registration, an Ethics Officer would either have to identify themes to pursue on the basis of what (s)he thinks may be topical/interesting for Members or to rely on retrospective data from the Complaints Team. Any educational function with Members would require the Ethics Officer to have an effective working knowledge of the existing rules and to be aware of precedent complaints, making it difficult to achieve a separation from the rest of the team.

The creation of a separate Ethics Officer role is likely to be expensive. Even if the officer were to report to the Commissioner (and it is doubtful that it should, if the emphasis is on a separation of powers), the creation of sufficient distance between the new role and that of the current team would imply separate administrative arrangements, office space, etc. all of which would come at a price. The Committee would also wish to consider the relationship between an Ethics Officer and the Committee itself.126

133. We agree with the Commissioner. Members of Parliament who wish to receive advice on specific issues should approach the Office of the Parliamentary Commissioner for Standards. If they do so, and accept the advice offered, the Commissioner and Committee should bear this in mind when considering any subsequent complaints about their conduct. The same applies where the advice sought and accepted came from other responsible House of Commons authorities. MPs should always ask for advice to be confirmed in writing.

134. We understand why some MPs would like to see the advice function separated from the investigation one, but there is a question of proportionality and cost. The system is designed to cover 650 people, and we believe that to introduce a separate advice function would be disproportionate.

126 SSC0022
**Fairness**

**The process**

135. If an MP is investigated, it is important that the system for investigation is fair. The House has thought it appropriate to adopt an investigatory rather than an adversarial process. The Commissioner investigates and presents her findings to the Committee. The Commissioner’s note ‘Procedure for Inquiries’ (which is sent to the MP when the Commissioner has accepted a complaint) explains the process:

Members will be informed about allegations against them when the Commissioner has decided there is sufficient evidence to justify initiating an inquiry. The Commissioner will write to the Member concerned. In this letter the Commissioner will: tell the Member the nature of the allegation; set out the relevant rules of the House; provide the Member with the evidence supporting that allegation; and ask the Member for their response. What is asked of the Member is to give a full and truthful account of the matters which have given rise to the allegation.

In the course of the inquiry the Commissioner may ask the Member follow-up questions, seek evidence from any witnesses, including any identified by the Member, and consult authorities such as the relevant Department of the House of Commons, or the Registrar of Members’ Financial Interests. The Commissioner may interview the Member in the course of the inquiry, and will always see or speak to the Member if the Member so requests. When interviewing the Member, the Commissioner will normally make a record of the interview and subsequently clear that record with the Member to ensure its accuracy.

... 

Under paragraph 19 of the Code of Conduct Members are required to cooperate, at all stages, with any inquiry. The Committee may also exercise its power to summon persons, papers and records, either independently or at the Commissioner’s request.

A Member has the right at any time to provide any evidence he or she wishes to the Commissioner, including drawing attention to the names of any witnesses which he or she believes to be material to the consideration of the allegation. Except where an Investigatory Panel has been appointed, the Member does not have the right to cross-examine directly witnesses who may have given evidence in support of the allegation. However the Commissioner will put to the Member all material evidence in support of the allegation so that the Member may have an opportunity to challenge it if he or she so wishes.

Any evidence which a Member supplies can be expected to become public, although the Commissioner and the Committee are ready to consider requests for the deletion of confidential and personal information which is not relevant to the resolution of the inquiry.
The role of the Commissioner as an investigator is to report the facts as found and offer the Commissioner’s own conclusion on whether the Code has been breached. Paragraph 3 above sets out the normal outcomes of an inquiry. Before reaching his or her conclusions, the Commissioner will share the draft factual sections of any report to the Committee with the Member so that the Member has an opportunity to comment on them. The Commissioner will include in this report the Member’s evidence, both in the body of the report and as annexes. 127

136. When the Commissioner has concluded a Memorandum, she sends it to the MP, currently minus her analysis and conclusions. The Member is given time to comment on it; when the Commissioner has considered any points the Member makes she adds her conclusions and sends it to the Committee for consideration. It is open to the Committee to ask her to seek further information, it may seek further evidence itself.

137. The MP who is the subject of the inquiry may ask to appear before the Committee for an evidence session. This is held in private, but a transcript is subsequently published. Richard Caborn and Bill Wiggin told us that they would prefer hearings to be held in public, 128 and we return to this question when discussing media matters. They have also told us that they are discouraged from asking to appear in person to explain their side of things. 129 We would deplore any suggestion that any MP should be dissuaded from providing any evidence to the Commissioner or to the Committee that would assist in resolving a case.

138. While Bill Wiggin was concerned that he felt that he was expected to incriminate himself, 130 we consider that the system gives MPs safeguards even before the matter reaches the Committee. MPs may produce to the Commissioner any evidence they consider relevant and are given the opportunity to comment on the factual sections of her Memorandum before it goes to the Committee. A further safeguard could be introduced if the Commissioner were to provide investigated MPs with her analysis, and we understand that she would not object to doing so. We expect our successor Committee and the Commissioner to consider how this might be done.

139. We have discussed above (paragraph 141) the propriety of the Commissioner being present in the Committee room when the Committee are discussing memoranda.

140. When the Committee has considered the Commissioner’s memorandum, an agreed Report is made to the House. When the Committee is at variance with the Commissioner, the publication of the Commissioner’s memorandum with the Report means that they are obliged to explain the reasons for the difference of opinion.

128 Q189
129 Q174
130 Q164
Standard of proof

141. The Commissioner uses a civil standard of proof. Her note on the procedure for inquiries says:

When considering allegations against Members, the Commissioner and the Committee normally require allegations to be proved on the balance of probabilities, namely, that they are more likely than not to be true. Where the Commissioner and the Committee deem the allegations to be sufficiently serious, a higher standard of proof will be applied, namely, that the allegations are significantly more likely than not to be true. 131

Gordon Downey had used a similar approach when he was Commissioner, writing:

One issue the Committee might like to consider is the question of standard of proof. Since there are not criminal matters, I took the view that the civil standard of “balance of evidence” was generally appropriate. However, where serious misdemeanours were alleged on which a verdict could ruin an MP’s career, I felt the standard needed to be pretty close to “beyond reasonable doubt”. 132

142. Bill Wiggin argued that making of judgements based on probabilities was one of the reasons why the adjudication process could not be fair:

It is a code but it does not stack up at all. You are making judgments on probability. You are using principles. You are not giving people proper rules and yet, here we are, making rules for the rest of the country.” 133

He therefore advocated MPs being held accountable to a contract of employment rather than a Code of Conduct. Since, as we have explored, MPs are not in an employment process, we cannot see how this would work. Moreover, employers might take disciplinary action based on the civil rather than the criminal standard of proof, and most professional conduct bodies, such as the Solicitor’s Regulation Authority, use the civil standard of proof, and the Law Commission has recently recommended that the civil standard of proof should continue to apply to all fitness to practice hearings in the health and social care professions. 134

143. The civil standard is a single one; in principle the same standard, of balance of probabilities applies regardless of the seriousness of the allegations. But case law also makes clear that certain types of conduct, may be regarded as intrinsically less probable than others, 135 and those adjudicating will bear this in mind. In practical outcomes, there is

132  SSC0008
133  Q191
135  This has been confirmed by case law eg Re B (Children) [2008] UKHL 35 and Re Doherty [2008] UKHL
likely to be little difference between the current formulation used by the Committee and Commissioner and the practice of the courts. The standard used by Commissioners has in effect been the normal civil standard tempered by the view that some things are inherently implausible. We consider that the wording in the Procedure for Investigations is more readily understandable by those who are not legal practitioners. We conclude that the standard of proof used by the Commissioner and Committee is appropriate.

144. We are confirmed in our belief in the essential fairness of the process by the recent decision of the European Court of Human Rights (ECtHR) in the case of Geoffrey William Hoon against the United Kingdom. Mr Hoon, a former MP, had been found by the Commissioner and Committee to have breached the Code while still serving as an MP. Mr Hoon applied to the ECtHR on the grounds that there had been a number of violations of the Convention on Human Rights, that he had been denied access to a court to appeal against the legality of the parliamentary proceedings and the sanctions imposed, that his right to private life had been violated and that he could not bring judicial proceedings to challenge the decisions of the Commissioner, Committee or House. The ECtHR unanimously declared Mr Hoon’s application inadmissible. Particularly relevant is their statement that “the Court considers that the procedure followed gave the applicant a fair opportunity to put his case and defend his interests, as regards both his status as a public office-holder and as regards his private reputation”. The judgement also found that “the interference with his private life was not disproportionate to the legitimate aim pursued”.

**Support for MPs**

145. Even though we are confident the system is broadly fair, we believe MPs who are the subject of a complaint need some additional support and advice. A specific concern was that once the Commissioner has received a complaint, her office will not give the MP advice, other than purely procedural advice. Bill Wiggin said:

> In my experience there is no help, support or advice of any sort for a Member of Parliament who is being investigated. If you were to have an external process you could perhaps get legal advice, but because our system does not fall under the law you cannot consult a solicitor or a barrister. You cannot get any help of any sort from anyone. The Committee are not allowed to speak to you. The Clerks’ department are not allowed to speak to you. You are completely isolated and you have no idea what is going on. I would prefer that this job be treated like any other job and that if you do something wrong you go to court.

146. MPs may be accompanied during interviews with the Commissioner, including by a lawyer, but may not be represented. The same applies at Committee hearings, although the right to be accompanied is rarely used. The process is designed to investigate an apparent problem based on the evidence found, without introducing an adversarial

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136 Hoon v. the United Kingdom (application no. 14832/11)
137 Q163
element. To allow legal representation, as some would wish, would change the system fundamentally. There is also the question of where the costs of support would fall. They could be borne by public funds but, despite the argument that no price should be put on justice, it is arguable whether this would be justifiable when the client group is so small and the actual breaches of the rules are frequently so minor. Alternatively the MP could pay, but then there arises the question of equality of access. (Whether or not a system of professional indemnity insurance as used in the professions would be proportionate in view of the numbers involved is questionable.)

147. The House’s regulatory system needs to be robust and proportionate. It should not attempt to replicate court proceedings and MPs themselves should be capable of presenting arguments to the Commissioner. The current practice whereby an MP may be accompanied, but not represented, by a colleague or adviser is appropriate.

148. We have considered whether the system of assistance and support could be formalised. There is, we believe, scope for a cadre of MPs, interested in and informed about standard matters, who could advise MPs on ethical conduct and advise and assist them when they are the subject of a complaint. They might also play a role in the further development and understanding of parliamentary standards. A practical problem arises, however, in that the most suitable MPs for this role would probably be those with experience of the system and these would be likely to be former members of this Committee. The most common reason for MPs to leave the Committee is that they are leaving the House (in which case they might not be available) or promotion to ministerial or equivalent opposition rank, in which case the party allegiance which serving MP members of the Committee successfully ‘leave at the door’ might well once again become a factor. Nonetheless, it would no doubt be of benefit to MPs who find themselves the subject of a complaint to have a source of support and advice, and if MPs wished to volunteer for such a role we would expect the Commissioner’s office to give them such advance advice and assistance as would serve them if they were called upon. This might mitigate the tendency of MPs to seek informal advice ‘in the tearoom’.

Appeal

149. We have considered whether there are sufficient opportunities for the MP to challenge the findings of an inquiry. The MP may, in effect, appeal from the Commissioner to the Committee. The Committee’s role is to scrutinise the outcome of the Commissioner’s inquiry. The Member may then appeal to the House, which may amend the recommendation of the Committee. The advantages of any appeal mechanism from the Committee’s findings before a matter reached the House would need to be balanced against the consequent delay (see paragraph 165 for the timescale of inquiries).

Sanctions

150. Just as it is important that the process is seen to be fair and proportionate, if the public is to develop confidence in the system for identifying and punishing breaches of the Code or Rules by MPs the sanctions must be seen to be sufficient and defensible. The
penalties are not clearly understood outside the House, as is shown by the GRECO recommendation that the penalties should be reviewed.139

151. The penalties at the Committee’s disposal range from simply reporting that a breach has occurred, to, in principle at least, recommending expulsion from the House. Criminal investigations and legal proceedings will take precedence over the disciplinary procedures of the House.

152. At the lowest level, the Committee’s sanctions will affect an MP’s reputation. The fact a written apology has been required will be a matter of public record. Apologies on the floor of the House by personal statement must normally be made immediately after Question Time, when the House is full, and the matter prominent. MPs who apologise in form alone can be strongly criticised, and may face political consequences.

153. The Committee may also recommend financial penalties, such as withholding of salary for a period, suspension for a period (which carries automatic loss of pay and pension rights) or, ultimately, expulsion. In these last cases the House will debate the Committee’s Report and may amend the suggested penalty.

154. Expulsion has not been used for over sixty years, but on two recent occasions when a long suspension has been recommended the MP has resigned by ‘taking the Chiltern Hundreds’—a de facto expulsion. If the MP concerned wished to defend his or her reputation, expulsion would not be a final judgement: it would in theory be possible for the individual to appeal to the constituency by standing in the subsequent by-election, and the constituency would be free to return him or her. The voters would have the last say.

155. The general view of the witnesses was that the range of sanctions is very wide, and that this is appropriate. There was some concern that sanctions were inconsistently applied and that there are no guidelines. In this context Bill Wiggin suggested that tariffs might be published.140 This would be difficult because no two cases are the same; failure to register an interest may spring from a desire to conceal something significant, or from simple oversight. In the case of sanctions imposed by parliament in criminal law, a range of sentences is generally allowed to the courts on the basis that there are always degrees of culpability and different mitigating or aggravating circumstances. A table of tariffs would in our view have so wide a series of ranges as to be wholly unhelpful. However, consistency is a guard against favouritism or inappropriate severity, and the Committee should maintain and publish its table of sanctions imposed. It would be possible to make available a digest of cases, and we note that the RCVS does so.

156. Concerns were also expressed about the possible impact of a finding of a minor misdemeanour on an MP’s career and prospects;141 but such concerns are not unique to

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140 Q169
141 Q166
MPs. Questions were also raised about the interplay between any sanctions imposed by the Committee and any Act which results from the Recall Bill. The Committee has said that it will work to implement whatever Parliament decides on recall.

157. We find the range of available sanctions to be appropriate and sufficient, but the Committee (in recommending sanctions), and the House (in imposing them), should be aware of how similar breaches of the relevant Code would be treated elsewhere.

**Administration of the process**

**Receipt of complaints**

158. Unlike in some of the countries we have looked at, there are no restrictions on who may submit a complaint, and we believe this to be healthy. Complaints must be signed and give a postal address. They must also be accompanied by evidence. Currently the Commissioner does not formally accept complaints submitted by email, though she will assist a complainant submitting in this way if she is of the opinion that the complaint is material. This insistence on hard copy is out of step both with public opinion and general House of Commons policy, and we recommend that (subject to appropriate checks on the identity of the complainant) the Commissioner should continue to accept only those complaints which are made in writing, but should make no distinction as to the format of that written complaint—i.e. that she should be enabled to accept complaints made by e-mail or via her website.

**Communications between Commissioner and MP**

159. When the Commissioner has decided to open an inquiry, she writes to the MP concerned. Sir Bob Russell said that this letter arrived without a ‘confidential’ marking, but this would have been contrary to the Commissioner’s practice. We believe that the Commissioner’s office makes every effort to ensure that communications with MPs are confidential and timely but would ask the Commissioner to review her practices to see if any improvement can be made.

160. In this context we note that Chapter 4 of the Guide to the Rules makes explicit the duty on an MP to co-operate with the Commissioner in any investigation. The Committee has regarded failure to co-operate as an aggravating factor when considering memoranda. Nonetheless, for the avoidance of doubt, we put on record that should a Commissioner, in our view, make unreasonable demands on an MP we believe that this Committee would not hesitate to say so. The same would apply to a complainant.
Publicity

161. MPs have suggested that they are subject to an undue level of reputational risk and that there is no praise for MPs found to have behaved properly.\textsuperscript{144} This is not unique to MPs: it is common to all regulated professions, although MPs are exposed to greater, and more persistent, levels of media attention than many.

162. The Commissioner is careful to avoid exposing MPs and their families unnecessarily to media attention, and she does not disclose the names of MPs against whom she has received a complaint unless and until she is satisfied that there is sufficient evidence to warrant her opening an inquiry, at which that stage she puts the name of the MP—though not of the complainant—on her website. It is not unusual, however, for the complainant to publicise the complaint, and the Commissioner’s staff will always confirm, if asked, whether she has received a complaint; if she has not decided whether to open an inquiry they will say she is considering the complaint.

163. The name of the complainant is made public only when the Commissioner has prepared a memorandum for the Committee or made a rectification decision. The decision to withhold the complainant’s name was originally made at the request of MPs, who felt that to release it would only increase the publicity accorded to a complaint which had not at that stage been upheld. We appreciate that some complainants might be deterred by the fear of publicity. However, we believe that equity would be served by publishing the complainant’s name. \textbf{We recommend that unless the Committee, after discussion with the Commissioner, decides otherwise, and subject to the usual protection against harassment and victimisation, the name of the complainant be made public at the same time as that of the MP. We recommend that this should be done unless in particular circumstances the Committee, or a sub-committee, agree that this should not happen.}

Time-scales

164. Not only do MPs have to deal with the publicity surrounding a case but cases can take a considerable length of time to resolve. The time taken by the Commissioner to complete an inquiry varies. In 2013–14, the range was from 30 to 408 days.\textsuperscript{145} Some MPs complained about this, but it does not compare unfavourably with the time taken in some other systems.\textsuperscript{146} We note also that an appeal system (see para 150) could only extend the length of time taken. In some cases, examination of the evidence appended to the Commissioner’s memoranda shows extended intervals between the sending of and response to her letters, so in some cases the remedy may be in the MP’s own hands.

\textsuperscript{144} SSC0018
\textsuperscript{145} Parliamentary Commissioner for Standards Annual Report for 2013–14, HC 354
\textsuperscript{146} Eg Q213
6  Media matters

165. If the House of Commons standards system is to carry credibility with the public, then the public must be helped to understand it. At present there is frustration on both sides: the Committee can be disappointed by the portrayal of its decisions and the media can be unhappy with the way the Committee publishes and explains these decisions. We believe that the solution must lie partly with the House authorities and partly with the media.

166. The sub-committee took evidence from James Landale, Chair of the Parliamentary press gallery. He referred to a “natural reluctance of the media to participate in something that normally they observe and report”.147 We believe, nonetheless, that those media representatives who are in the privileged position of working in Parliament have a moral responsibility to assist with making clear to the public how the House standards system works and what it does—and does not—do. Inaccurate media reports damage the standing of MPs and of the House and are hard to correct. Recently the Committee’s urging of IPSA to implement greater transparency in its complaint-handling process was interpreted as MPs lobbying for increased secrecy.148 The public deserves better.

167. Without seeking to blunt the critical function of the media, we believe the Committee should work to make it easier for journalists to report accurately on its work. The Committee’s existing practice is to release reports without comment. This, as witnesses pointed out, is now unusual. David Howarth noted that “Even the Supreme Court now regularly puts out press releases explaining its decisions”, and suggested that it was better to put out a press release explaining a decision than have to give further explanation the following day “in the wake of the misrepresentations in the press”.149

168. Peter Riddell summed up the current practice and how he felt it could be improved:

The tradition is that the Committee releases its reports at 11.30, 12, or whenever. There is no briefing of the press; it is just done. It goes to the House—that’s it. I know it’s difficult to do anything else, but in the modern communications world, I would suggest that the Chair of the full Committee and the Clerk, when they release the report, have a briefing, which will obviously have to be guarded, to explain what happened with the lay members and why there was a disagreement about some of the findings […] At present, the way it comes out is almost designed to create misunderstanding. Practically no other documents are released in that way. It is difficult to do, and I know there are a lot of sensitivities, but if you say there is a problem and you are looking for solutions, that might be a solution.150

147 Q97
148 Article in Daily Telegraph 15 December 2015 Commons watchdog will publish names of MPs facing expenses investigation. An apology was subsequently published.
149 Q157
150 Q20
169. James Landale agreed: “I think the problem at the moment is that the report is left to stand on its own. Personally I think that is a mistake.”\(^{151}\) He went on to advise the Committee that few documents are released that way these days, and that if a media briefing was considered then:

You have a whole spectrum of options open to you, from a pre-briefing and an embargoed copy put out the night before. Most Select Committees put out their reports the day before and, by and large, they are stuck to. There are occasionally incidents when somebody writes up the story a day ahead. We all tell them not to and get annoyed with them, but by and large those embargoes can be kept to. On a daily basis, we are trusted with these kinds of embargoes across Government and across political parties. It is not 100% fool-proof, but by and large it works. That means people have time to read and understand. In extremis, you could have something called a lock-in. \(^{152}\)

170. The then Leader of the House, and the Shadow Leader, were somewhat more cautious about the Committee engaging with the media. Andrew Lansley was frustrated: “That people don’t read the report and then complain that they don’t know things is not the Committee’s fault.”\(^{153}\) The MP members of the Committee on Standards do, after all, have the opportunity to comment in debate in the House in due course. However, Angela Eagle accepted that

You have to be open-minded about how to deal with the demands of the media as they are evolving and answer requests for information in a calm and collected way. All I would say is that it is up to the Committee to decide whether in certain circumstances it might be appropriate to issue a press release or a statement, given that reports are often complex and rules are often more complex still. It is important for public understanding that the Committee’s decisions are communicated in a way that is not sensationalist and is devoid of the kind of emotion and colour that you often get at those times. Even given the context of the Committee’s role as an adjudicator, I would be open to it thinking about how that might best be done.\(^{154}\)

171. Should the opportunity arise in the rest of this Parliament we will consider how we could provide more notice and information to the media in respect of reports. We would hope that our successor Committee will continue this approach, provided that it has no adverse consequences.

172. In addition to requesting a more effective, and more open, process for the briefing of the press in advance of the publication of adjudication outcomes, James Landale also wanted more openness during an investigation:

\(^{151}\) Q103  
\(^{152}\) Q104  
\(^{153}\) Q61  
\(^{154}\) Q61
We as the media are trying to work out how serious a matter it is. We sometimes find it quite hard to get information out of the Committee machinery about very basic and innocent logistical things: what is the time frame for this; how long do you expect it to go on; what are the actual parameters and, if a Member has broken a rule, where can you find the rules that apply to the area of that allegation? It is that sort of basic thing where we would be very grateful for anything that could help us.155

173. Following guidance from the Committee, which itself followed some unhappy experiences, the Commissioner’s office is cautious in responding to press inquiries, though they will confirm, on request, whether a complaint has been received (which does not, of course, mean that it has been accepted for investigation); as noted above (para 140) the Commissioner will not at that early stage release the name of the MP or the complainant. We are aware of the reasons for this caution, but believe the time may have come to experiment with a little more openness. We urge the Committee in the next Parliament to work with the Commissioner in discussion with media representatives whether it might be possible to be more informative towards and more proactive with the media.

174. When MPs who are the subject of a memorandum from the Commissioner appear before the Committee, they give evidence in private, though the transcript is subsequently published. There is a question as to whether a hearing before the Committee on Standards should be held in public. From the media’s perspective, James Landale urged the Committee on Standards to “Be more open. Be more transparent. Hold more hearings in public, if you can.”156 (Hearings are in fact relatively rare events.) He argued that court reporters understand the judgements given, and provide better reports, because they have sat through hearing the evidence in the case themselves.157

175. MPs were less sure about the value of open hearings. Richard Caborn and Bill Wiggin thought that they should be open; Sir Bob Russell was unsure. Richard Caborn said that “I would put my position into the public domain. Whether that is the case for everybody is obviously a decision that you will have to ponder.”158 Bill Wiggin noted that “there is no private if you are under investigation. It is all in the public domain. It is for the benefit of the Committee if you choose to meet in private.”159 Sir Bob Russell thought that the Member under investigation should have a say in whether the hearing is in public “I think the person against whom the complaint has been made should have the right to request a public hearing. The decision would always be in public, of course; I am talking about the inquiry.”160

176. David Howarth felt that an oral hearing in public could reassure the public that the Committee is dealing appropriately with the issues when making decisions; but that the

155 Q101
156 Q100
157 Q100
158 Q189
159 ibid
160 ibid
question of public hearings was “very difficult” and that they “would be pretty horrible for the people involved”. He added that “You could not act in public without giving an opportunity to reply”. Other witnesses agreed that publicity about cases could be hard on the person investigated, particularly if they were subsequently cleared, but felt that this was a necessary evil. There is, perhaps, a difference between the professions and MPs in this respect: there are a great many doctors, solicitors and veterinarians but far fewer MPs, and the media attention on the latter is generally more. It is most unlikely that an investigation could be kept secret even if there were a wish to do so.

177. While courts (mostly) do hold their hearings in public their proceedings are covered by the Contempt of Court Act 1981 and are not, as yet, broadcast. This prevents sensationalised reporting which might create “a substantial risk that the course of justice […] will be seriously impeded or prejudiced”, though the threshold is high, particularly in civil proceedings. The Contempt of Court Act applies to all stages of the process: it is engaged not merely by the hearing itself but by the arrest or similar stage in criminal proceedings and in civil proceedings applies from the point when the date of a hearing is set down. Judges may impose reporting restrictions on decided cases, where there is a danger that reporting evidence might prejudice future criminal proceedings, even where evidence has been given in open court. There is no equivalent protection for Committee proceedings. The Committee hearing is only part of the House’s disciplinary system. If the Committee recommends a punishment such as suspension the matter must subsequently come to the floor of the House. Holding a hearing in public might improve public understanding: conversely, the publicity attendant on such a hearing might affect the House’s final decision.

178. James Landale noted there might be a question of breach of privilege if reporting was prejudicial; not only is this an uncertain and cumbersome procedure, we do not wish to censor journalists and nor do we believe the House would wish to do so.

179. We invite the media to engage in discussion with the Committee to consider how the risk of prejudicial reporting might be overcome.

180. We note that the Standards Committees of local authorities in England and Wales (when they were required to exist, and where they still exist) are required to hold hearings in public unless they can justify the exclusion of press and public by applying a public interest test (under Section 100 of the Local Government Act 1972). Where press and public are excluded, good practice would be that an official liaises with the press and public about the facts, outcome, and reasons for verdict, as soon as practicable after the conclusion of the hearing so that the fullest practicable information can be reported at the earliest practicable time. Parliament has, therefore, legislated for a presumption of openness in the hearings of standards cases for elected members of local authorities.

161 Q160
162 ibid
163 Q212
164 Q126
181. We believe that, if the MP concerned wishes, hearings should be held in public, but we recognise the potential difficulties in having public hearings as a matter of course. If the press can suggest appropriate safeguards, we recommend that our successor Committee considers holding public hearings for a time-limited period in the next Parliament. The Committee has the power to prevent public hearings being broadcast, and we believe it should be ready to exercise that power if disciplinary hearings are held in public.
7 Wider Leadership

Leadership: taking standards seriously

182. Leadership is important for the enforcement and reinforcement of ethical standards. As Richard Thomas reminded the Committee, “Leadership is one of the seven Nolan principles and, in some ways, the most important because, without that, nothing happens.”\(^{165}\) Having considered the House of Commons system for propagating and maintaining high standards, we conclude that with some adjustments it is fit for purpose. As our witnesses made clear, however, compliance through fear is no substitute for a cultural acceptance that MPs must exemplify high standards. Andrew Lansley said:

> We are building on a culture of greater compliance and we now need to build a culture of positive understanding of the Nolan principles. That is beyond compliance. Openness, selflessness, objectivity and leadership are issues that go beyond the culture of compliance.\(^{166}\)

183. The Commissioner wrote:

> I do not think it is over-stating the case to say that moving from a culture of compliance with detailed rules to one of more active engagement with ethical issues and principles is fundamental if the objective is to increase public belief in the ethical standards operating in this sphere of public life. This is far easier said than done.\(^{167}\)

Achieving high standards

184. The achievement and maintenance of that cultural acceptance cannot be attained through rules, codes, and procedures alone: it requires leadership from all corners of the House of Commons. While the House has a responsibility, as an institution, to provide leadership, however, the structure of leadership is, as Angela Eagle reminded the Committee, “a very diffuse structure; it is not a top-down, hierarchical structure … there are lots of accountabilities, and the electorate’s decision is final, in my view”.\(^{168}\) We explore these sources of ethical leadership here.

185. The UK political system is still largely based on party allegiance. Political parties are important for preparing candidates for political life long before they become MPs. Ideally, an introduction into the standards required of MPs should begin even before someone becomes a candidate. With a few exceptions, candidates are selected by their parties. Even though political parties cannot hope to replicate the lengthy acculturation and formal training required of candidates for the professions, induction into the requirements of the Code of Conduct for MPs should begin at this stage, and we were pleased to learn that such

\(^{165}\) Q39

\(^{166}\) Q46

\(^{167}\) CCS0023

\(^{168}\) Q45
education does indeed form part of the selection process. Andrew Lansley made the point that the party whips have a role in the education of candidates. David Howarth, for example, who was an MP and is now a member of the Electoral Commission, in itself part of the ‘standards ecosystem’, told us that “parties have every incentive to select candidates of the highest integrity, because if you do not you end up being punished.” Indeed, given that the Electoral Commission is part of the standards ecosystem, it is important that candidates become ethically aware long before they become MPs. The Electoral Commission issues guidance to candidates and elected MPs. We consider the Commission should include links to the House of Commons Code and Guide in its guidance to candidates and welcome its willingness to do so.

186. The party whips also have a clear role in supporting their MPs. Peter Riddell’s view was that Whips, who have an overt disciplinary function, should combine this with exercising leadership on ethical standards questions: “The party Whips should have a role of reminding their flocks what the rules are and what they should not do.” Therefore, “guidance can be given and reinforced by the party Whips. People go to the Registrar to clear things up.” Angela Eagle also stressed the role of parties and whips: “in the Labour party’s case the national executive committee and the standing orders of the parliamentary Labour party are all sources of potential disciplinary conflict if behaviour gets out of line with what is expected”, adding that the role of the whips “is not all about imposing party discipline and forcing people to vote the way the political party in question has decided to vote”—it extends to any rule-breaking or conduct that might bring the party into disrepute: in such cases, the Labour Party “have a system of administrative suspension, which the General Secretary would announce, pending review of what had happened”.

187. Traditionally, also, the whips have a pastoral role, but there was some criticism of how it was exercised. Laura Sandys said:

There should be much more of an early warning system. That is not about candidates—it is about MPs. With candidates, too, Labour headquarters and Conservative central office should have an understanding that they are putting people, particularly first-time MPs or first-time candidates, in an unusual position. It is not a position that is natural to most people. For the reputation of the party as much as for the individual, there might be a little more of a role on the pastoral side—and just watching. I can tell you which people are on the edge at the moment, but I am not sure sometimes that the wider organisation is identifying that.
James Arbuthnot, a former Chief Whip, agreed with Laura Sandys: “That really should be the role of the Whips.”

188. The Party Whips are also well-placed to link the standards of behaviour expected from MPs with the need, which we have articulated above, for these standards to be inculcated upon prospective MPs.

189. Party leaders are a key influencer of MPs’ attitudes and behaviours. Notwithstanding the diffuse sources of authority in the House, Ruth Fox’s view was that party leaders are an essential source of ethical leadership for MPs:

Ultimately, the source of authority for most MPs comes right down from the top, and that is party leaders. Until they take it more seriously and engage with the detail, I do not think we can expect everyone else to follow.

Party Leaders can reinforce standards by encouraging their parties to adopt their own rules for the conduct of MPs.

190. The risk, however, in looking to party leaders and whips for leadership on standards matters is their focus on electoral advantage. As James Arbuthnot said:

That was what happened over the expenses system. Everybody was trying desperately—at least the party leaders were—to put themselves in a better position to win the next election, rather than trying to sort out an issue with the behaviour of MPs. That did not go down well with Members of any party. It did not go down particularly well with the electorate either.

191. By dint of their job titles, the Leader and Shadow Leader of the House can be expected to have a role in standards-setting across the parties. In evidence they were clear that, though they were sources of leadership “we are not the definitive source of leadership in this area.”

Andrew Lansley said:

I see the role of Leader of the House—there are many sources of leadership in the House, but this is mine in particular—as being about enabling the House and facilitating the process by which the House can itself give expression to these principles.

Angela Eagle’s view was:

I certainly do not regard myself as some sort of shadow CEO of the House with the kind of executive responsibility that you would accept in a company. The House is a

175 Q155
176 Q47
177 Q86
178 Q149
179 Q46
180 Q45
much more diffuse organisation, and there are many points of moral authority and power in the House. With all due respect to Andrew, I certainly would not say that they emanate from him or me. We do our best in the context we are in, but we are in multiple contexts.

... I have my own role with colleagues in emphasising that they ought to take cognisance of these things and go to the appropriate induction events, and all of that, and in talks in general that they should take it seriously. I think they would have to be quite blind to what has been going on in the last few years not to take it seriously.181

192. The Committee on Standards itself could become a key player in promoting ethical conduct through explaining the nature and consequences of unacceptable conduct, and through the engagement of MPs as a preventative measure, as Andrew Lansley argued:

It seems to me, on the face of it, that the House looks to the Standards Committee to be a source of that kind of impetus. It might be that you would think in terms of the Standards Committee not only imparting a view about what standards are expected, and about what the consequences would be where people fall down on that in individual cases, but about a continuous process of engagement with Members of the House in terms of what standards are expected, to avoid having cases that illustrate it by virtue of breaches.182

We support the idea that, in the next Parliament, the Committee on Standards should develop its voice as a promoter of ethical conduct by MPs, and recommend that it should draw on examples from the professions and other legislatures in doing so.

193. Individual MPs are important as role models for their colleagues. Greg Power commented that:

politicians—this is true everywhere—learn how to be politicians by watching what other politicians do. It is often the culture, the precedent and the practice that shape how Members of Parliament will behave. That is true everywhere, and especially so here where the tradition is so strong. There is a very strong parliamentary culture about what is wrong and what is right, and I think there is a general acceptance about that, which is a real strength of the system.183

Angela Eagle told us that the Labour Party provides “a sort of buddy system, so that you have somebody who has got experience of being in here to give advice and support to new people who come in.”184 It is not just a question of senior MPs mentoring those who are newly-elected. We believe that the one-third of MPs elected in 2010, who are less-

181 Q45
182 Q47
183 Q75
184 Q47
entrenched in the old ways of doing things in Parliament, who may have come from a background where they have previously been subjected to a formal Code or to the need for regulatory compliance, and all of whom have had the advantage of having seen the expenses scandal from the outside, have a role to play in changing the culture of the House. We believe that there is a role for senior backbenchers to guide their fellow MPs in good conduct, but also for more recently-elected MPs to bring their perspectives for the benefit of longer-standing MPs.

194. However strong the ethical culture of the House, there will be disputes about standards, either in general terms, or in particular cases. While we support the idea that the Committee on Standards might take the lead that Andrew Lansley thought appropriate, it is the House as a whole which sets the rules and decides the system. The House, as a whole, needs to support the system. The House also needs to support the Committee given the responsibility for implementing that system. All too often, it fails in this. The party leaderships have a particular responsibility here. They do not have to comment on individual cases dealt with by the Committee, but it is their responsibility to understand the framework which the House has put in place, and to explain and support actively the rationale for that framework. If they consider change is necessary, they should explain why in dispassionate terms. They should not give way to the temptation to exploit short term controversies on particular cases for political advantage.

**Formal induction**

195. There was general acceptance of the importance of proper formal induction for MPs about the standards of conduct expected of them. Andrew Lansley said “I think that [cultural acceptance] comes from a proper induction process, early in a Parliament”. The House provides formal induction for new MPs, but the difficulty has been getting them to take advantage of it at a time when they are being bombarded with new experiences. As Laura Sandys put it:

> It is interesting how inductions are done. In companies they would stagger them so that you would end up with a six-month period. What we had, which I know was extremely good, was all in the first week. You cannot absorb anything

Melanie Sully told us that “You’ve got to get MPs to see. They have to get something out of it”. Greg Power concurred: “MPs have to believe that there is a need for some sort of restriction, and that it is going to solve a problem. They have to agree that there is a problem in the first place, and that this is a potential solution to it.” He elaborated on the appropriate context of ethics induction:

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185 Q46
186 Q153
187 Q70
188 Q70
In order for a code of ethics and training to work, there has to be a perception that there is a potential problem that MPs need to respond to and that this is a way of resolving it. When you look at the option of training or courses, most Members of Parliament, like most people in any profession, will ask, ‘How is this going to help me do my job better?’ It must be pitched to Members of Parliament in a way that says to them, ‘This is going to help you in doing constituency work, in working in Parliament and in shaping your voters’ expectations of you.’ That is all part of a code of ethics and conduct.\(^\text{189}\)

196. In the light of its experience from 2009/10, the House is making some steps in the right direction. The induction planned for the new Parliament will be very focused. We were pleased to learn that although this initial process will be reduced to four elements, one of those will be a session on standards, in which former members of the Committee on Standards, including its lay members, will be invited to participate. The Committee on Standards in Public Life goes further in recommending that, to ensure that induction has the desired impact, induction on standards issues should be part of a wider integrated programme of continuing professional development for MPs.\(^\text{190}\) We note that, with 35 per cent of all MPs being new to the House of Commons in 2010, the lack of attendance at these induction sessions was a missed opportunity to help more than one third of MPs gain full awareness, early on, of the standards system. We support the attempts being made to improve the effectiveness of MPs’ induction in 2015.

197. Another way in which the House as a whole could exercise leadership is to consider whether any sanctions (such as withholding allowances or limiting access to facilities) should apply to MPs who have not attended standards training, or otherwise that such lack of attendance at training should be counted against any MP who is later found to have breached the Code of Conduct. The Committee on Standards in Public Life has noted that it is “increasingly difficult” for MPs to justify opting out of induction sessions, not least as MPs legislate on the standards required from members of other bodies.\(^\text{191}\) Some of our witnesses discussed the question of making training strictly required; but whilst compulsion can compel attendance, true engagement with the issues comes only if the sessions are themselves compelling. As Angela Eagle told us, the better route is to make induction ethical standards “literally unmissable”.\(^\text{192}\) Education for MPs on ethical standards should be convenient, compelling, and continuous.

**Facilitating the work of the Committee**

198. The House as a whole could assist the Committee to take a more leading role is to facilitate MPs’ attendance at its meetings. We note that the lay members commented in their first-year report on the difficulties experienced by MPs in finding the time to attend committee meetings. We appreciate the demands on MPs’ time, but believe that it would

\(^{189}\) Q\text{96}

\(^{190}\) CSPL, ‘Ethics in practice’ – a report by the Committee on Standards in Public Life (2014), para 3.13.

\(^{191}\) CSPL Ethics in Practice (2014), para 2.43.

\(^{192}\) Q\text{46}
enhance the House’s reputation for taking standards matters seriously if the party leaderships accepted their responsibility for ensuring that the Committee could run smoothly, by, for example, ensuring that MP Members of the Committee on Standards were not required to attend General Committees when the Committee on Standards was meeting. Similarly, we hope the Speaker would make allowances, despite the convention of the House that an MP who has not been present from the beginning of a debate is less likely to be called to speak, for MPs detained by a meeting of the Committee on Standards.193

199. One way in which the House as a whole can show that it takes standards seriously is to debate the Committee’s reports in a timely way. By convention, reports on the Conduct of MPs are debated without delay, but the same cannot be said of wider reports, of which, if our suggestions about our successor Committee are adopted, there will be more in future. We particularly deplore the failure of the business managers to timetable a debate on the Committee’s Third Report of Session 2012–13, recommending changes to the Code and Guide,194 and the related Third Report of the current session.195 We note that Government Departments are expected to respond to the Reports of Departmental Select Committees within two months and recommend that a variant of the same principle—that is, that a debate be scheduled within two sitting months of publication—to allow the House to respond within two months, be adopted in respect of Reports from the Committee on Standards.

In conclusion

200. Whatever the debate outside the House, systems are only as good as the people who operate them, and who operate within them. We note that leadership in the House in every respect is diffused, and that ethical leadership is no exception to this. That diffusion, however, must become a strength rather than a weakness, and if each source of leadership supports the standards system appropriately it will be strengthened immeasurably. In the end, it is the responsibility of each and every MP, whatever his or her role in the House, to assume personal responsibility for his or her own good conduct as an MP and also for the good name of the House of Commons as an institution. Public confidence will grow only when this is so.

193 An MP who has not been present for the whole of a debate is less likely to be called to speak than one who has.
The Standards System in the House of Commons

MONDAY 2 FEBRUARY 2015

Members present:
Peter Jinman, in the Chair
Mr Tom Clarke  Sir Nick Harvey
Mr Geoffrey Cox  Sir John Randall
Mr Dominic Grieve  Dr Alan Whitehead

The Standards System in the House of Commons

The Sub-Committee considered this matter.

Peter Jinman left the chair and Mr Tom Clarke was called to the chair.

Draft Report (The Standards System in the House of Commons), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 200 read and agreed to.

Appendices agreed to.

Summary, as amended, agreed to.

Resolved, That the Report be the Report of the Sub-Committee to the Committee.

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 Committee.
Formal Minutes of the Committee on Standards

TUESDAY 3 FEBRUARY 2015

Members present:
Kevin Barron, in the Chair
Sir Paul Beresford
Mr Christopher Chope
Sharon Darcy
Mr Dominic Grieve
Sir Nick Harvey
Peter Jinman
Walter Rader

Draft Report (The Standards System in the House of Commons), proposed by the Chair, brought up and read.

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

Paragraph 1 read, amended and agreed to.
Paragraphs 2 to 21 read and agreed to.
Paragraph 22 read, amended and agreed to.
Paragraphs 23 to 150 read and agreed to.
Paragraph 151 read, amended and agreed to.
Paragraphs 152 to 200 read and agreed to.
Appendices agreed to.

Summary, as amended, agreed to.

Resolved, That the Report be the Sixth 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.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned to a day and time to be fixed by the Chair]
Appendix 1: Local Government Standards Regimes in England

Introduction

The Committee has asked me to prepare a note outlining the ethical standards frameworks that apply to local government in England. This note seeks to do that by detailing the evolution of the local government standards regime and then addressing some of the themes raised in other evidence submitted to the Committee. This note draws on research into the evolution of the standards system in English local government, and on my experience with Oxford City Council (a district council of 48 elected councillors representing 151,900 residents), as an Independent Member of its Standards Committee (2008–12) and as an Independent Person of the local authority (2012–), and I am grateful to two of my colleagues from 2008–12 for their helpful comments; however, the views expressed here are my own and represent neither the views of Oxford City Council nor of its Standards Committee past or present.

Background: trust in local government standards

Local government in England has, by international standards, generally enjoyed very high standards of conduct on the part of elected Members.¹ The Poulson scandal led to two Royal Commissions and a National Code of Local Government Conduct, first issued in 1975, which was applied to elected councillors in England, Wales, and Scotland. From 1990, that Code had a statutory footing, and breaches of the Code were treated as maladministration. When, in the mid-1990s, the Nolan Committee (Committee on Standards in Public Life, CSPL) turned its attention to Local Government, they found that “scarcely anyone had a good word to say” about this National Code.² Nolan found that local government was constrained by rules and by a system that lacked clarity: the National Code bore “little or no resemblance” to the best practice formula, which the Nolan Committee had already developed, i.e.:

- codes should be short, clear statements of principles, not rule books; the organisation within which a code operates should have an important role in revising it, or adapting it to its needs; sanctions should be clear, appropriate, and consistent; there should be a firm commitment to educating and training people in the code so they understand why it is there, as well as what it says³

¹ Cm.3072-1 (Committee on Standards in Public Life, Standards of Conduct in Local Government in England, Scotland, and Wales (3rd report, Cm.3072, July1997), Vol.1), Nolan to Prime Minister: “Despite instances of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct.”
² Cm.3072-1, 17.
³ Cm.3072-1, 17.
Moreover, Nolan cautioned that the detailed rules-based arrangements in force at that time was in fact a risk to standards rather than a support for them: "We have commented in our previous two reports that attempting to enforce good conduct through detailed rules, especially where these are based on the presumption that people will naturally misbehave, can itself contribute to wrongdoing. Nowhere is this more evident than in local government." A new Code and a new standards regime – a fresh start – was needed.

That new standards regime came into being in 2001, when the Local Government Act 2000, which set out a new ethical framework for local authority elected members in England and Wales, came into effect. The Government published a model Code of Conduct, and local authorities were required, as a minimum, to adopt all elements of this model Code into their own Code of Conduct. A non-departmental public body, the Standards Board for England (SBE, later Standards for England) was established to promote and maintain high standards of conduct and to receive and investigate complaints of misconduct by councillors. Separately (to ensure a distinction between the investigation and adjudication of standards complaints) an Adjudication Panel for England was formed. Each principal local authority had to create a standards committee, tasked with promoting and maintaining high standards of conduct and facilitating Member engagement with the Code of Conduct.

Nolan had argued for the local regulation of standards issues; but the Government had preferred that complaints should be handled at arm’s length – i.e. by the SBE – not least to ensure consistent complaints-handling. Although some investigations by SBE were handed back to local authorities for determination, the centralisation of investigations led to much criticism for SBE: substantial delays in resolution of complaints; marginalisation of local procedures; over-weighting of trivial complaints and lack of local knowledge; inability to resolve complaints through mediation or informal means. The 2001 regime was highly-centralised.

Local resolution of standards complaints finally came into force in May 2008. The Local Government and Public Involvement in Health Act 2007 had amended the Local Government Act 2000 by providing for the local reception and assessment of allegations of the breach of a council’s Code of Conduct, and the Standards Committee (England) Regulations 2008 outlined requirements for the conduct of a council’s members and requirements for handling problems. Councils were required to augment their Standards Committees in order to equip them to take a much more pro-active role in promoting standards and in ruling on questions of ethical conduct. Although the standards regime was set down in legislation, and the Standards Board’s role in setting standards and promoting good practice was often appreciated, there was nonetheless substantial variation in local practice. The number of Parishes within an authority’s remit, as well as the local

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4 Cm.3072-1, 3.  
5 Cm.3072-1.  
political attitude to petty or tit-for-tat complaints, resulted in variance in the volume of complaints and the complexities of resolving them; some elected members in some authorities saw standards committees as a nuisance.

Under the Standards Board regime, some council Standards Committees took on functions other than monitoring standards of conduct, for example the oversight and review of the council’s Codes of Practice, or the monitoring of service and other complaints made to the council. Such activities meant that a Standards Committee understood more fully the workings of the council as a whole, meant that external input was brought to bear in reviewing and analysing these issues, ensured that the Standards Committee met regularly even when no adjudication on complaints against councillors was required, and helped raise the profile of the Standards Committee elsewhere within the local authority.

There had been substantial criticism of the 2001 Standards Board regime. For example, Eric Pickles, as Shadow Minister for Local Government in 2005, called for the abolition of the Standards Board for England. He preferred to rely on existing mechanisms relating to financial accountability (through District Auditors) and service provision (the ombudsman), alongside prosecution in the courts for breaches of the criminal law. Some of this discontent related to delays and other failures which were remedied under the 2008 changes (such as slow resolution and the disempowerment of local Standards Committees). Nonetheless, the Coalition Government’s Programme for Government committed to ending the Standards Board regime, which it regarded as “a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy.” This long-term criticism resulted in clauses of the Localism Act 2011, which abolished SBE and the national model Code of Conduct, and imposed new requirements on local authorities and councillors; but the “lighter-touch” regulatory regime has not been universally welcomed.

**Codes of Conduct**

Model Codes of Conduct for different levels of local government (district, parish) were issued by the Government in 2001. A review on behalf of the SBE in 2005 indicated that “the code enjoys broad support, although significant issues remain”. An SBE review in 2006 resulted in substantial changes to the model Code being introduced in 2007. A particular criticism, which was addressed, was the requirement to withdraw from discussion of matters on which a Member has a prejudicial interest. The 2007 Model Code was designed to promote transparency and prevent conflicts of interest (through its treatment of personal and pecuniary interests and questions of improper advantage), and

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7 HC Debs, 1 Feb 2005, Col.229WH.
to advance the fair and effective functioning of the authority (through its strictures against bullying, the compromising of officers, and the obstruction of access to information, and its underlying of principles of equality and anti-discrimination law).

To some extent, a single and mandatory code was helpful. It meant that councillors who were elected members of more than one council were subject to the same standards regimes in each. It enabled Independent Members and council officers from different authorities to exchange information and best practice. SBE was able to provide training and guidance across the English local authorities, which was generally helpful and much-appreciated by the standards committee. A consistent approach to standards helped foster the development of a national standards culture.

Since 2012, local authorities have been required to promote and maintain high standards of conduct by their Members. There is no national model Code. Instead, it is mandatory for local authorities to adopt principles-based regulation – a Code of their own choosing, based on the Seven (Nolan) Principles of Public Life. The Department for Communities and Local Government has published an “illustrative text” and other bodies (notably the Local Government Association and the National Association of Local Councils) have also published model codes. Certain matters of financial misconduct were made criminal offences.

**Elected Members’ public lives and private lives**

Under the 2001 Code, most provisions of the Code did not have effect on actions undertaken “other than in an official capacity”, except that conduct which brought the Member’s office into disrepute were covered by the code whether made in an “official capacity, or any other circumstance”.

The leading case involved comments made by Ken Livingstone (then Mayor of London) to a journalist having left an official function. The allegation – with which the Adjudication Panel agreed – was that Mr Livingstone’s conduct had breached the provision that “A Member must not, in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrespect”. The finding in the case was that Mr Livingstone was not acting in his official capacity, as he had left the official function, but that he had nonetheless breached the provision. However, in the High Court Mr Livingstone argued that the Code should not cover conduct from a Member’s private life. The High Court ruled that the Code could apply to private acts when they were linked to the position as a councillor, and therefore that unlawful conduct was not necessarily covered by the Code. Collins J observed in his judgement in the case: “There is a danger in regarding any misconduct as particularly affecting the reputation of the office rather than the man. … Misuse of the office can obviously bring disrepute on the office, but personal misconduct will be unlikely to do so.”

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The Committee on Standards in Public Life’s Tenth Report, published a year before the Livingstone case was concluded (2005), had highlighted the difficulties of making a distinction under the Code between private and public life, commenting that:

The relationship between standards of conduct by public office-holders acting in their official capacity, and conduct in their private lives has been a difficult and contentious issue over the years. The Committee in its First Report drew a significant difference between, for example, sexual misconduct and financial misbehaviour. We indicated that while rules could be usefully drawn up for the latter, they could not for the former. This has remained the case in all of its subsequent reports and recommendations. The Committee has concentrated on standards of conduct in respect of public, rather than private life except where private interests, financial or otherwise could give rise to a potential conflict of interest with an office-holders’ public role. The public attitudes research published by the Committee indicated that the public place a lower priority on public office-holders setting a good standard in their private lives than they do in respect of public conduct.12

When the Code was revised in 2007, it was clarified that the disrepute provisions covered serious criminal offences conducted in the Member’s private capacity. The broader question of how “disrepute” ought to be defined was left unaddressed. For the Code to be engaged other than by acts of a serious criminal nature, the Member complained of, at the time of the alleged misconduct, had to be holding the office of councillor and also to be acting in her or his official capacity.

**Leadership on ethical standards**

The changes to the ethical framework from May 2008 put Standards Committees “at the heart of” the system.13 Standards Committees generally met six times each year to receive investigatory reports and monitor standards more generally.14 With the augmentation of the Independent (Lay) Membership of Standards Committees, the Committees came to have a key role in providing ethical leadership to councils. At Oxford City Council, Independent Members of the Standards Committee showed leadership by attending the standards training given to Members; officials ensured that training was run across multiple parallel sessions to maximise the ability of councillors to attend, with further dates being offered; councillors themselves showed commitment to that training by adopting a rule that failure to complete the Code of Conduct training by a specified date resulted in the Councillor having her or his basic allowance cut by 15 per cent until she or he had completed the training.

The relationship between the Committee and the party groups was also essential in developing the standards culture. In Oxford, the Independent Chair and Vice-Chair, the

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12 Cm.6407 (Committee on Standards in Public Life, *Getting the Balance Right: Implementing Standards of Conduct in Public Life* (10th report, January 2005)), Para. 3.88.
14 Ibid., 77
Monitoring Officer, and party Group Leaders, met together informally every six months. It was important to get buy-in from the groups as to the importance of ethical conduct generally and the standards system in particular. There was no formal agenda, no minutes were taken; but it was an opportunity to refract through recent cases and to share good practice. It was not a case of saying “come on, this is how you behave”. Elected Members of the Standards Committee could also be a conduit for generating understanding between the Committee and Councillors. Ethical leadership was a partnership between the Standards Committee (especially through its Lay Members), officers, and key elected Members.

That Leadership is essential for the good functioning of local government standards can also be seen as a weakness of the system. In its 2013 report, the CSPL welcomed the requirement for local authorities to adopt a Code of Conduct based on the Nolan Seven Principles of Public Life; but observed that “Due to the emphasis on local ownership of standards we would expect the new regime, like the previous one, to function well in those areas where party leaders are prepared to provide the necessary leadership and example. It is likely to do less well where such leadership is inadequate.” This tendency for ethics regimes to work best where good standards already exist was found by Cowell, Downe, and Morgan, in research conducted in mid-2008 on the ethical framework for local government in England, who observed the ethical framework had had a positive impact on the ethical conduct of local politicians; but the nature of this impact varies according to “the social, political and organizational context of local government”. The attitudes of elected Members, and political groups, are crucial to the effective functioning of any formal standards regime mechanisms.

**Lay Members**

In the period 2001–08, many local Standards Committees included Lay Members, often coopted, but there were no requirements for the inclusion of Lay Members. Research for SBE in 2005 found that 66 per cent of Standards Committees were chaired by an Independent Member and 28 per cent contained members of the local executive; the composition of the committees ranged from three to 15 members, with the average being seven members including two or three Independent Members. CSPL in 2005 urged legislation to require that Standards Committees have both an Independent Member as chair, and a majority of Independent Members as a whole. Some local authorities, however, worried about finding enough suitable candidates to fill these roles.

From 2008–12, Standards Committees were required to comprise at least 25% Independent (Lay) Members (all of whom had a vote); no more than one elected Member

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17 Cited in Macaulay and Lawton, n.10 above, 480.
18 Cm.6407, paras 353–5.
19 Macaulay and Lawton, n.10 above, 480.
could be from the authority’s Executive, and at least two Members must be from local parish councils – nationally, the bulk of complaints related to Parish Councillors, and there was a utility in having Parish members of a standards committee, both to provide local knowledge and to engage parishes with standards issues. Oxford City Council came to have 12 Members on its Standards Committee: 5 elected, 5 Independent, 2 Parish; previously-coopted Lay Members themselves went through the proper recruitment practice under the new regime and new Lay Members were recruited. A Standards Committee and any sub-committees had to be chaired by an Independent (Lay) Member; their quorum was three. Some local authorities were able to recruit multiple, high-calibre Independent Members; others struggled to find volunteers to fill their 25% minimum quota.

The Localism Act abolished the role of Independent Members of Standards Committees, but created the role of Independent Person. Each local authority must appoint, by a proper process, at least one Independent Person, who can be consulted by the Monitoring Officer, and also by the accused Member and the Standards Committee (if the authority has one) itself. The role of the Independent Person is advisory, and does not have a vote on any council committee.

The reduction of lay involvement in the new standards regime, compared with its predecessor, has been criticised by CSPL, which reported of the requirement to consult with an Independent Person that “We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.”

The investigatory process

Under the Standards Board regime from 2001 to 2008, all complaints against local councillors were made directly to SBE in the first instance. SBE’s Adjudication Panel determined whether or not to investigate. SBE informed an elected Member that they were subject to a complaint only after its initial assessment had taken place (i.e. once the decision whether or not to refer for investigation had been completed). That was in line with other bodies’ practice at the time; and there were arguments both for and against earlier notification. Yet, it was broadly seen as unfair not to inform an elected Member when others were told. Any investigation was carried out on behalf of SBE by one of its Ethical Standards Officers (sometimes helped by local authorities; Monitoring Officers), though some cases were thereafter referred back to the local authority for determination.

From 2008 to 2012, under local determination, complaints were received in the first instance by the local authority concerned. Complaints had to be put in writing and could be made in hard copy or by e-mail. Anonymous complaints could not be considered unless there was accompanying documentary or photographic material giving evidence of an especially serious matter. A complaint, on being received, would be referred to an Assessment Panel (in effect, a sub-committee of the Standards Committee), comprising two Lay Members and one elected Member. This would determine, in effect, if there was a

21 HC60-1, Para 47.
case to answer (does the Code apply? if so, does it merit investigation?). If there was, it
could refer for “alternative action” (resolution without investigation – e.g. Member
training; reconciliation between a Member and a complainant; etc – falling short of a
formal sanction following a full investigation) or authorise an investigation. The
Assessment Panel could decline to consider complaints which appeared to be outside the
scope of the Code, or not sufficiently serious, or were untimely, or lacked sufficient
information, or appeared to be malicious or politically-motivated. However, it was
important, too, that the Assessment Panel took a complete view of whether the conduct
alleged might constitute a breach of the Code: it would not have been right to require that a
complainant specify the particular aspect of the Code which had been breached (though
most attempted to do so). A separate similarly-constituted Review Panel could conduct a
re-hearing of the Assessment Panel’s decision if it was appealed. If the case was referred for
investigation, members of these Panels were not disbarred from adjudicating on the final
report, since they had made no finding about the substance of the allegation.

Where a matter was referred for investigation, the Monitoring Officer (a council official,
usually a senior lawyer or similar) or someone appointed by them would carry out that
investigation and make a report to the full Standards Committee for adjudication, and if
necessary determination of sanction. Councils could outsource their investigations, for
example to neighbouring local authorities’ officers, to avoid an internal conflict of interest
or to provide the necessary administrative capacity to ensure a timely investigation. The
role of the Monitoring Officer, and their relationship with the Standards Committee, was
crucial not only in resolving standards complaints but in promoting compliance with the
Code and so avoiding complaints in the first place: Cowell, Downe, and Morgan, found
that, overall, “compliance with the code was enhanced where councillors trusted the person
responsible for overseeing the ethical framework, and the judgements that they made.”

Some Monitoring Officers nationally had been concerned by a potential conflict of duty
between their two duties relating to the standards process after devolution from the
Standards Board: (a) to advise the Council and individual elected members about
appropriate standards of conduct; (b) to advise the Standards Committee, especially in
relation to alleged breaches of the Code of Conduct, and to investigate such alleged
breaches. To avoid this, some Monitoring Officers chose to farm out specific advice in
response to individuals’ requests for guidance to junior colleagues (so as to avoid the risk,
during an investigation, of being called to adjudicate on their own advice) whilst retaining
a leadership role in general standards training.

From 2012, local authorities are no longer required to have a Standards Committee, and
the role of the Assessment and Review Panels has been discontinued. The Monitoring
Officer will often consult the Independent Persons before taking a view on whether or not
to take no action, to resolve matters informally, or to refer the case for investigation; but
she or he may decide to act alone at the initial stage (the Monitoring Officer must consult
the Independent Persons following a formal investigation). A formal investigation may

result in a hearing before a committee of the authority (the Standards Committee where one exists). Some local authorities have established other mechanisms, for example having a Standards Panel, composed of an Independent Person and others who are not Members, to consider an investigation report and to advise the relevant committee.23

**Support for Members investigated**

Support for Members accused of a breach of the Code has, for the most part, been informal (peer support from their fellow Members), although they were not barred from seeking legal advice. Under the 2012 regime, an accused Member may, additionally, consult with one or more of the local authority’s Independent Persons to seek their advice; but the need for Independent Persons to remain objective means that they cannot represent or otherwise make a case on behalf of an accused Member.

**Conduct of hearings**

Under both the 2008 and the 2012 regimes, where a case resulted in a hearing to consider an investigation report, the accused could attend the hearing and make representations to the Standards Committee, or make representations in writing. Witnesses could be called, and examined, as required. That Committee was required, before 2012, to have an Independent Member Chair and a substantial Independent membership. Since 2012 hearings take place before Standards Committees (where they exist), which are required to be politically-balanced and to have no voting Independent (Lay) Members: such committees, however well they function, are open to the criticism that they can be perceived as being regular, politically-constituted, committees.

**Holding hearings in public.** Nolan’s 1997 recommendation included that Standards Committees should hear cases in public (with their deliberations in private); a disciplinary hearing should have before it a written report prepared by an officer; affected parties should have a right to be heard.24

From 2008–12, guidance from SBE advised that, in most cases, the public interest in transparent decision-making would outweigh the interest of an elected Member in limiting the publication of an unproved allegation. Usually, therefore, a written investigation report was circulated and considered at a meeting of a Standards Committee held in public. The Standards Committee could exclude the press and public from a meeting, and exempt any papers from publication, by applying a public interest test,25 and some cases were heard in closed session according to these provisions. Since 2012, if a local authority holds standards committee hearings, the same applies: the presumption is that they are to be held in public, unless a public interest test can be satisfied.

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24 Cm.3072-1, 45.

25 Under Section 100A(4) of the Local Government Act 1972.
Assessment Panel and Review Panel deliberations under the 2008–12 regime were held in private. These private deliberations of sub-panels containing lay and elected members, in the presence of the Monitoring Officer, meant that members of the Standards Committee learned a great deal: they were able to explore issues and take advice, debating half-formed views in private before coming to a collective view which was made public.

**Appeals procedures.** Under the 2001 regime, a Member was able to appeal an Adjudication Panel for England decision to the High Court; any case referred for determination by a local authority’s Standards Committee could be appealed to the Adjudication Panel for England. Under the 2012 procedures, a determination can be appealed through the courts.26

**Sanctions**

Until 2012, sanctions covered a very wide spectrum. The sanctions (from 2001 imposed by SBE and from 2008 by the local standards committee) included: (i) censure; (ii) restriction of up to 6 months on a Member’s access to the premises and/or resources of the Authority; (iii) full, or partial, suspension of the Member for up to 6 months; (iv) a requirement for a Member to make a written apology to a specified sanction; (v) a recommendation that a Member undergo training. The First Tier Tribunal could suspend or disqualify a Member for up to 12 months.

Since the Localism Act, the only sanctions available to a local standards committee are to censure the Member or to remove that Member from a council committee. Some new matters – deliberately withholding or misrepresenting a financial interest – have been made specific criminal offences, and so are subject to potential prosecution in the Magistrates’ Courts by the Crown Prosecution Service (these are summary only, and the maximum punishment on conviction is a fine and/or disqualification from holding office for up to 5 years). A survey of 74 local authorities conducted in autumn 2013 showed that 85 per cent of authorities thought the sanctions under the new regime were too weak, and only 2 per cent thought they were too tough.27

Under the Localism Act regime, there is a significant lacuna in sanctions between censure and criminal prosecution. CSPL observed in 2013 that “The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. While censure may carry opprobrium in the political arena it is often considered unacceptably lenient by the public relative to other areas of their experience. Coercion of other members or officers is one category of offence with which it will be

26 On 30 August 2013, the Administrative Court granted permission to appeal against a Localism Act standards regime decision under the terms of the European Convention on Human Rights (including freedom of expression; standards committee is neither independent nor impartial).

difficult to deal adequately under the new arrangements.” 28 Moreover, concerns have been expressed that the lack of “teeth” of local authority standards committees undermines the standards system and makes it less likely that an accused Member will cooperate with any investigation.29

**Standards Committees and the Media**

Under local determination from 2008–12, Standards Committee findings were often published as “decision notices” as soon as practicable after the end of the Committee’s hearings, or after an Assessment Panel had decided that there was no case to investigate. They included: (i) the name of the Member complained of; (ii) the name of the complainant; (iii) a summary of the complaint; (iv) a summary of the process of investigation; (iv) the areas of the Code engaged; (v) a written decision and the reasons for this. On occasions when a motion to exclude press and public from a hearing was being considered, good practice suggested that the press should be permitted to attend the start of the meeting to make representations arguing against such a motion; where such a motion was passed, good practice suggested that a reasoned decision notice and an appropriately-redacted version of any reports considered at the hearing would be made available as soon after the meeting as possible, and the press liaised with. Under the Localism Act’s procedures the outcomes of a committee’s deliberations on a report are usually be reported in a similar way.

**Criticisms**

It seems that membership and sanctions go hand-in-hand. The risk of being subject to a substantial sanction forces the engagement of all elected members against whom allegations are levelled. A robust process with a substantial independent (lay) element ensures that any findings or sanction cannot be dismissed as a political stitch-up. Both effective sanctions and lay membership, therefore, give the standards system credibility.

A common feature of the 2001 and 2012 regimes is that they were introduced too quickly, with the regulations and orders required to make the regimes functional being passed only just before the new system came into effect (2012 regime) or, indeed, some time afterwards (2001 regime).

The standards regimes may not have increased trust in local government. Macauley and Lawton, noting that “standards of conduct in English local government are generally very high” and that 2004 MORI polling data found that 35 per cent of people trusted local councillors, concluded that “significant reforms have been implemented, with seemingly little effect on public perceptions, to solve a problem that did not appear to exist in the first place”, though they noted that these data on the trust of local councillors “are, of course, relative and are an improvement on the 18% that trust politicians generally.”30 Overall,

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29 e.g. ‘Lawyers in Local Government echoes concerns over standards regime’, *Local Government Lawyer*, 02 September 2013.
30 Michael Macaulay and Alan Lawton, n.10 above, 474.
public distrust of local government had not, by 2006, been reduced by the 2001 standards regime.

Chris Ballinger

15 December 2014
Summary of Standards arrangements, 2001-12 and 2012-

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Implementation date</strong></td>
<td>2001 (amended by the Local Authorities (Model Code of Conduct) Order 2007, which devolved assessment to councils from May 2008)</td>
</tr>
<tr>
<td><strong>Code of Conduct</strong></td>
<td>Statutory Code of Conduct for Members (including Independent Members of the Standards Committee). Code is engaged only when a person is acting in an official capacity. Each local authority can, if it wishes, add requirements to (though not subtract from) the statutory code, although the Standards Board for England advised caution in this.</td>
</tr>
<tr>
<td><strong>Sanctions</strong></td>
<td>Maximum sanction is suspension (or partial suspension) as a councillor for up to 6 months (originally 3 months). First-tier Tribunal can suspend for up to 12 months. Other sanctions include censure, apology in a specified form, reconciliation, requirement to complete training.</td>
</tr>
<tr>
<td><strong>Standards Committee</strong></td>
<td>Required by the Act. Chaired by an Independent Member. Must have minimum of 1 Independent Member and 2 political members. If larger than 3 people, Committee must have minimum 25% Independent Members. Tasks are to assess initial complaints (i.e. does complaint merit investigation), review these assessments, and to conduct hearings following an investigation.</td>
</tr>
<tr>
<td><strong>Independent Members</strong></td>
<td>Voting members of the Standards Committee (at least 25% of that Committee), including the Chair. Voting members on assessment panels and review panels (i.e. sub-committees, which must also have an Independent Member as Chair).</td>
</tr>
<tr>
<td><strong>Investigation of complaints</strong></td>
<td>Initially centralised – all complaints sent straight to the Standards Board for England (later Standards for England) which considered complaints from 2002. From 2003 SBE had power to refer results of investigations to councils for determination. More responsibility given to councils under the “local filter” from 2008. Initial assessments/reviews held in private; full hearings presumed to be heard in public.</td>
</tr>
<tr>
<td><strong>Appeal Mechanism</strong></td>
<td>Subject to Judicial Review. First-tier tribunal can hear appeals. Local Government Ombudsman has some jurisdiction (remedy for personal injustice).</td>
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Appendix 2: Parliamentary self-regulation: Australia (House of Commons), Canada (House of Commons), New Zealand and the USA

Introduction

This briefing note focuses on the five regulatory systems named above; other systems were referred to during the evidence session on 15 July 2014. The systems covered here all have one factor in common: MPs and Representatives do not have immunity for criminal matters and parliamentary privilege is restricted to matters directly relating to the House, not private proceedings.

This note is based on regulations adopted by the legislatures themselves, including Standing Orders (the source of most rules) and occasionally legal acts. Other regulations—including rules on party financing, electoral systems etc.—also have impact on parliamentary conduct, but they are less relevant to the Subcommittee’s inquiry.

Parliamentary codes of conduct: shapes, forms, and purposes

Most codes of conduct have two elements: principles which underpin the desired behaviour and more detailed rules regulating specific aspects of behaviour. They also share a similar goal—to maintain public trust in the legislatures—and a minimum standard: all these parliaments have rules regarding conflict of interest (private v. public), arrangements for MPs to declare financial interests and for making those declarations available to the public. Other than that, the form, scope and detail of codes vary widely: some legislatures have not adopted comprehensive codes of conduct while others feature detailed codes supported by manuals and advisory opinions of the relevant Registrar, Commissioner, or Committee. Some legislatures choose to provide advice on more matters than others: the U.S. Senate, for example, provides advisory guidance on services for constituents.

Australia and New Zealand have not yet adopted comprehensive Codes of Conduct for all parliamentarians (though they do have Codes for Ministers which apply to MPs serving in government). Rules governing their lower Houses regulate behaviour in the chamber and establish Members’ duty to declare pecuniary interests. Australia’s regulations on conduct are contained within the Resolution adopted in October 1984 and last amended in October 2008. In New Zealand, Standing Orders 164-167 require members to register financial interests on an annual basis.

The categories of registrable interests in Australia and New Zealand are quite similar to those in the UK. In Australia, the Resolution obliges MPs to declare financial interests grouped into 14 categories, including real estate owned, directorships of companies, gifts, private travel, savings and liabilities. In New Zealand, here are 13 categories of registrable interests, ranging from controlling interests in companies to accepting gifts, travel and
hospitality, and payments for activities. The list is exhaustive: If a category of interest is not listed in the Standing Orders, then a Member is not required to declare it, regardless of whether it could give rise to a conflict of interest.¹ Summaries of the registries are available online.

In Australia, MPs and their spouses and dependent children have to register pecuniary interests; in New Zealand, this only applies to MPs.

While the New Zealand code of conduct is restricted to pecuniary matters, there have been repeated calls for a much more comprehensive code to be adopted. On 12 June 2007, four minor Parties – the Greens, Maori Party, United Future and the ACT Party – announced they were signing a voluntary Code of Conduct and invited other Members to follow suit. The intention was that if enough Members signed, it could be adopted by the Parliament and included in the Standing Orders.

The voluntary Code includes the following principles:

- Working for the public good
- Showing respect for Parliament
- Not accepting inducements
- Not advancing private interests
- Avoiding conflict of interest
- Ensuring proper use of public resources.²

The voluntary Code did not gain support of major parties in Parliament. A similar fate befell the consultation draft Members of Parliament (Code of Ethical Conduct) Bill introduced in 2012 by Labour MP Ross Robertson.

The Canadian House of Commons adopted the Conflict of Interest Code for Members of the House of Commons by Standing Orders on 29 April 2004, further amending it in June 2007, June 2008 and June 2009. The Code states that its main purposes include:

- to ‘maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the House of Commons as an institution’;
- to ‘demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case’.³

¹ Registration of Members’ Interests. Requirements of the House of Representatives (Australia), Resolution Adopted 9 October 1984, para 2; Standing Orders of the House of Representatives, New Zealand 2005, Appendix A, pp122-130
³
The Code declares that service in Parliament is a ‘trust’; accordingly, the main principles on which the Code is based include honesty, integrity, and adherence to standards higher than merely staying within the law. The Code also exhorts MPs to avoid the conflict between public and private interest and, should such conflict arise, to resolve it ‘in a way that protects the public interest’.4

The Code includes rules on avoiding conflict of interest and registering private interests, a prohibition on accepting gifts (except when offered as a normal expression of ‘courtesy and protocol’), and rules on declaring sponsored travel to be either avoided or, if arising from a Member’s duties, to be disclosed. There is, however, a minimum threshold of value for assets and liabilities which needs to be exceeded for the interest to be declared: $10,000. Declaration of private interests applies to the Members, their spouses, and dependent children.5

In the United States, both the House of Representatives and the Senate have formal codes of conduct. They are shaped by what the House Ethics Manual states is a guiding principle of government: “public office is a public trust”. The Code of Ethics for Government Service also applies to Members of both Houses; it contains the following main principles:

- Adhere to the highest moral principles;
- Give a full day’s labor for a full day’s pay;
- Never discriminate unfairly by dispensing special favors;
- Never accept favors or benefits that might be construed as influencing the performance of governmental duties;
- Make no private promises binding on the duties of office;
- Engage in no business with the Government inconsistent with the performance of governmental duties;
- Never use information received confidentially in the performance of governmental duties for making private profit; and
- Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.6

In the House, the main document is the Code of Official Conduct, adopted as the House’s Rule XXIII. It applies not only to Members of the House, but also to its officers, delegates,

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3 Conflict of Interest Code for Members of the House of Commons (Canada), para 1
4 Conflict of Interest Code for Members of the House of Commons (Canada), para 2
5 Conflict of Interest Code for Members of the House of Commons (Canada), paras 12-24
6 The Code of Ethics was unanimously passed by the United States Congress on June 27, 1980, and signed into law as Public Law 96-303 by the President on July 3, 1980. See http://www.law.cornell.edu/cfr/text/34/part-73/appendix-lii1, accessed 20 July 2014
Resident Commissioners and employees. Its provisions are again quite similar to those adopted by the UK Parliament: they pertain to receiving and declaring gifts, maintenance of strict separation between official and campaign funds; sponsored travel; etc. The Code requires that Members of the House of Representatives and some higher-paid employees declare a number of interests, including any extra-parliamentary income (even if relayed to charities), real estate possessed, assets and liabilities, trusts and any arrangements for future employment. Spouses and dependent children of Representatives must also declare their pecuniary interests.

The Senate rules, contained within the Senate Code of Official Conduct, are similar to those adopted by the House of Representatives when it comes to scope. Categories in which rules apply include gifts, privately sponsored travel, campaigns, conflicts of interest, and financial disclosure. They apply, similarly, to Senators and senior officials and employees. However, the Senate rules are based to a greater degree on prohibitions rather than declarations: for example, it the Ethics Committee restricts Senators’ participation in commercial ventures to sitting on non-fiduciary, advisory bodies rather than simply expect a declaration of an interest.

Interestingly, the Senate Ethics Committee also takes a stand on constituency services. In an advisory opinion, the Senate’s Ethics Committee states:

Senators have broad discretion regarding whether and how to help their constituents. However, Senators are not permitted to make decisions to provide or deny assistance based on party affiliations and contributor status. In addition, the Committee has recommended Senators consider whether the agency is performing a quasi-judicial, adjudicative, or enforcement function and should not contact an agency involved in such functions. Before contacting an executive branch agency on behalf of constituents, offices should first contact the Congressional liaison for that agency to see if such intervention would be permitted at that time.

It adds:

The Committee has recommended that prior to intervention with a government agency, a Member should consider both the merits of the constituent’s case, as well as the kind of agency involved, and the nature of the agency proceedings. A review of the case might include consideration of whether the Senator’s office would perform the same service for any constituent similarly situated; the extent to which the proposed action or pattern of action deviates from normal office practice; and, if the Senator or staff member knows that an individual is a contributor, the history of donations by a contributor and the proximity of money and action, i.e., how close in

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7 Delegates are non-voting members elected from U.S. territories and Washington, D.C. There is currently one Resident: the representative of Puerto Rico, who can sit on Committees and is elected in the same way as a Congressman, but does not have a vote in final legislative proceedings.
8 Committee on Ethics, House of Representatives, Specific Disclosure Requirements, accessed 25 July 2014
9 U.S. Senate Select Committee on Ethics, Conflicts of Interest, accessed 24 July 2014
10 U.S. Senate Select Committee on Ethics, Frequently Asked Questions, accessed 24 July 2014,
time the Senator’s official action would be to his or her knowledge of or receipt of contribution(s).\textsuperscript{11}

‘Permissible interventions’ with federal agencies include requests for information or a status report, urging of prompt consideration, arranging for interviews or appointments, and calls for reconsideration of administrative responses which the Member thinks are weakly supported by statutes and applicable considerations. There are two types of ‘prohibited interventions’: any intervention in an executive agency’s enforcement, investigative, or quasi-judicial proceedings; and ex-parte communications, i.e. communications with an agency employee involved in decision-making with the view to influence said decision, and without proper notice to all parties. The Committee also advises that Senators should refrain from intervening in pending court actions (unless they apply to the court to intervene as amicus curiae, or friend of the court).\textsuperscript{12}

Table 1: Codes of Conduct

<table>
<thead>
<tr>
<th></th>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
<th>US House of Representatives</th>
<th>US Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code of Conduct?</td>
<td>No, but there have been attempts to introduce it</td>
<td>Yes</td>
<td>No, but a voluntary Code has been introduced by some parties</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Register of Members’ Interests?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Adopted by Standing Orders or by law?</td>
<td>Standing Orders</td>
<td>Standing Orders</td>
<td>Standing Orders</td>
<td>Rule XXIII (equivalent of Standing Orders)</td>
<td>Rules 34 through 43 of the Standing Rules of the Senate (equivalent of Standing Orders)</td>
</tr>
<tr>
<td>What main principles are they based on?</td>
<td>None explicitly named</td>
<td>Honesty, integrity, and adherence to standards higher than the letter of the law</td>
<td>None explicitly named</td>
<td>‘public service is public trust’</td>
<td>‘public service is public trust’</td>
</tr>
<tr>
<td>What types of rules do they contain?</td>
<td>- rules re behaviour in the Chamber - regulation of conflict of interest</td>
<td>Regulates mostly pecuniary interests and conflict of interest issues: - income from sources other than the House;</td>
<td>- rules re behaviour in the Chamber - regulation of conflict of interest</td>
<td>Rules mostly pertain to conflict of interest: - receiving gifts; - sponsored travel; - separation between electoral and office-related funds; - restrictions on participation in</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{11} Ibid.

\textsuperscript{12} U.S. Senate Select Commitee on Ethics, \textit{Constituent Service}, accessed 24 July 2014
The Standards System in the House of Commons

<table>
<thead>
<tr>
<th>travel;</th>
<th>gifts;</th>
<th>private interests;</th>
<th>release of confidential information</th>
<th>electoral and office-related funds, etc.</th>
<th>commercial interests.</th>
</tr>
</thead>
</table>

An interesting addition is inclusion of guidance on constituency service.

Who oversees and implements the system? External/internal input and the role of lay members

Most self-regulation arrangements reviewed rely on what the OSCE’s Office for Democratic Institutions and Human Rights refers to as a ‘hybrid’ system: a combination of intra-parliamentary (an oversight committee, for example) and external scrutiny (commissioners, lay members in oversight institutions), although the balance between the two differs from parliament to parliament. As a rule, external bodies act as investigators in cases of alleged breaches, while internal committees perform the role of adjudicators.

There are also systems—such as Australia and the U.S. Senate—where external input into scrutiny is minimal or non-existent. In Australia, the relevant oversight committee is the Committee of Privileges and Members’ Interests, assisted by the Registrar of Members’ Interests (currently the Deputy Clerk of the House). The Committee Chairman is required to table the Register of Members’ Interests in Parliament as soon as feasible after the start of Parliament and to make it available for inspection (scans of original documents have recently been put online). The Committee can also consider complaints regarding Members’ interests. The Committee reports to the House when it sees fit, but is obliged to report on its operations in connection with the registration and declaration of Members’ interests during the year as soon as possible after 31 December each year. There have been no reports this Parliament. There is also no lay input into the scrutiny mechanisms.

The Committee of Privileges and Members’ Interests has 11 members and an overall Government majority: the Leader of the House or his or her nominee, the Deputy Leader of the Opposition or his or her nominee, five government and four non-government Members. When the Opposition is composed of two parties, the non-government Members need to include at least one member of the smaller opposition party.

In the U.S. Senate, the Code is administered and enforced by the Select Committee on Ethics, which is non-partisan and has three members from each party. The Committee is authorised to ‘receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate, relating to the conduct of

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13 OSCE Office for Democratic Institutions and Human Rights (ODIHR, 2012), Background Study: Professional and Ethical Standards for Parliamentarians, p65
14 Registration of Members’ Interests, Requirements of the House of Representatives (Australia), para 3
15 Committee of Privileges and Members’ Interests, Role of the Committee, accessed 23 July 2014
16 Committee of Privileges and Members’ Interests (2013), House of Representatives Report concerning the registration and declaration of members’ interests during 2012, para 3
individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto. The Committee can also investigate unauthorized disclosure of intelligence information by a Member and to investigate complaints regarding use of franking (mail) privileges, and to recommend additional rules to the Senate if it considers these necessary to maintenance of good standards. It also reports violations of the law (which include providing false information to the Committee) to state or federal authorities (this is done by a majority vote of the full Committee). It can also interpret the rules and provide advice to Members, officers and employees. There is, however, no lay input.

The New Zealand system is somewhat similar to the Australian one, though it does feature a greater degree of external input. The Register of Members’ Pecuniary Interests is prepared by the Registrar and complaints can be referred by the Speaker to the Privileges Committee. The Committee does not have any lay members. The Registrar is the Deputy Clerk of Parliament; however, the position is delegated to an external appointee. This allows the Clerk to advise the Privileges Committee on matters related to the Register without also advising members who had been referred to the Committee. The Registrar is responsible for providing advice to members and compiling a summary of returns, which is published online and in booklet form and presented to the House. Full text of the returns is not made public.

The most significant form of external input into the system is the role of the Office of the Auditor-General (OAG), who is an Officer of Parliament. Copies of the returns are provided to the OAG for review and inquiry. The review is not a detailed audit; rather, it involves checking whether all members have submitted a declaration and whether it covers the required elements. However, the OAG can also launch inquiries into Members’ declarations following their own review, concerns raised in the media, a complaint from a member of the public or from another MP. The results of the inquiry are reported to the House.

The voluntary Code of Conduct adopted in 2007 by four minor parties was to be policed by the parties themselves: if a Member breached the Code, they would be censured by their own party.

The Canadian House of Commons features arrangements somewhat similar to those in the UK. The Office of the Conflict of Interest and Ethics Commissioner is ‘responsible for helping appointed and elected officials prevent and avoid conflicts between their public

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17 Select Committee on Ethics (1978), Rules of Procedure, Section 2 para 1
18 Ibid., Part 1
19 Queensland Parliament, Members’ Ethics and Parliamentary Privileges Committee (2009), Report No. 98 – Report on Study Investigation by the Committee, para 4.1
20 Controller and Auditor General, Register of Pecuniary Interests of Members of Parliament, para 9.11
21 Controller and Auditor General, Register of Pecuniary Interests of Members of Parliament, paras 9.12-9.22
22 Queensland Parliament, Members’ Ethics and Parliamentary Privileges Committee (2009), Report No. 98 – Report on Study Investigation by the Committee, para 4.3
duties and private interests'; the Commissioner’s responsibilities relate to administering the Conflict of Interest Code for Members of the House of Commons. Mary Dawson, the first Commissioner, took office on 7 July 2007 (similar offices were, however, in existence before).

The Commissioner’s key responsibilities include:

- Providing confidential advice to Members of Parliament about how to comply with the Code: the Office provides guidelines and advisory opinions, can organise information sessions if requested and maintains regular contacts with individuals affected by the Code;
- Reviewing MPs’ confidential reports on activities, assets and liabilities;
- Making information available: while the details of Members’ disclosures remain confidential, the Office prepares and makes publicly available summaries of the information, which include general information on Members’ assets, liabilities and activities;
- Investigating possible contraventions: the Commissioner can conduct investigations at the request of another Member, at the direction of the House of Commons, or pursuant to her own initiative; and
- Reporting to Parliament: the Commissioner submits an annual report on the administration of the Code. She is also required to prepare a list of sponsored travel by Members of the House of Commons and submit it for tabling in the House of Commons.  

The Commissioner is an officer of Parliament and enjoys the privileges and immunities of the House of Commons and its Members when carrying out her duties and functions. He or she is appointed by the Governor in Council (in consultation with all recognized parliamentary party leaders) for a seven-year renewable term. The Office is a separate employer and has its own Code of Values and Standards of Conduct for its employees.  

The Standing Procedure and House Affairs Committee oversees the Office of the Commissioner; however, it only considers the annual reports of the Office, not results of investigation into particular cases (the procedure is detailed below). The Committee does not have any lay members and the majority of members are from the government caucus (currently six out of ten are Conservative).  

The U.S. self-regulation system for the House of Representatives has two pillars: the Office of Congressional Ethics (OCE) and the House Committee on Ethics. The OCE, established in 2008, is “an independent, non-partisan entity charged with reviewing allegations of misconduct against Members, officers, and staff of the United States House of

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25 Standing Procedure and House Affairs Committee, accessed 21 July 2014
Representatives and, when appropriate, referring matters to the House Committee on Ethics. Its members are private citizens who cannot be members of Congress or work for the federal government. It is governed by a Board made up of eight lay members (six voting members and two alternates), usually lawyers or other professionals with expertise in ethical governance and investigations. The OCE Board members are appointed by the Speaker of the House and the Minority Leader: each appoints three voting members and one alternate. The Speaker and the Minority Leader need to be in agreement as to their respective appointments.

The Committee on Ethics is non-partisan, with five Democratic and five Republican members. It interprets the House Code of Conduct, provides advice and training, and conducts inquiries into alleged breaches of the Code.

The creation of the OCE followed what the New York Times called ‘[t]he dismal record of the House Ethics Committee trying to investigate and judge its own colleagues’. The immediate impulse was the Abramoff lobbying scandal, which saw accusations of bribery and improper influence peddling in the House of Representatives. Since its creation, the OCE has earned plaudits from some and criticism from others, who alleged arrogance and lack of understanding of the role of elected representatives.

The degree of external input into parliamentary regulation is also reflected in the range of those seen as entitled to bring complaints against MPs. In the Canadian system, members of the public cannot bring complaints against an MP; in New Zealand and the United States they are entitled to do so. In the House of Representatives, however, a complaint from a fellow Representative can get fast-tracked to the Committee, omitting the OCE stage.

There is little direct involvement of political parties in regulating standards. The exception is the U.S. Congress, where the Ethic Committees of both Houses can make a recommendation to a Member’s party conference (the equivalent of a parliamentary party) regarding their seniority or positions of responsibility on committees. The party could demote a Member in response to ethical concerns; on occasion, they do it even without an Ethics Committee recommendation.

### Table 2: How do self-regulation systems work in other Parliaments?

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<thead>
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<th>US Senate</th>
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26 Office of Congressional Ethics, About, accessed 15 June 2014
29 Office of the Conflict of Interest and Ethics Commissioner (Canada), Investigations Under the Code, accessed 20 June 2014; Controller and Auditor General, Register of Pecuniary Interests of Members of Parliament, para 9.18; Committee on Ethics (2013), Rules, Rule 15
Parliamentary element | Committee of Privileges and Members’ Interests and the Registrar of Members’ Interests | Office of the Conflict of Interest and Ethics Commissioner, with the Standing Procedure and House Affairs Committee considering the Office’s annual reports. | Privileges Committee and the Auditor General. | Committee on Ethics, non-partisan, with five Democratic and five Republican members. | Select Committee for Ethics, non-partisan, with three members from each party. 
--- | --- | --- | --- | --- | ---
Lay input | No | Conflict of Interest and Ethics Commissioner. Complaints and allegations can only be raised by MPs, not the public. | Registrar of Members’ Interests, who is an external appointee; Office of the Auditor General; the public can lodge complaints. | Office of Congressional Ethics, composed of private citizens; the public can file complaints with the OCE. | No, though members of the public can file complaints. 
Direct involvement of political parties? | No | No | No. However, the Voluntary Code adopted by minor parties pointed to parties as enforcers of the Code. | No | Yes, in executing sanctions. 

How the system works, part 1: advice and training

Parliamentary systems analysed here comprise a variety of advice and educational provisions, ranging from minimalistic—where Members only receive advice from the Registrar on registering their financial interests—to comprehensive arrangements for training for new members supported by larger and more formalised advisory services.

Again, Australia and New Zealand are on the minimalist side of the spectrum, with no educational provisions other than the respective Registrars’ prerogative to provide advice to Members. In Canada, the situation is similar, although the Conflict of Interest and Ethics Commissioner does have the prerogative to organise information sessions on the Code and to maintain regular contact with the individuals affected by it (there is no information on whether this actually happens and what the uptake might be). She also regularly publishes advisory opinions and has prepared backgrounders on the Code and compliance processes.

The U.S. House of Representatives and the Senate have the most comprehensive provisions for education and provision of advice. The House Committee on Ethics publishes guidance on ethical rules, including a revised version of the House Ethics Manual. It also provides advice to Members, usually done through the Committee’s Office of Advice and Education over the phone and by the Committee itself in writing. Written opinions issued by the Committee are binding on the Committee, i.e. a Member cannot be censured for following

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advice issued to them by the Committee. The Committee therefore advises Members to seek written opinions in more complicated cases.32

The Ethics Committee also runs mandatory ethics courses for new and returning House staff. Each new employee has to complete ethics training within 60 days of starting work. There are also refresher/CPD provisions for existing staff: all are required to complete one ethics course, live or online, per year. Senior House Staff are additionally required to complete an extra hour of training per Congress (i.e. per two years).33

The Senate’s Select Committee on Ethics has a mandate to develop programmes and materials ‘designed to educate Members, officers, and employees’ about the rule of law and applicable standards. It can also interpret the rules and provide advice to Members, officers and employees, which it does through publication of regular guidelines and advice for Members on specific issues. The Committee also runs a training programme which all new Senators and employees are required to complete within 60 days of commencing their service or employment. Senators are required to verify that all new staff have completed training.34

While Senators are required to complete ethics training pursuant to the Honest Leadership and Open Government Act (2007),35 there is no such requirement for Members of the lower chamber. In July 2014, Representatives Cicilline (Dem) and Rigell (Rep) introduced a bipartisan Ensuring Trust and Honorability in House Services (ETHICS) Act, which, if passed, would make ethics training obligatory for members of the House of Representatives.36

Newcomers to U.S. Congress can also attend The Bipartisan Program for Newly Elected Members of Congress, a four-day, mostly off-the-record series of seminars aimed at preparing new legislators for their duties and run by the Kennedy School of Government at Harvard (an institution which set out to provide education for public management as a profession). There are no specific sessions on ethics, with the programme concentrated on substantive issues of policy such as health, education and the economy. However, the schedule does feature sessions led by more experienced members of Congress who pass on lessons learned, as well as a session on ‘practical civility’ and on communicating with constituents.37

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<th>US Senate</th>
</tr>
</thead>
</table>

32 Committee on Ethics, U.S. House of Representatives, Committee Advice, accessed 15 June 2014
33 Committee on Ethics, U.S. House of Representatives, FAQs About Training, accessed 20 June 2014
34 U.S. Senate Select Committee on Ethics, Frequently Asked Questions – Training, accessed 20 July 2014
35 Section 553.
How the system works, part 2: investigating alleged breaches

Mechanisms of investigation vary according to the nature of the system: in pure self-regulatory systems with no external input investigation and adjudication functions are usually carried out by parliamentary Committees, with the whole House needed to confirm sanctions. In hybrid systems, external bodies such as Commissioners or the OCE conduct investigations and a parliamentary committee acts as adjudicator.

In Australia, complaints regarding conflict of interests and financial declarations are investigated by the Committee of Privileges and Members’ Interests, which reports its findings to the House. It is unclear whether the public can file complaints with the Committee. In New Zealand, the Office of the Auditor General has the mandate to review declarations made by members (mandatory) or to conduct inquiries into potential irregularities (a discretionary function). The OAG can undertake an investigation either following a complaint (members of the public are entitled to lodge complaints) or on its own initiative. The OAG reports findings to the House of Representatives.

There is no specific timeline for conducting inquiries in either country.

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38 Standing Committee of Privileges and Members’ Interests, accessed 15 July 2014
39 Controller and Auditor General, Register of Pecuniary Interests of Members of Parliament, paras 9.11-9.22
In Canada, the Conflict of Interest and Ethics Commissioner is responsible for conducting investigations following a complaint from a Member of the House of Commons or from her own initiative. Upon receipt of the complaint, the Commissioner is required to forward it to the Member who is the subject of the complaint and to afford the Member 30 days to respond. Once the Member has completed his or her response, the Commissioner has 15 working days to conduct a preliminary review of the request and the response and to notify both Members in writing of the Commissioner’s decision as to whether an inquiry is warranted. Inquiries must be conducted in private.\(^{40}\)

There is no set timeline for inquiries. However, a quick look at the inquiries conducted since 2008 reveals that three out of six inquiries took over a year (20 months for the Paradis inquiry, February 2012-December 2013) and three lasted about 6 months (5 months for the Cheques Report, October 2009-April 2010).\(^ {41}\)

The Commissioner’s reports are provided to the Speaker, who tables them in the House. The Member concerned has a right to make a statement (lasting up to 20 minutes) in the House within 10 sitting days of the tabling of the report. The House has to concur in the report by motion (this includes endorsement of any sanctions suggested by the Commissioner), but if no motion to concur is taken within 30 sitting days, it is deemed to have passed such a motion. The House of Commons is authorised to refer a report back to the Commissioner for further consideration, at any point before the report has been considered.\(^ {42}\)

The House has so far used this prerogative in one case. The Commissioner explains in a 2008 report:

> On May 7, 2008, the Thibault Inquiry Report (the Report) was tabled in the House of Commons following an inquiry conducted under the Conflict of Interest Code for Members of the House of Commons (the Code). By letter received on June 9, 2008, the Clerk of the House of Commons sent me a motion adopted by the House on June 5, 2008. That motion, which is set out in its entirety below, referred the Thibault Inquiry Report back to me pursuant to subsection 28(13) of the Code for reconsideration in light of an amendment to the Code adopted by the House of Commons pursuant to the motion.\(^ {43}\)

The Commissioner changed her conclusions following the amendment and the referral: where she had previously found that a member had breached his obligations under the Code of Conduct, she revised the conclusion to exonerate him.

The investigation procedure in the U.S. House of Representatives usually comprises two stages: an OCE review and the Ethics Committee stage. The OCE is usually the first port of

\(^{40}\) Office of the Conflict of Interest and Ethics Commissioner, *Investigations under the Code*, accessed 22 June 2014


\(^{42}\) *Conflict of Interest Code for Members of the House of Commons* (Canada), para 25(13)

\(^{43}\) Office of the Conflict of Interest and Ethics Commissioner, *Response to the Motion adopted by the House of Commons on June 5, 2008 for further consideration of the Thibault Inquiry Report*, p1
call for allegations of misconduct: it receives and conducts the initial investigation of allegations of code breaches. The complaints can come from a number of sources, including the general public. The OCE can either recommend that the complaint should not be investigated or pass it on to the Committee. As explained in the previous section, however, the Committee on Ethics can also launch an investigation without a recommendation from the OCE, and that a complaint either submitted or certified by a member of the House of Representatives can be relayed straight to the Committee.

The OCE review has two stages: a preliminary review, and a second-phase review; the OCE Board must authorize each stage. The preliminary review is limited to 30 days, during which the OCE staff investigates whether a violation may have occurred. A second-phase review is initially limited to 45 days, with the option for the Board to extend it by an additional 14 days. At any point during the preliminary review, four members of the Board may vote to terminate a review.

At the end of the second-phase review, the Board considers a staff report presenting all the evidence and determines if there is a “substantial reason to believe” that the alleged violation may have occurred. According to the OCE’s Rules, a substantial reason to believe exists when “there is such relevant evidence a reasonable mind might accept as adequate to support a conclusion.” If four members agree, the Board may adopt a report that refers the matter to the Committee on Ethics for further review or, alternatively, recommends that the Committee dismiss the matter. In the case of a tied vote, the Board may send the final report to the Committee with the matter unresolved. The Board may also decide that information about the allegations should be referred to another government commission, office, or authority for appropriate action.

The OCE review can last overall up to 90 days.

Except in very limited circumstances, the Committee on Ethics must eventually release the OCE’s report and findings. Public release is required within 45 days, unless the Committee votes to extend this period by an additional 45 days. The release of the report and findings can also be delayed if the Committee decides to create an investigative subcommittee to investigate the matter. In that case, the OCE report must still be released within a year. If the Board recommends dismissal and the Committee also votes to dismiss the matter, the report does not have to be made public. Release of an OCE report may also be delayed when a law enforcement authority that is taking action in the matter requests that the Committee defer the public release.

When the complaint reaches the Ethics Committee, the Chairman and Ranking Minority Member of the Committee make an initial determination as to whether a complaint is in compliance with House and Committee rules. If it is determined that the complaint

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44 Office of Congressional Ethics, How does the OCE start and investigation?, accessed 20 June 2014
45 Office of Congressional Ethics, Process, accessed 20 June 2014
46 Office of Congressional Ethics, Guide to the Office of Congressional Ethics, pp 4-6
47 Office of Congressional Ethics, Process
submitted meets the requirements for what constitutes a complaint, Committee rules provide for notification of that determination to the respondent, and for an opportunity to respond. The Chairman and Ranking Minority Member may establish an investigative subcommittee or make recommendations to the full Committee as to the disposition of the complaint. The rules permit the Chairman and Ranking Minority Member to jointly gather additional information concerning alleged conduct which is the basis for a complaint until the Committee has established an investigative subcommittee or placed the issue of establishing an investigative subcommittee on the agenda of Committee meeting. The length of the review is not specified.48

In the Senate, allegations against Senators are investigated by the Select Committee for Ethics. After receiving a complaint, the Committee first conducts a preliminary review to determine whether there is sufficient evidence to conclude that a violation which is within the Committee’s remit has indeed occurred. The next stage is an adjudicatory review, which determines whether the Member or an officer has indeed broken to Code of Conduct. If it established that a violation did occur, it can recommend (by resolution or majority vote) disciplinary action to the Senate.49

In the majority of systems, there is no formal appeals procedure. However, the Commissioner/Committee investigations are usually concluded by a report being tabled in the House in question and followed by a vote (or, in the Canadian case, tacit acceptance) on recommended sanctions. Thus the House does perform some of the functions that would be expected of an appeals tribunal: it can endorse or reject suggested conclusions and sanctions, or, in the Canadian case, refer the matter at hand to the Commissioner for further consideration.

The only system with an explicitly formulated procedure for appeals is the United States Senate. Within 30 days of the Committee report and recommendations imposing reprimand or restitution being submitted to the Senate, the party under investigation (but not the complainant if the complaint is rejected) can appeal to the Senate in writing; the notice of appeal is printed in the Congressional Record and the Senate Journal. If the motion for appeal is accepted (there is no debate on it), the appeal will be decided on the basis of the Select Committee report and the maximum debate time for it is 10 hours, divided equally between those favouring and opposing the appeal.50

The levels of investigative activity vary for different Committees and other authorised bodies. Australia’s Committee of Privileges and Member’s Interests spends far more time on matters of parliamentary privilege than on those of conflict of interest and ethics: in 2008-2012, it looked into two complaints related to conflict of interest and dismissed both of them.51 In New Zealand, the OAG has conducted inquiries into more general aspects of

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48 Committee on Ethics (2013), Rules, pp18-32
49 Select Committee on Ethics (1978), Rules of Procedure, p 19-30
50 Select Committee on Ethics (1978), Rules of Procedure, p6
51 Committee of Privileges and Members’ Interests, Report concerning the registration and declaration of members’ interests during 2012, para 9; Report concerning the registration and declaration of members’ interests during 2013, para 9; Report concerning the registration and declaration of members’ interests during 2008 and 2009, para 12
parliamentary entitlements, but on into individual MPs. In 2011, the OAG released a report into the use of parliamentary travel expenses, based on alleged wrongdoing of one MP. The report identified shortcomings of the travel expenses system, which were subsequently rectified by the government. In Canada, the Commissioner has conducted full inquiries for 6 complaints concerning MPs since 2008; none of them were concluded with disciplinary sanctions. The Commissioner initiates about 40 inquiries per year, most of which pertain to ministers rather than MPs.

The level of activity seems greater in the US Congress. In 2010-2013, the Senate’s Select Committee on Ethics considered 234 alleged violations. A large majority were dismissed either because they did not fall within the Committee’s remit or because no substantiation was provided; only 23 were proceeded to a preliminary review. Out of those, only two resulted in public or private letters of admonition being issued; no sanctions were recommended.

In 2011-2013 (112th Congress), the House of Representatives Ethics Committee investigated 96 matters and empanelled 2 investigative subcommittees for two separate matters. 27 matters were addressed publicly (most of these were referrals from the OCE) and there were 14 reports to the House. In one case, the committee found that an impermissible gift was received, but found mitigating circumstances and decided to apply no sanctions. It issued four Letters of Reproval (two for Members and two for staff) and twice ordered fines to be paid.

While the OCE cannot recommend sanctions on its own, the publication of its reports can still exert pressure on Representatives, even if the Committee on Ethics does not recommend a sanction. For example, in February 2010 Democrat Charles B. Rangel was made to give up his post as chairman of the House Ways and Means Committee due to the pressure from his party; this was despite the Ethics Committee only issuing a reprimand following Mr Rangel’s acceptance of a free trip to the Caribbean.

Table 4: Investigation and disciplinary process

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<tr>
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<tbody>
<tr>
<td>Who can file complaints</td>
<td>Unclear. Standing orders point to the House and the Speaker</td>
<td>Members of the House of Commons. However, since the</td>
<td>Anyone, including members of the public. No guarantee,</td>
<td>Anyone, including members of the public (only through the OCE). No guarantee,</td>
<td>Anyone, including members of the public. No guarantee,</td>
</tr>
</tbody>
</table>

52 Auditor-General’s Overview, Inquiry into the use of parliamentary travel entitlements by Mr and Mrs Wong, 2011, accessed 20 July 2014
55 U.S. House of Representatives (2013), Select Committee on Ethics, Summary of Activities: One Hundred and Twelfth Congress, pp 3, 27-62
| Who investigates | Committee on Privileges and Members' Interests | Conflict of Interest and Ethics Commissioner | Office of the Auditor General | Office of Congressional Ethic (stage 1) and the Ethics Committee (stage 2). The Ethics Committee can also launch an investigation independently and investigates if a complaint is made or certified by a member of the House. | Ethics Committee |
| Who adjudicates | Committee on Privileges and Interests recommends sanctions to the House | The entire House | The entire House | Ethics Committee can undertake ‘administrative’ action and recommend disciplinary action to the House of Representatives. | Ethics Committee suggests sanctions to the whole Senate, which needs to approve them. |
| Appeals procedure | None | No formal procedure, but the Member can address the House when the report is being considered | None | None | A Senator can appeal to the whole Senate; no procedure for complainants |
| How long do investigations take? | Unspecified | Unspecified, but investigations so far took between 5 and 20 months | Unspecified | OCE review lasts up to 90 days; unspecified for Committee stage | Unspecified |

### What are the sanctions/disciplinary actions?

In most systems, sanctions are recommended by the respective parliamentary Committee and approved—or modified—by the respective House as a whole. The severity and range of possible sanctions differs from parliament to parliament: they range from an ‘administrative’ sanction (usually a letter from a Committee), to censure by the House, to fines and, in very rare cases, imprisonment (this prerogative has not been recently used).

In Australia a Member who fails to declare an interest or makes a false declaration can be found ‘guilty of a serious contempt of the House of Representatives and shall be dealt with
by the House accordingly.’ The Parliamentary Privileges Act 1987 states that the House can impose the following penalties on those found in contempt:

- imprisonment of up to 6 months; or
- fine: up to AUD 5,000 for individuals and AUD 25,000 for corporations.

The House, however, has no power to expel members.57

In New Zealand, the arrangements are similar: Members making false declarations are guilty of the contempt of the House. The House (as a whole) can apply the following sanctions:

- imprisonment (not longer than the session in which the sanction was applied);
- fine (although there is some argument as to whether the House has this power);
- censure;
- suspension;
- expulsion: whether Parliament can expel members is seen as unclear in New Zealand. The Standing Orders Committee has recommended that any power to expel a member be explicitly abolished;
- exclusion from the precincts; and
- apology to the House.58

The Canadian Conflict of Interest Code mentions that the Commissioner may recommend sanctions with regard to a Member found to be in breach of the Code, but it does not specify what these sanctions might be (and the Commissioner has not recommended any sanctions yet). Their imposition is up to the House of Commons as a whole. In cases where the Commissioner finds that a Member breached the Code, but “took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error of judgment made in good faith”, the Commissioner can so state in the report and recommend that no sanction be imposed.59

The Canadian House of Commons also has a role in sanctioning on members who have been found guilty of offences regulated by criminal law and related to bribery, corruption, influence-peddling and breach of trust. If a person is found guilty of these offences and sentenced to more than two years in jail, they become incapable of being elected, sitting and voting in the House. However, the House still has the right to regulate its own premises and disciplining of Members; therefore, even if a Member has been convicted of

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57 Parliamentary Privileges Act 1987, Section 7, para 5; Section 8
59 Conflict of Interest Code for Members of the House of Commons (Canada), para 25(8)
an offense, they cannot lose their seat in the House unless the House votes to suspend or expel them.\textsuperscript{60}

The U.S. House of Representatives has the following sanctions at its disposal:

- Censure;
- Reprimand;
- Condemnation;
- Reduction of seniority (which in turn has influence on appointments to committees);
- Fine;
- Removal or suspension from Committee functions (usually decided and executed by party caucuses);
- 'Other sanction deemed appropriate'; and
- Expulsion, with the concurrence of two-thirds of Representatives.\textsuperscript{61}

If there is suspicion of criminal activity, the matter in question can also be referred for criminal investigation if two-thirds of the House concur.\textsuperscript{62}

A sanction of the whole House follows the recommendation of the Committee on Ethics. The Committee itself has the power to impose administrative sanctions such as issuing Letters of Reproval \textsuperscript{sic} without recommending further action by the full House.\textsuperscript{63}

The Committee can also recommend that sanctions be imposed by the House against an officer or employee of the House. Such sanctions could include:

- Dismissal from employment;
- Reprimand;
- Fine; and
- Other appropriate sanction.\textsuperscript{64}

In the U.S. Senate, the Select Committee for Ethics can issue a report, resolution, or recommendation related to the investigation. It can also issue a letter of admonition if it determines that a violation was inadvertent, technical or insubstantial ('of a de minimis

\textsuperscript{60} James E. Robertson and Erin Virgint, Criminal Charges and Parliamentarians, Library of Parliament (Canada) Research Publicaitons, para 3
\textsuperscript{61} Committee on Standards of Official Conduct, House Ethics Manual, 2008, p3
\textsuperscript{62} Ibid, p3
\textsuperscript{63} Ibid, pp 11-12
\textsuperscript{64} Committee on Standards of Official Conduct, House Ethics Manual, 2008, p3
nature’); this letter is usually private if issued at the stage of the preliminary review and public if issued after an adjudication review. The letters are not considered ‘discipline’.65

In case of a Senator, disciplinary action can include:

- expulsion (if two-thirds of members support it);
- censure;
- payment of restitution;
- recommendation to a Member’s party conference (i.e. all party members in the chamber) regarding the Member’s seniority or positions of responsibility; or
- a combination of the above.66

Possible disciplinary actions toward employees are the same as in the House.

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65 Select Committee on Ethics, United States Senate (2003), Senate Ethics Manual, p15
66 Ibid, p15
Table 5: Sanctions

<table>
<thead>
<tr>
<th>Sanctions for Members</th>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
<th>US House of Representatives</th>
<th>US Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>False declarations can put a Member in contempt of the House. Sanctions include: - imprisonment for up to 6 months; OR a fine: up to AUD 5,000 for individuals and AUD 25,000 for corporations. The House has no power to expel Members.</td>
<td>Unspecified</td>
<td>False declarations can put a Member in contempt of the House. Sanctions include: - apology; - censure; - fine; - suspension; - exclusion from the premises; - expulsion; - imprisonment.</td>
<td>Administrative sanction: Letter of Reproval. Disciplinary measures: - Censure; - Reprimand; - Condemnation; - Reduction of seniority; - Fine; 'Other sanction deemed appropriate'; and - Expulsion, with the concurrence of two-thirds of the House.</td>
<td>Administrative sanction: Letter of Admonition. Disciplinary measures: - Censure; - Reprimand; - Condemnation; - Reduction of seniority; - Fine; 'Other sanction deemed appropriate'; and - Expulsion, with the concurrence of two-thirds of the Senate.</td>
<td></td>
</tr>
</tbody>
</table>

| Sanctions for employees | Not specified | Not specified | Not specified | - Dismissal; - Reprimand; - Fine; and - 'Other appropriate sanction'. | - Dismissal; - Reprimand; - Fine; and - 'Other appropriate sanction'. |

<table>
<thead>
<tr>
<th>Recommended by</th>
<th>Committee of Privileges and Members’ Interests</th>
<th>Conflict of Interest and Ethics Commissioner</th>
<th>Privileges Committee</th>
<th>Ethics Committee</th>
<th>Ethics Committee</th>
</tr>
</thead>
</table>

| Imposed by | Whole House | Whole House | Whole House | Ethics Committee for administrative sanctions; whole House for disciplinary measures; party caucuses for Committee positions. | Ethics Committee for administrative sanctions; whole Senate for disciplinary measures; party conferences for Committee positions and seniority. |

Committee Staff
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/business/committees/committees-a-z/commons-select/standards/standards-review-sub-committee/inquiries/parliament-2010/complaints-about-members-of-parliament/

Tuesday 24 June 2014
Lord Bew, Chair, Committee on Standards in Public Life, Richard Thomas CBE, Committee on Standards in Public Life, and Rt Hon Peter Riddell CBE, Director, Institute for Government

Tuesday 1 July 2014
Rt Hon Andrew Lansley MP, Leader of the House of Commons, and Ms Angela Eagle MP, Shadow Leader of the House of Commons

Tuesday 15 July 2014
Dr Ruth Fox, Director and Head of Research, Hansard Society, Greg Power, Director, Global Partners and Associates, Dr Elizabeth David-Barrett, Director for the Study of Corruption and Transparency, Kellogg College, University of Oxford, and Dr Melanie Sully, Executive Director, Institute for Go-Governance

Monday 20 October 2014
James Landale, Chairman of the Parliamentary Press Gallery

Tuesday 21 October 2014
Rt Hon James Arbuthnot MP, David Howarth, Laura Sandys MP, and Rt Hon Jack Straw MP

Tuesday 28 October 2014
Mr Richard Caborn, Sir Bob Russell MP, and Bill Wiggin MP.

Tuesday 4 November 2014
Professor Sir Peter Rubin, Chair of the General Medical Council, Charles Plant, Chair of the Solicitors Regulation Authority Board, Paul Philip, Chief Executive of the Solicitors Regulation Authority, and Gordon Hockey, Head of Legal Services and Registrar of the Royal College of Veterinary Surgeons
Published written evidence

The following written evidence was received and can be viewed on the Sub-Committee Committee’s inquiry web page at www.parliament.uk/business/committees/committees-a-z/commons-select/standards/standards-review-sub-committee/inquiries/parliament-2010/complaints-about-members-of-parliament/

1 Andrew Lansley (SSC0019)
2 Bill Wiggin (SSC0018)
3 Committee Clerks (SSC0023)
4 Committee On Standards In Public Life (SSC0014)
5 Full Fact (SSC0007)
6 Gillian Peele And Dr David Hine (SSC0010)
7 GMC (SSC0016)
8 Gordon Downey (SSC0008)
9 Graham Brady (SSC0020)
10 IPSA (SSC0013)
11 John Benger (SSC0021)
12 John Lyon Cb (SSC0001)
13 Mark Field (SSC0009)
14 Melanie Sully (SSC0003)
15 Michael Bernal (SSC0017)
16 Michael S Vorley (SSC0004)
17 Parliamentary Commissioner for Standards (SSC0022)
18 Paul Browning Msc Rsm Fcqi Cqp (SSC0002)
19 Royal College Of Veterinary Surgeons (SSC0015)
20 Sir Bob Russell (SSC0012)
21 Sir Philip Mawer (SSC0006)
22 SRA (SSC0011)