

HOUSE OF LORDS

Committee for Privileges and Conduct

5th Report of Session 2016–17

Process for publishing Commissioner reports

Commissioner and police investigations

Minor amendments to the Code

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The Committee for Privileges and Conduct

The Committee for Privileges and Conduct is appointed each session by the House of Lords to consider questions regarding its privileges and claims of peerage and precedence and to oversee the operation of the Code of Conduct.

Current membership

The members of the Committee for Privileges and Conduct are:

<u>Lord Bassam of Brighton</u>	<u>Baroness Jay of Paddington</u>
<u>Lord Brown of Eaton-under-Heywood</u>	<u>Lord Mackay of Clashfern</u>
<u>Earl Cathcart</u>	<u>Lord McFall of Alcluith (Chairman)</u>
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<u>Lord Irvine of Lairg</u>	<u>Viscount Ullswater</u>

The members of the Sub-Committee on Lords' Conduct are:

[Lord Brown of Eaton-under-Heywood \(Chairman\)](#)
[Lord Cope of Berkeley](#)
[Lord Dholakia](#)
[Lord Irvine of Lairg](#)
[Baroness O'Neill of Bengarve](#)

The Code of Conduct and the up-to-date Register of Lords' Interests are on the internet at

<http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/house-of-lords-members-conduct>

General information

Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

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Fifth Report

PROCESS FOR PUBLISHING COMMISSIONER REPORTS

The process

1. The Commissioner for Standards is appointed to investigate alleged breaches of the Code of Conduct. After investigation she makes a report of her findings. If she finds the member in breach of the Code and the case is unsuitable for remedial action, her report is submitted to the Sub-Committee on Lords' Conduct. The Sub-Committee reports to the Privileges and Conduct Committee recommending a sanction. The latter committee hears any appeal and reports the case to the House. No change is proposed to this process.
2. If, after investigation, the Commissioner either exonerates the member or agrees remedial action with the member the report currently goes to the Committee for Privileges and Conduct. We then decide whether to publish such reports. In practice the decision to publish is routine, and this step in the process serves mainly to delay publication.
3. In the House of Commons when the Commissioner clears an MP or agrees remedial action¹ her findings are published only on her webpages. A note is sent to the Commons Standards Committee for information, but no committee report is published. The Commons Commissioner has discretion to report an exoneration to the committee if the allegation was particularly serious, or if the case gives rise to issues of wider interest or relevance. When the Commissioner reports to the Committee the latter must report the case to the House of Commons.²
4. We consider that the Lords should follow the Commons' system so that when a member is cleared or the breach is minor and remedial action is agreed the Commissioner's report is normally published only on her webpages.³ This would make the Lords' process for dealing with such cases quicker and less onerous. The Commissioner would have discretion to report an exoneration to the Privileges and Conduct Committee if the allegation was particularly serious, or if the case gives rise to issues of wider interest or relevance.
5. This change would mean that the Privileges and Conduct Committee would no longer automatically have the opportunity of commenting on each case. However, in practice we have rarely commented substantively on an exoneration or case where remedial action has been agreed. In any event (and regardless of the change proposed in this report) the committee can at any time consider an issue arising from a case.
6. Publishing the Commissioner's reports and evidence only on her webpages (rather than as part of a select committee report) should not affect their protection by parliamentary privilege. **We recommend that the paragraph 126 of the Guide is amended to put this beyond doubt.**

1 Described as the "rectification procedure" in the House of Commons.

2 Guide to the Rules relating to the conduct of Members (2015, HC 1076), chapter 4, paragraph 15.

3 <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards/>

7. **We recommend that where the Commissioner exonerates a member, or agrees remedial action, her report and evidence should normally be published only on her webpages on the parliamentary website and not referred to the Privileges and Conduct Committee. The Commissioner would have discretion to submit a report to the Privileges and Conduct Committee if a case involved a particularly serious allegation or if it gave rise to matters of wider interest or relevance. In those instances the Privileges and Conduct Committee would report the case to the House.**
8. If the above proposal is agreed an email would be sent on each occasion to members of the Privileges and Conduct Committee and the Sub-Committee on Lords' Conduct alerting them to the publication of a Commissioner report on her webpages.
9. Annex 1 includes proposed amendments to the Code and Guide to implement the above recommendations.

Remedial action

10. In proposing the change in paragraph 7 above we have considered the current provisions in the Guide on remedial action. Paragraph 129 states that:

“Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. Remedial action involves “putting the record straight”, for instance by making an amendment to the Register; the member will also normally be expected to make a formal apology, either in writing or by means of a personal statement in the House.”.

As remedial action may be agreed only for a minor breach of the Code we consider it unlikely to be proportionate for remedial action to include a member making a personal statement in the House.

11. **We recommend amending paragraph 129 of the Guide to remove the reference to a personal statement in the House. Amendments to this effect are proposed in the Annex.**

COMMISSIONER AND POLICE INVESTIGATIONS

12. Paragraph 118 of the Guide states:

“118. The police and other agencies investigate allegations of criminal misconduct and the Commissioner will not investigate any related allegation of a breach of the Code while the agency is conducting its own investigation.”
13. Following a recent case which involved a significant delay to the Commissioner’s investigation caused by the requirements of paragraph 118 we have reviewed its provisions.⁴
14. In considering this matter we have taken into account the desirability of Commissioner investigations not being unduly delayed, both because of the public interest in cases proceeding with appropriate speed and because it would be unfair on the member concerned for the case to be unnecessarily prolonged. We are also conscious of the principle of comity between Parliament and the courts, which means that each respects the other’s jurisdiction. It would be undesirable for any change to result in the possibility of prejudicing a fair trial. For that reason we consider that a Commissioner investigation should be suspended if the case becomes *sub judice*.
15. **We recommend that in future the Commissioner should be allowed to continue an investigation into alleged misconduct which the police are also investigating, but with the Commissioner not finalising her report on the case until the criminal process concludes. Before finalising her report the Commissioner would take account of any relevant issues which arose during the criminal process. This approach should avoid prejudicing any trial. It would mean that the House’s disciplinary process could conclude shortly after the criminal process, rather than normally beginning at that point. The Commissioner will suspend an investigation if related proceedings (civil or criminal) become *sub judice*. Amendments to paragraph 118 of the Guide are proposed in the Annex.**

⁴ See Committee for Privileges and Conduct, *The conduct of Lord Bhatia* (6th Report, Session 2015–16, HL Paper 133), page 9.

MINOR AMENDMENTS TO THE CODE OF CONDUCT AND GUIDE TO THE CODE OF CONDUCT

16. We propose below seven minor amendments to the Code of Conduct and the Guide to the Code of Conduct to reflect developments in practice and to clarify uncertainties.

Reviewing the Code

17. Paragraphs 26 and 27 of the Code⁵ state:
- “26. The Sub-Committee on Lords’ Conduct reviews the Code of Conduct once each Parliament. Its findings, along with any recommended changes to the Code, are reported to the House.
27. The Sub-Committee also keeps the Guide to the Code of Conduct under regular review; recommended changes are reported to the House and will not take effect until agreed by the House.”
18. In practice the Code and Guide have both been kept under regular review, with various changes recommended throughout the last Parliament and this Parliament. Paragraph 26 of the Code therefore does not reflect current practice; it may misleadingly give the impression that all changes to the Code should be “saved up” for a review every five years, rather than addressing issues as they arise.
19. A more accurate approach would be to merge paragraphs 26 and 27 of the Code, such that it is stated that both the Code and Guide are kept under regular review.
20. **We recommend replacing paragraphs 26 and 27 of the Code with the following paragraph:**
- “The Sub-Committee on Lords’ Conduct keeps the Code of Conduct and the Guide to the Code of Conduct under regular review. Recommended changes are reported to the House and take effect when agreed by the House.”

Threshold for registering interests

21. Paragraphs 43 and 44 of the Guide provide that in general interests below £500 in value need not be registered.⁶ Footnote 4 on page 14 of the Guide states that the £500 figure will be updated once each Parliament in line with inflation. In practice the figure was not updated during the last Parliament; in the last two years of the Parliament inflation was very low, at times even negative.
22. Neither the House of Commons Code of Conduct nor the Ministerial Code contain provisions for updating thresholds in line with inflation.

⁵ [Fifth edition](#): July 2016

⁶ This is a general threshold. Different thresholds exist in respect of occasional income from speeches and journalism (where the threshold is £1,000 per calendar year), shareholdings not amounting to a controlling interest (£50,000 in value at the preceding 5 April), land or property rented out (£5,000 per year) and gifts, benefits or hospitality (£140).

23. **We recommend deleting footnote 4 on page 14 of the Guide.** This would not prevent the threshold being increased in future; it would just be less prescriptive about it.

Paper copies of the Register

24. Paragraph 47 of the Guide states:

“47. The Register is updated daily when the House is sitting, and is published online at www.publications.parliament.uk/pa/ld/ldreg.htm. This up-to-date online edition of the Register is also available in a loose leaf form for inspection by members at the Table of the House, in the Table Office, and in the Library; and by the public in the search room of the Parliamentary Archives.”

25. The second sentence of paragraph 47 does not reflect current practice. A paper print of the Register of Lords’ Interests has not been produced since January 2015. The Register is updated online throughout the working day, so any paper copy is overtaken almost immediately. In practice the paper copies were seldom consulted, if at all.
26. It is therefore better to delete the second sentence of paragraph 47 of the Guide. Should any member (or anyone else) wish to consult the Register, officials in the Table Office, the Library and the Parliamentary Archives, and clerks at the Table of the House, are able to access the up-to-date online edition.
27. **We recommend deleting the second sentence of paragraph 47 of the Guide.**

Self-invested personal pensions

28. Paragraph 57 of the Guide is in the section describing the requirement to register remunerated employment. It begins:

“Members are not required to register pension arrangements, unless conditions are attached to the continuing receipt of the pension that a reasonable member of the public might regard as likely to influence their conduct as parliamentarians.”

Thus the only qualification to the statement that pension arrangements are not registrable relates to conditions attaching to receipt of a pension.

29. Paragraph 57 as it stands does not quite give the full picture. This is because paragraph 67 of the Guide states:

“Pensions are not in themselves registrable (see paragraph 57 above), but identifiable holdings in a self-invested personal fund are registrable in either this category [shareholdings] or category 5 [land and property] as appropriate if of registrable value.”

30. Thus a member’s pension arrangements may be registrable if a shareholding in a self-invested personal pension exceeds £50,000 in value. It would be helpful if paragraph 57 were qualified by a reference to paragraph 67.
31. **We recommend amending paragraph 57 of the Guide as follows** (new words in **bold**):

“Members are not required to register pension arrangements (**save for certain investments in self-invested personal pensions—see paragraph 67**), unless conditions are attached to the continuing receipt of the pension that a reasonable member of the public might regard as likely to influence their conduct as parliamentarians.”

Registration of shareholdings

32. Paragraph 65 of the Guide provides that, “The value of a shareholding is determined by the market price of the share on the preceding 5 April”. This means that Register entries relating to shareholdings should be examined and if necessary brought up to date once a year. It reduces the burden of registration by dispensing with the usual requirement to notify changes to a member’s interests within one month of the change, which would mean carrying out valuations each month.
33. The procedure set out in the Guide does not fully describe registration practice. New members generally register shareholdings with reference to the date they enter the House. Existing members generally register new shareholdings with reference to the date of purchase. In the case of new members it does not seem logical to ask them to calculate the value of their shareholdings with reference to a date before they became members. In the case of existing members it would be unreasonable to require them to research a share’s price months before they bought the shares.
34. It would be more helpful for paragraph 65 to state what is in practice required by way of registration.
35. **We recommend amending paragraph 65 as follows** (*new words in bold; deleted words struck through*):

“65. The value of a shareholding is determined by the market price of the share ~~on the preceding 5 April~~ **at the time it is first registered, and thereafter by the market price on 5 April. This means that after Register entries relating to shareholdings are first registered they need to be updated only once a year, within one month of 5 April. The Registrar should be informed of the purchase or disposal of registrable shareholdings within one month of the date of the purchase or sale.** If the market price of a share cannot be ascertained (e.g. because the company is unquoted and there is no market in the shares), the member should decide whether to register it on the basis of its estimated value. Interests in shareholdings include share options.”

Corporate bondholdings

36. Members are required to register shareholdings if they (a) amount to a controlling interest in the company or (b) exceed £50,000 in value. Paragraph 68 of the Guide, in the section describing the requirement to register shareholdings, states, “Holdings of UK and other governments’ ... bonds ... are not registrable.” The Guide is silent on whether corporate bonds should be registered. It would be desirable for it to be clear.
37. There are differences between a bondholding and a shareholding. A shareholder (part-) owns the company and has a right to vote at its AGMs; a bondholder is a mere creditor and has no control over company activity. A shareholder may receive dividends, which depend on the company’s profits;

a bondholder usually receives only a set amount of interest which does not depend on company profits. Thus the respective interests are different in nature. These differences justify requiring shareholdings to be registered but not corporate bondholdings.

38. **We recommend adding the following at the end of paragraph 68 of the Guide:**

“Corporate bondholdings are not registrable.”

Honorary non-financial posts

39. Paragraph 84 of the Guide to the Code is in the section describing the requirement to register non-financial interests. It states that honorary fellowships in colleges and universities, the post of patron and *ex officio* positions in voluntary organisations should not be registered. This might imply that other honorary posts should be registered.

40. In a recent report the then Commissioner drew a distinction between non-financial interests which might reasonably involve executive functions or decision-taking (which broadly speaking should be registered) and honorary posts which don't involve such activity (which need not be registered).⁷ This reflected the practice that honorary posts are not registered. It would be helpful for the Guide to contain a clear statement to this effect.

41. **We recommend amending paragraph 84 of the Guide as follows** (*new words in bold*):

“The following posts should not be registered: honorary fellowships in colleges and universities; **other honorary posts**; offices in political parties; patrons; *ex officio* positions in voluntary organisations (for instance, those held by the Lords Spiritual). There may however be occasions on which such interests should be declared.”

⁷ Committee for Privileges and Conduct, *The conduct of Lord Mandelson* (1st Report, Session 2016–17, HL Paper 12), page 6.

ANNEX: PROPOSED AMENDMENTS TO THE CODE OF CONDUCT AND GUIDE TO THE CODE OF CONDUCT

Amendment to the Code of Conduct

[new words in **bold**; deleted words ~~struck through~~]

19. After investigation the Commissioner makes a report of her findings. If the member is found not to have breached the Code, or if the member and the Commissioner have agreed remedial action, the report **is normally published only on the Commissioner's webpages. The Commissioner has discretion to submit a report in such instances** goes to the Committee for Privileges and Conduct. If the member is found to have breached the Code (and remedial action is inappropriate or has not been agreed), the Commissioner's report goes to the Sub-Committee on Lords' Conduct; the Sub-Committee reviews the Commissioner's findings and, where appropriate, recommends a disciplinary sanction to the Committee for Privileges and Conduct. The member concerned has a right of appeal to the Committee for Privileges and Conduct against both the Commissioner's findings and any recommended sanction.

Amendments to the Guide to the Code of Conduct

[new words in **bold**; deleted words ~~struck through~~]

4. The procedure for enforcing the Code of Conduct is described later in this Guide. In summary, responsibility for investigating alleged breaches of the Code rests with the House of Lords Commissioner for Standards, who is an independent officer appointed by the House as a whole. Following her investigation, the Commissioner reports to the Sub-Committee on Lords' Conduct her findings of fact in cases where she has upheld the complaint and remedial action has not been agreed with the member concerned. The Sub-Committee reviews the Commissioner's findings, may comment on them and, where appropriate, recommends a sanction. The reports of the Commissioner and Sub-Committee are presented to the Committee for Privileges and Conduct, and the member concerned has a right of appeal against both the Commissioner's findings and any recommended sanction. Having heard any appeal, the Committee for Privileges and Conduct reports to the House and the final decision rests with the House. In cases where the Commissioner has dismissed the complaint or where remedial action has been agreed, the Commissioner's reports **are normally published only on the Commissioner's webpages on the parliamentary website. However, she has discretion to submit such a report** ~~submitted direct~~ to the Committee for Privileges and Conduct.

118. ~~The police and other agencies investigate allegations of criminal misconduct and the Commissioner will not investigate any related allegation of a breach of the Code while the agency is conducting its own investigation. The same suspension of investigation applies while related proceedings (for instance, an action for defamation) are before a court of law.~~ **The Commissioner may continue an investigation into an alleged breach of the Code if the police or another agency are investigating a related allegation of criminal misconduct, but in such circumstances the Commissioner will not finalise her report on the case until the criminal process concludes. Before finalising her report the Commissioner will take account of any relevant issues which arose during the criminal process. An investigation will be suspended if related**

proceedings (criminal or civil) become *sub judice* (within the meaning of the House's *sub judice* resolution).

121. Proceedings are not adversarial, but inquisitorial in character. The Commissioner is an independent and impartial investigator, appointed by the House, whose task is to establish the facts of a case. **She produces a report on each case, which includes her conclusions as to whether or not there has been a breach of the Code. If the complaint is upheld and no remedial action has been agreed with the member concerned her report is submitted to the Sub-Committee on Lords' Conduct. If the complaint is not upheld or if remedial action has been agreed the Commissioner's report is normally published only on her webpages on the parliamentary website. However, she has discretion to submit such a report to the Committee for Privileges and Conduct. This may be because of the particular seriousness of the allegation or because the case gives rise to matters of wider interest or relevance. In such instances the Committee for Privileges and Conduct reports the case to the House.** ~~She reports these, along with her conclusions as to whether or not there has been a breach of the Code, either to the Sub-Committee on Lords' Conduct (in cases where she has upheld a complaint but no remedial action has been agreed with the member concerned) or direct to the Committee for Privileges and Conduct (in cases where she has dismissed a complaint or where remedial action has been agreed).~~

126. The Commissioner is an officer of the House of Lords and parliamentary privilege extends to her in carrying out her duties **and to her reports**. It also extends to witnesses and parties to her investigations. A complaint is however not regarded as covered by parliamentary privilege unless and until the Commissioner has decided to undertake an investigation.

127. From the point that the Commissioner decides to undertake an investigation all evidence and correspondence relating directly to the inquiry is covered by parliamentary privilege. It must remain confidential unless and until it is published ~~by the Committee for Privileges and Conduct~~. If such evidence or correspondence were to be published or disclosed to anyone else without the ~~Committee's~~ **agreement of the Committee for Privileges and Conduct or the Commissioner**, this would be a contempt of the House. An attempt to obstruct an investigation is a contempt of the House.

129. After considering the member's written submission, the Commissioner may decide either to dismiss the complaint or to agree remedial action with the member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. Remedial action involves "putting the record straight", for instance by making an amendment to the Register; the member will also normally be expected to make a formal apology, ~~either in writing to the Chairman of the Sub-Committee on Lords' Conduct or by means of a personal statement in the House~~. If the Commissioner and member agree remedial action, the Commissioner ~~reports~~ **explains** the circumstances and remedial action **in her report on the case** ~~direct to the Committee for Privileges and Conduct~~. The Commissioner informs the complainant of the action taken in response to the complaint.

133. If, having considered the member's comments, the Commissioner considers that there remain significant contested issues of fact, she will prepare her own account of the facts of the case, while drawing the attention of ~~the Sub-Committee~~ to those points which are contested.

136. In the case of a breach of the Code, the options available to the Sub-Committee in its report to the Committee for Privileges and Conduct include:

- ~~that the Code has been breached but that no action or sanction is appropriate. Where the member concerned has volunteered appropriate remedial action (such as corrected disclosure or a personal apology to the House), the Sub-Committee may report to the Committee for Privileges and Conduct that it sees no need for the matter to be reported to the House because the remedial action itself involves public acknowledgement of the mistake.~~
- ~~that the Code has been breached; that the member's conduct should be drawn to the attention of the House in a report from the Committee for Privileges and Conduct; and, where appropriate, that the Committee for Privileges and Conduct should recommend to the House that the member be required to take action to regularise the position. **This may involve a formal oral statement of apology to the House.**~~
- **the Committee for Privileges and Conduct should recommend to the House that the member be required to make a personal statement of apology in the House.**
- ~~that the Code has been breached and that the Committee for Privileges and Conduct should recommend to the House that the member be suspended from the House. If the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then, the suspension may be for any period of time. If the conduct occurred before 26 June 2015 and was public knowledge before then, the suspension may be for a specified period of time not longer than the remainder of the current Parliament.~~
- ~~that the Code has been breached and that the Committee for Privileges and Conduct should recommend to the House that the member be denied access for a specified period of time to the system of financial support for members and/or denied access for a specified period to the facilities of the House. These sanctions can be applied for any period of time and may be applied in addition to a sanction of suspension.~~
- ~~that the Code has been breached and that the Committee for Privileges and Conduct should recommend to the House that the member be expelled from the House. This recommended sanction is available if the conduct concerned occurred on or after 26 June 2015, or if it occurred before 26 June 2015 but was not public knowledge before then.~~

141. ~~Where a case is referred to the Committee for Privileges and Conduct, either by the Sub-Committee or by the Commissioner, the Committee reports the case to the House. complaint is not upheld, the Committee for Privileges and Conduct has discretion as to whether to report to the House. When the Committee does not report to the House, it informs the complainant and member of the outcome of the complaint.~~

142. ~~Where a complaint is upheld, the Committee for Privileges and Conduct normally reports to the House (though it may decide not to make a report to the House in minor cases, where the member concerned has agreed appropriate remedial action). The Committee must seek the agreement of the House in any case~~

where **if** it is proposed that a **the** member be required to take action to regularise the position, or that the member be sanctioned by suspension or expulsion, or that the member be denied access to the system of financial support or the facilities of the House.