



House of Commons
Committee on Standards

The Committee's role in ICGS appeals

Sixth Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

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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' 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; 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.

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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

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Committee staff

The current staff of the Committee are Robin James (Clerk), Medha Bhasin (Second Clerk) and Jim Camp (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Committee on Standards, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3259; the Committee's email address is standards@parliament.uk.

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Report

Introduction

1. After a brief summary of recent developments relating to parliamentary standards, this Report sets out how we intend to exercise the responsibilities given us by the House in respect of Independent Complaints and Grievance Scheme (ICGS) appeals. We also make some comments about an issue of concern relating to confidentiality in both ICGS and non-ICGS cases.

Standards system: recent developments

2. Since the start of the present Parliament in June 2017 there have been major developments impacting on the parliamentary standards system. These include the following:

- The House of Commons' decision to create a new Independent Complaints and Grievance Scheme – July 2018¹
- The publication of the independent report by Dame Laura Cox QC on bullying and harassment in the House of Commons (hereafter referred to as the 'Cox report') – October 2018²
- The establishment of an independent inquiry headed by Gemma White QC into bullying and harassment of MPs' staff – November 2018
- The establishment of an independent inquiry headed by Naomi Ellenbogen QC into bullying and harassment by past and present Members and staff of the House of Lords – December 2018
- The decision by the House of Commons to confer full voting rights on lay members of the Committee on Standards and to strengthen the independent status of the Parliamentary Commissioner for Standards – January 2019³
- The pending establishment of an independent "six-month review" of the ICGS headed by an external assessor, and of an internal working group to consider the implementation of Dame Laura's recommendation that "the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part" – expected in March 2019.⁴

3. The Committee on Standards has played its part in this developing process. We have published two Reports dealing with issues related to bullying and harassment, and sexual harassment: one in July 2018 which made proposals for ICGS implementation, drawn up in

1 Votes and Proceedings, 19 July 2018

2 Dame Laura Cox DBE QC, *The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report*, published 15 October 2018

3 Votes and Proceedings, 7 January 2019

4 See comments by the Leader of the House, Official Report, 7 January 2019, cols 125–26, and 31 January 2019, col 974

tandem with the Delivery Report of the steering group chaired by the Leader of the House, and one in December 2018 which made initial proposals relating to the implementation of the Cox report.⁵ Both Reports were approved by the House; the later report formed the basis for the House's decisions on lay members' voting rights and the Commissioner's independent status referred to in Paragraph 2 above.⁶

4. In our December 2018 Report we highlighted the initial response of the House of Commons Commission to the Cox report, citing its comment that "We [...] have too often failed to honour the responsibility to provide a workplace free from bullying and harassment. [...] The scale of the problem and depth of hurt caused is beyond dispute." We added the following comment of our own: "We, like the Commission, deeply regret what has gone wrong, and commit ourselves to contributing to putting things right."⁷

5. We noted that our recommendations on lay members' voting rights and the Commissioner's status were only an interim contribution to tackling the problems which Dame Laura identifies but added that "we believe they are steps in the right direction which can be put into effect by the House almost immediately, if it chooses."⁸ We are grateful to the Leader of the House for making time available for an early debate on our Report, and we are pleased that the House has endorsed our recommendations.

6. In our December 2018 Report we set out further actions we proposed to take in relation to bullying and harassment, and sexual harassment. The present Report contains an update to the House on how we propose to carry out our responsibilities in respect of ICGS appeals, as well as some comments on a linked issue relating to the confidentiality of the complaints process.

ICGS appeals

Background

7. Under the ICGS as approved by the House in July, the Committee on Standards has been given the responsibility of considering certain appeals in relation to complaints of bullying and harassment, and sexual misconduct, by Members of Parliament.

8. The Independent Complaints and Grievance Policy (ICGP) Delivery Report, published in July 2018, recommended as follows:

Appeals

The Commissioner will review the initial investigations and the complainant will be able to exercise the appeal rights set out in the policy at that stage. The Committee on Standards will hear appeals against a finding of the Commissioner raised by either the responder, or the complainant. If the latter, appeals will be possible only in instances where correct procedure

5 Committee on Standards, Second Report of Session 2017–19, *Independent Complaints and Grievance Policy: Implementation* (HC 1396); Committee on Standards, Fifth Report of Session 2017–19, *Implications of the Dame Laura Cox report for the House's standards system: Initial proposals* (HC 1726); Delivery Report of the Independent Complaints and Grievance Policy Programme Team, published July 2018

6 Votes and Proceedings, 19 July 2018 and 7 January 2019

7 HC (2017–19) 1726, paras 4, 5

8 HC (2017–19) 1726, para 8

is questioned or substantial new evidence has since become available and we anticipate that such appeals would not necessarily require a hearing. If a hearing is required, we note that the Committee on Standards has power to work through sub-committees, and could appoint such a sub-committee if it considers a complainant might be intimidated by appearing before a fourteen member committee.⁹

9. Our own report on ICGP implementation, also published in July, recommended as follows:

It is desirable, on grounds of fairness and natural justice, for the new system to include provision for 'appeal' by each party (the complainant and the subject of complaint). If the Commissioner, as we propose, has oversight of investigations into Members, it follows that she will not be appropriately placed to carry out an 'appeal' function. It would be logical for this function to be carried out by the Committee, as it is in relation to existing complaints of breaches of the Code of Conduct. Cases would be referred by the Commissioner to the Committee only if she was not able to bring them to resolution herself, if they were sufficiently serious to require sanctions which only the Committee or the House could impose, or if either party sought to appeal against her determination of the case.¹⁰

10. The Delivery Report and our own Report were approved by the House on 19 July 2018.

11. The ICGS is now operational, complaints under the Scheme are being investigated, and we may be asked to consider appeals in the near future. With regard to this role, we commented in our December 2018 Report:

We note Dame Laura's recommendation, accepted by the Commission, that "the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament [should] be an entirely independent process, in which Members of Parliament will play no part". However, Dame Laura herself notes that much work will have to be done to establish how this "entirely independent process" might operate, with "the practicalities of delivering it [...] carefully considered in conjunction with all the relevant parties".¹¹

Until this work has been done, and decisions taken on the new process, the Committee on Standards will continue to be under a responsibility which the House has placed on it to carry out the appeal function under the ICGS.¹²

12. We indicated that we would therefore continue with contingency planning for dealing with such appeals, and would publish our conclusions on this as soon as possible so as not to introduce unnecessary delay into the consideration of appeals.¹³

9 Delivery Report, para 55

10 HC (2017–19) 1396, para 26

11 Cox report, para 396

12 HC (2017–19) 1726, paras 10,11

13 HC (2017–19), para 11

Framework for appeals

13. We have now agreed an outline framework for considering ICGS appeals in relation to complaints against Members of Parliament. For the reasons set out in paragraphs 23 and 24 below, we shall delegate our decision-making on appeals to an Appeals Sub-Committee. (The Sub-Committee will also deal with cases escalated to the Committee by the Commissioner.) The outline framework is as follows:

- a) Appeals to the Sub-Committee should be a two-stage process: (1) acceptance that there are grounds for appeal and (2) where there are such grounds, the appeal itself.
- b) Grounds for an appeal by either the complainant or the respondent would be:
 - i) The investigation or decision-making was procedurally flawed.
 - ii) Significant new evidence has become available.
- c) The Sub-Committee would not re-investigate a case, but rather would, if necessary, require the investigation to be re-opened.
- d) An appeal by the respondent against sanctions would be heard where those are imposed by the Commissioner: this would not involve re-opening the investigation but would consider whether the proposed sanction was appropriate in view of the investigation findings.
- e) Given the sensitive nature of ICGS complaints, other than in exceptional circumstances neither the complainant nor the respondent should appear before the Sub-Committee; the appeal would be considered on the basis of documentation only.

14. An application for appeal should be made in writing to the Clerk of the Committee either by post or by email sent to standards@parliament.uk. This application should set out as fully as possible the grounds for appeal, with any necessary supporting information. If the Sub-Committee concludes that there are no grounds for appeal, the applicant will be informed as soon as possible and no further proceedings will arise.

15. The Sub-Committee will give consideration to an application to appeal if received within 15 working days of the applicant receiving notification of the outcome of their complaint. If there are mitigating circumstances, for instance ill health or bereavement, the Sub-Committee at its discretion may give consideration to a late application. The Sub-Committee will use its best endeavours both to determine whether to consider an appeal, and if necessary to conduct that appeal, as quickly as possible.

16. It is important to distinguish between appeals as set out in paragraph 13 above, which are prompted by one of the parties to a complaint (complainant or respondent) and the quite separate process, also envisaged under the ICGS, whereby the Commissioner will refer cases to the Committee (in practice, the Sub-Committee) in circumstances where either “she was not able to bring them to resolution herself [or] if they were sufficiently serious to require sanctions which only the Committee or the House could impose”.¹⁴ In the case of appeals, the process will not be initiated by the Commissioner, but the Sub-

Committee would expect the Commissioner to furnish it with a memorandum setting out her response to the appeal. The Sub-Committee at its discretion may seek further written evidence from any relevant party.

17. It is also important to distinguish between appeals dealt with by the Sub-Committee and reviews carried out at earlier stages of the process by either the investigation service or the Commissioner.¹⁵ Our framework relates only to appeals dealt with by the Sub-Committee.

18. We draw attention to one significant difference between the framework and the proposals in the Delivery Report. The latter envisaged that grounds for appeal for the complainant would be restricted to “instances where correct procedure is questioned or substantial new evidence has since become available” but implies that no such restrictions would apply to the rights of appeal of respondents.¹⁶ We see no justification for privileging respondents over complainants in this way; our framework proposes that the grounds for appeal should be the same for both.

19. The framework set out above is interim, in two senses. First, because it is proposed without prejudice to any future decisions taken by the House in response to the Cox report. Secondly, because we acknowledge that as the implementation of the ICGS is a developing process, it may not be possible to anticipate every question which the appeal process throws up. Particular circumstances may arise in individual cases which require some deviation from this framework. Our intention is to resolve any unanticipated questions as to appeals procedure and process by reference to the principles of natural justice,¹⁷ fair treatment of both parties, and the need to protect potentially vulnerable people. We are aware that the last-mentioned consideration applies particularly strongly in relation to allegations of sexual harassment. We are also aware that people who have been bullied or harassed, or subject to sexual harassment, are more likely to come forward with complaints if they have confidence that the complaints system is fair and will protect their interests.

Confidentiality and anonymisation

20. Because of the special sensitivities attaching to complaints of bullying and harassment, and sexual harassment, we accept that procedures in our consideration of ICGS cases (including appeals) may differ from those that we have adopted in the past, and may continue to adopt, in relation to non-ICGS cases, both in relation to the right to appear before the Committee (which will be retained for non-ICGS cases) and in respect of confidentiality and anonymisation, which we deal with in the next paragraph.

21. We propose the following arrangements in respect of confidentiality and anonymisation in ICGS cases when they come before the Appeals Sub-Committee, based on the decisions taken by the House in July 2018:¹⁸

- a) In cases escalated to the Sub-Committee by the Commissioner, unless the complainant agrees otherwise, their name and identifying details will be

15 A potential confusion arises from the fact that the Delivery Report in a number of places refers to such reviews as appeals (e.g. at page 89 (“Timescales”)).

16 Delivery Report, para 55

17 For a fuller discussion of natural justice in this context, see para 30 below.

18 Votes and Proceedings, 19 July 2018; HC (2017–19) 1396, para 40; Delivery Report, para 71

redacted by the Commissioner so the Sub-Committee itself will be unaware of these and they will therefore remain redacted in any Report published by the Committee.

- b) In cases escalated to the Sub-Committee by the Commissioner, the name and identifying details of the respondent will also be redacted by the Commissioner and not supplied to the Sub-Committee until the Committee has reached its decision on the case and on any possible sanctions; unless the Commissioner concludes that the Sub-Committee needs to know the identity of the respondent at an earlier stage because they are a previous offender or have been the subject of multiple allegations.
- c) We envisage that in most appeal cases there will be no requirement for the Committee (on behalf of the Sub-Committee) to make any report to the House. The Sub-Committee will either conclude there are no grounds for appeal, or dismiss the appeal, or uphold the appeal and require the investigation to be re-opened. Only in cases where the Sub-Committee recommends sanctions to be imposed by the House do we envisage there will be a need for a report to the House. Proposed arrangements for the redaction of names and identifying details in case where such a report is needed are set out in the following two sub-paragraphs.
- d) In cases of appeal by the complainant, the Sub-Committee itself will have the responsibility of redacting their name and identifying details and, if it considers it appropriate, those of the respondent before forwarding any Report or other written material to the full Committee for formal approval or publication.
- e) In cases of appeal by the respondent, if the complainant's name and identifying details are not redacted by the respondent in making their application for an appeal (as would be desirable), the Sub-Committee itself will have the responsibility of doing so (and, if it considers it appropriate, redacting also the names and identifying details of the respondent) before forwarding any Report or other written material to the full Committee for formal approval or publication.

22. It is highly important that the above arrangements in respect of confidentiality are respected and enforced. The Delivery Report noted that while “both those working in Parliament and the public at large need to know that serious cases are being dealt with effectively”, which “requires a degree of transparency on outcomes”, a right to confidentiality for the complainant throughout the process is essential, both to protect potentially vulnerable people and to encourage people who have suffered abuse, particularly in the form of sexual harassment, to come forward in the first place.¹⁹ In our July 2018 Report we commented:

The experience of victims' groups, backed up by academic research, has shown that a lack of confidentiality—or the fear of a loss of confidentiality—deters many people who have experienced bullying, harassment or sexual harassment from coming forward. We agree that this is a powerful argument, and that the new procedures, particularly regarding sexual harassment, will

certainly require a greater degree of confidentiality, to protect victims, than exists for complaints relating to financial misbehaviour or abuse of House facilities.²⁰

Appeals Sub-Committee

23. For this reason we consider it appropriate that the number of members of the Committee who have access to the information that will be redacted as proposed in sections (d) and (e) of paragraph 21 above should be limited, to minimise the risk of unauthorised disclosure of that information. We note that any such disclosure would be a potential contempt of the House.

24. **As we have noted in paragraph 13 above, therefore, we propose to set up a formal sub-committee to consider applications for ICGS appeals, to conduct appeals, and to take decisions on redaction to protect the anonymity of the complainant.** All responsibilities of the Committee relating to ICGS appeals, as well as those relating to cases escalated to the Committee by the Commissioner, will be delegated to this Appeals Sub-Committee. The full Committee will not in any circumstances challenge the decisions of the Sub-Committee, but will agree without debate to any request by the Sub-Committee to approve its findings or to publish reports or evidence. This will be reflected in a formal Resolution of the Committee which will be recorded in its formal minutes.

25. Standing Order No. 149 (6) provides that a formal sub-committee of the Committee on Standards must have at least three members, of which at least one should be a lay member and at least one an elected member; the quorum is three. We propose that the Appeals Sub-Committee should have five members, of which three will be lay members and two will be elected members. The Sub-Committee will have the right to choose its own Chair. We will decide in the light of experience whether the Sub-Committee should have a standing membership or whether it should be constituted afresh in respect of each appeal.

Possible objections to 'paper-only' appeals

26. The Delivery Report left it open to question whether a hearing in person might be required at the appeal stage. The proposed framework set out above does not envisage that such hearings would take place other than in exceptional circumstances; some objections to this proposal are considered in the following section of this Report.

27. One potential objection to a 'paper only' appeal stage might be that it was not compliant with Article 6 of the European Convention on Human Rights (ECHR), which protects the right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, and the right to examine witnesses or have them examined. Although the privileged status of select committee proceedings would protect the Committee from any challenge in UK courts under human rights legislation, it would not preclude the possibility of the matter being raised directly with the European Court of Human Rights (ECtHR) in Strasbourg.

20 HC (2017–19) 1396, para 38

28. The counter-argument to this objection is that a 'paper only' appeal stage would be ECHR-compliant because Article 6 would have been complied with at the earlier stages of the complaints process (up to and including the Commissioner's findings), where there will be an opportunity to challenge evidence; and because, if that right were to be denied at the earlier stage, that would form grounds for an appeal and a referral back to the Commissioner.

29. We note that Article 6 does not impose an absolute right to an oral hearing, and indeed does not technically require an appeal to be available at all, although it is good practice to allow for one as even the best first-instance process may from time to time go awry, and in the absence of a right of appeal Article 6 will then be breached.²¹

30. The applicability of ECHR Article 6 to parliamentary proceedings has been disputed. A recent report by the House of Lords Committee for Privileges and Conduct, *Further report on the conduct of Lord Lester of Herne Hill* (hereafter the "Lords report"), contains valuable analysis of this issue.²² The report sets out some relevant case history:

The European Court of Human Rights has previously considered whether the right to a fair trial extends to Parliament's internal disciplinary cases. In *Hoon v. the United Kingdom* in 2014 Geoff Hoon was found by the Commissioner for Standards to have broken the Code over a lobbying sting, and he was sanctioned by the House of Commons. Recognising that the UK courts had no jurisdiction, he lodged an application with the ECtHR claiming that the Commissioner, the Committee and the House of Commons had violated Articles 6 (right to a fair trial), 8 (right to a private life) and 13 (right to an effective remedy in domestic law). The judgment rejected the application on all grounds: [...]. In particular it said that Article 6 had not been violated, because case law showed that the right to keep one's seat in Parliament is not a civil right but rather a political right; therefore, the parliamentary proceedings in question did not attract the application of Article 6 since they did not determine Hoon's civil rights.²³

31. A further objection to 'paper-only' appeals might be on grounds of natural justice and fairness. The Lords report contains a helpful analysis of these concepts as they apply in the context of internal disciplinary procedures. It states that:

Natural justice and fairness require that the person complained against:

- (a) shall be judged by a person who is both independent and impartial and who hears all sides of the argument;
- (b) shall have fair notice of the case being made against him or her; and
- (c) shall have a fair opportunity to answer to the complaint.²⁴

21 See, for instance, the Supreme Court's judgment in *R (Osborn) v Parole Board*; & 2 other cases [2013] UKSC 61.

22 House of Lords Committee for Privileges and Conduct, *Further report on the conduct of Lord Lester of Herne Hill*, HL Paper 252, published 12 December 2018

23 HL Paper (2017–19) 252, footnote 3

24 HL Paper (2017–19) 252, para 11

32. The Lords report further notes that although natural justice applies to the Member under investigation, fairness must apply also to the complainant, particularly in an investigation of sexual harassment and the abuse of power.²⁵ The Lords Committee rebuts the claim of the subject of the investigation that he be permitted to cross-examine the complainant against him, as part of the Lords appeal procedure:

We accept that a proper testing of the evidence by an impartial adjudicator who listens to all sides is essential to natural justice and fairness. But we simply disagree that cross-examination is inherent in the very notion of fairness. [...] cross-examination is particularly problematic in a complaint involving an allegation of sexual harassment, whether or not the behaviour under investigation amounts to conduct that could be deemed criminal. The adversarial model featuring cross-examination is widely held by experts to be disadvantageous for people reporting incidents of a sexual nature. In particular it would widely be seen as wrong if the person complained against was “allowed to confront the complainant” [...].²⁶

33. The Lords Committee comments that cross-examination is not the only way of running a fair and robust process that conforms with natural justice: it is not

a feature in all our own court processes or in many institutions comparable to the House of Lords. For example, parliamentarians being investigated in either House of the Canadian Parliament or in the Scottish Parliament, Welsh Assembly or Northern Ireland Assembly do not have a right of cross-examination. Neither do Ministers being investigated by the Independent Adviser on Ministers’ Interests for breaches of the Ministerial Code (including bullying and harassment), or judges being investigated by the Judicial Conduct Investigations Office.

It would be wrong to characterise these other systems of law, or the internal disciplinary processes of many other legislatures and organisations, as lacking in fairness because they do not accord the same significance to the oral tradition of advocacy and to cross-examination as does English common law.²⁷

34. The Lords Committee notes that the standards system in the House of Lords is meant to be inquisitorial rather than adversarial, and that it enables evidence to be robustly tested by a competent investigator. The Committee concludes that these processes satisfy the requirements of natural justice and fairness.²⁸

35. The House of Commons has similarly agreed that the inquisitorial approach is appropriate for its standards system. Accordingly, **on the basis of the arguments set out in paragraphs 27 to 34 above, we believe that a ‘paper only’ appeals process in ICGS cases in the House of Commons would be compliant with human rights legislation and with the demands of natural justice and fairness.**

25 HL Paper (2017–19) 252, para 16

26 HL Paper (2017–19) 252, paras 23, 25

27 HL Paper (2017–19) 252, paras 18–19

28 HL Paper (2017–19) 252, paras 20, 30, 58

Adoption of the appeals framework

36. We shall adopt the appeals framework set out in paragraphs 13 to 25 above with immediate effect, keep its operation under review, and hold a formal review of these procedures at least every 12 months as long as we continue to have responsibility for ICGS appeals. If necessary we will report further to the House on any modifications we make to the framework in the light of experience.

Guidance to appellants

37. We set out as an annex to this Report a text providing guidance to appellants. We hope this will be of assistance not only to people considering whether to submit an application to appeal, but to others involved in the ICGS process including helpline operators and the Commissioner's office. We will post this guidance on our website, keep it under review and revise it if necessary.

Breaches of confidentiality in ICGS and non-ICGS cases

38. Prior to the House's decisions on 19 July 2019, the Commissioner's practice was to publish online the fact that she had started an investigation into the conduct of a named Member, along with an indication of the rule which might have been breached. No further information was published till the end of the investigation, when either the Commissioner submitted a memorandum to the Committee or the complaint was dismissed or rectified.²⁹

39. The Leader of the House's Steering Group, the Committee and the Commissioner were in agreement that in ICGS cases the need to protect the identity of the complainant would be paramount, and that therefore there should be no announcement by the Commissioner that an ICGS investigation into a named Member had commenced. The Leader of the House further proposed that this degree of confidentiality at the start of an investigation should be extended to non-ICGS cases, i.e. complaints of breaches of the existing Code of Conduct (often relating to alleged breaches of the rules relating to declaration and registration of interests, the ban on paid advocacy, or misuse of House facilities). This proposal had been discussed, but not explicitly endorsed, in the Steering Group's Delivery Report; it was contained in the package of proposals put to the House by the Leader in order to create the ICGS. The proposal was opposed by the Committee and the Commissioner. The then Chair of the Committee, Sir Kevin Barron, tabled an amendment to the Leader's motion on 19 July to remove the provision, but the amendment was negated on division, by 79 votes to 22, and the provision was adopted with immediate effect.³⁰

29 See Delivery Report, para 61

30 Paragraph 4 of the Motion put to the House by the Leader read as follows: "[This House] recognises the role of the Parliamentary Commissioner for Standards to consider cases arising from the Independent Complaints and Grievance Scheme; notes the arrangements about publishing the details of investigations of such cases to ensure complaints are handled confidentially as set out in the Independent Complaints and Grievance Scheme Delivery Report; and accordingly agrees that, for consistency and fairness, the Parliamentary Commissioner for Standards should no longer routinely publish information about individual investigations before those investigations are concluded and accordingly agrees to amend sub-paragraph (b) of paragraph (12) of Standing Order No. 150 by inserting "statistical" before "information" and leaving out "and matters under investigation";". Sir Kevin's amendment was to leave out all the above text after "Delivery Report". For the Committee's views, see HC (2017-19) 1396, paras 41-43.

40. Since 19 July 2018, therefore, the Commissioner has not been able to announce that she has started an investigation, in either ICGS or non-ICGS cases; her office responds to any requests for information with the statement that she “can neither confirm nor deny” whether a particular investigation is taking place. We remain unconvinced that this change in respect of non-ICGS cases is desirable, but we respect the decision of the House and we, like the Commissioner, will operate within the spirit as well as the letter of this decision while it remains in force. The fact that the House has prohibited the Commissioner from publishing information which by its nature would be both accurate and authoritative makes it even more important that other parties should not disclose similar information without authorisation, not least because of the risk that it may be inaccurate or partial and there will be no means of correcting it.

41. We note that there have been recent cases in which the fact of an investigation has been publicised by one or more of the parties involved. Although the Commissioner has no power to bring sanctions against those responsible for breaching confidentiality in these cases, we emphasise that such actions may be considered a contempt of the House. If they were to be referred by the House to the Committee of Privileges, our expectation is that the Committee of Privileges would regard this as a serious matter, particularly if the Committee considered that the breach of confidentiality amounted to a significant interference with the Commissioner’s investigation or brought into question the rights or wellbeing of any of the parties to that investigation.

Conclusions and recommendations

1. We have now agreed an outline framework for considering ICGS appeals in relation to complaints against Members of Parliament. For the reasons set out in paragraph 23 and 24 below, we shall delegate our decision-making on appeals to an Appeals Sub-Committee. (The Sub-Committee will also deal with cases escalated to the Committee by the Commissioner.) The outline framework is as follows:
 - a) Appeals to the Sub-Committee should be a two-stage process: (1) acceptance that there are grounds for appeal and (2) where there are such grounds, the appeal itself.
 - b) Grounds for an appeal by either the complainant or the respondent would be:
 - i) The investigation or decision-making was procedurally flawed.
 - ii) Significant new evidence has become available.
 - c) The Sub-Committee would not re-investigate a case, but rather would, if necessary, require the investigation to be re-opened.
 - d) An appeal by the respondent against sanctions would be heard where those are imposed by the Commissioner: this would not involve re-opening the investigation but would consider whether the proposed sanction was appropriate in view of the investigation findings.
 - e) Given the sensitive nature of ICGS complaints, other than in exceptional circumstances neither the complainant nor the respondent should appear before the Sub-Committee; the appeal would be considered on the basis of documentation only. (Paragraph 13)
2. The framework set out above is interim, in two senses. First, because it is proposed without prejudice to any future decisions taken by the House in response to the Cox report. Secondly, because we acknowledge that as the implementation of the ICGS is a developing process, it may not be possible to anticipate every question which the appeal process throws up. Particular circumstances may arise in individual cases which require some deviation from this framework. Our intention is to resolve any unanticipated questions as to appeals procedure and process by reference to the principles of natural justice, fair treatment of both parties, and the need to protect potentially vulnerable people. We are aware that the last-mentioned consideration applies particularly strongly in relation to allegations of sexual harassment. We are also aware that people who have been bullied or harassed, or subject to sexual harassment, are more likely to come forward with complaints if they have confidence that the complaints system is fair and will protect their interests. (Paragraph 19)
3. As we have noted in paragraph 13 above, therefore, we propose to set up a formal sub-committee to consider applications for ICGS appeals, to conduct appeals, and to take decisions on redaction to protect the anonymity of the complainant. (Paragraph 24)

4. On the basis of the arguments set out in paragraphs 27 to 34 above, we believe that a 'paper only' appeals process in ICGS cases in the House of Commons would be compliant with human rights legislation and with the demands of natural justice and fairness. (Paragraph 35)
5. We shall adopt the appeals framework set out in paragraphs 13 to 25 above with immediate effect, keep its operation under review, and hold a formal review of these procedures at least every 12 months as long as we continue to have responsibility for ICGS appeals. If necessary we will report further to the House on any modifications we make to the framework in the light of experience. (Paragraph 36)
6. We set out as an annex to this Report a text providing guidance to appellants. We hope this will be of assistance not only to people considering whether to submit an application to appeal, but to others involved in the ICGS process including helpline operators and the Commissioner's office. We will post this guidance on our website, keep it under review and revise it if necessary. (Paragraph 37)
7. We note that there have been recent cases in which the fact of an investigation has been publicised by one or more of the parties involved. Although the Commissioner has no power to bring sanctions against those responsible for breaching confidentiality in these cases, we emphasise that such actions may be considered a contempt of the House. If they were to be referred by the House to the Committee of Privileges, our expectation is that the Committee of Privileges would regard this as a serious matter, particularly if the Committee considered that the breach of confidentiality amounted to a significant interference with the Commissioner's investigation or brought into question the rights or wellbeing of any of the parties to that investigation. (Paragraph 41)

Annex: Guidance to appellants

Independent Complaints and Grievance Scheme

HOW TO APPEAL AGAINST A DETERMINATION (FORMAL DECISION) MADE BY THE PARLIAMENTARY COMMISSIONER FOR STANDARDS IN AN ICGS CASE

This is interim guidance, prepared in the spring of 2019.

So you want to appeal against a decision made by the Commissioner

1. If you are not satisfied with a decision made by Parliamentary Commissioner for Standards you may be able to appeal against this. Your appeal must be received within 15 working days after you have received her decision.

What you can appeal about (grounds for appeal)

2. You can appeal for one or more of the following reasons:
 - There is significant new evidence which was not taken into account
 - The procedure used to investigate or decide your case was flawed
 - You are the MP who was accused, and you believe that the sanction imposed or recommended was too severe.
3. Appeals for any other reason will not be accepted.

How to appeal

4. Email the Clerk of the Committee on Standards (standards@parliament.uk) within 15 working days of receiving the Commissioner's decision. In your email use the subject line "Restricted Access: ICGS Appeal". Alternatively, you can send a letter to the Clerk of the Committee on Standards, Journal Office, House of Commons. On your envelope write "Restricted Access: ICGS Appeal". (If you are sending a letter you should allow extra time, to make sure the letter is received before the 15 working-day deadline.)
5. You must explain why you believe that the procedure used to investigate or decide your case was flawed, and which part of the procedure was affected. If you believe significant new evidence is available, you must describe it or send it if you can.
6. If you are the MP who was accused, you must give your reasons for believing that the sanction you were given is too severe.
7. You can ask someone else to advise you or help you, but they cannot appeal for you. You must be the person who signs the email or letter.

What happens next

8. The Committee on Standards has delegated its decision-making on appeals to an Appeals Sub-Committee.

9. The Clerk of the Committee on Standards will receive your appeal and will send it to the Appeals Sub-Committee. The Sub-Committee will consist of five members of the Committee on Standards. Three of these will be lay members of the Committee (i.e. not MPs) and two will be elected members (i.e. MPs). You can find out about the Select Committee's members here: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/membership/>.

Who sees your information

10. The Clerk of the Committee on Standards will receive your information and will send messages on behalf of the Appeals Sub-Committee.

11. The Parliamentary Commissioner for Standards and a small number of her staff will see your appeal. They will use this to prepare a summary of your case for the Appeals Sub-Committee. They will append the relevant evidence.

12. The Appeals Sub-Committee will see your appeal and the information provided by the Parliamentary Commissioner for Standards. The Sub-Committee will remove names and identifying information before any material is sent to the full Committee. However, if they believe that it may still be possible to identify you or other people involved, they will explain this to you before sending the information.

The appeal itself

13. The Appeals Sub-Committee will consider all the information it has. The Sub-Committee will be guided by the principles of natural justice, fair treatment of both parties, and the need to protect potentially vulnerable people.

14. There are two stages of the appeal process:

Stage 1: The Sub-Committee will decide whether your appeal meets the conditions in paragraph 2 above. The Clerk of the Committee on Standards will let you know the decision.

15. Stage 2: If your appeal meets the conditions in paragraph 2, the Appeals Sub-Committee will consider the appeal itself. The Clerk will ask the Parliamentary Commissioner for Standards to write a short case summary, and to send any relevant information which is held. The Sub-Committee may also ask for additional information from you or others.

16. Once the Sub-Committee has enough information it will review your appeal. It can ask for the Parliamentary Commissioner for Standards to reconsider a decision, or a sanction, or it can ask for further investigation to happen. The Sub-Committee cannot make those decisions for the Parliamentary Commissioner for Standards, or carry out its own investigation.

17. The Sub-Committee will assess the appeal by considering the evidence and reports before them. They will not hold a face to face hearing, unless there are exceptional circumstances and they believe that a hearing is needed to avoid an injustice.

18. Once the Sub-Committee has reached a view on your appeal, they will send this to the full Committee on Standards for formal confirmation. The Committee has agreed not to overturn the Sub-Committee's view in these cases.

After the appeal

19. The Clerk of the Committee on Standards will write to you to tell you the outcome of your appeal.

20. The Sub-Committee's decision is final. You cannot appeal against it.

What will happen to the information about you

21. The Parliamentary Commissioner for Standards will publish statistical information about cases and appeals in her Annual Report, in a form in which individuals cannot be recognised.

22. If the Appeals Sub-Committee recommends a sanction which the House of Commons needs to approve, it will invite the Committee to publish a Report to the House. It will remove the name of the complainant/reporter, and any details which would identify him/her, from the Report presented to the Committee.

23. The Independent Complaints and Grievance Scheme will keep information about this case and will publish statistical information about cases and appeals from time to time, in a form in which individuals cannot be recognised.

Document owner: Parliamentary Commissioner for Standards

Document date: Approved by the Committee on Standards on 5 March 2019.

For advice contact:

- Clerk of the Committee on Standards, via standards@parliament.uk
- Parliamentary Commissioner for Standards via standardscommissioner@parliament.uk
- Independent Bullying and Harassment Reporting Helpline on 0800 028 2439 or via disclosure@healthassured.co.uk
- Independent Sexual Misconduct Advisory Service (ISMA Service) on 0800 1124 318 or via isma@solacewomensaid.org.

Formal Minutes

Tuesday 5 March 2019

Members present:

Kate Green, in the Chair

Tammy Banks	Sir Peter Rubin
Jane Burgess	John Stevenson
Charmaine Burton	Sir Gary Streeter
Sir Christopher Chope	Paul Thorogood
Arun Midha	Liz Twist
Bridget Phillipson	

Draft Report (*The Committee's role in ICGS appeals*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 41 read and agreed to.

A paper was appended to the Report.

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 (8)).

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

[The Committee adjourned.]

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Dame Margaret Hodge	HC 591
Second Report	Independent Complaints and Grievance Policy: Implementation	HC 1396
Third Report	Ian Paisley	HC 1397
Fourth Report	Boris Johnson	HC 1797
Fifth Report	Implications of the Dame Laura Cox report for the House's standards system: Initial proposals	HC 1726