HOUSE OF LORDS

Committee for Privileges and Conduct

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Further report on the conduct of Lord Lester of Herne Hill

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The Committee for Privileges and Conduct

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Further report on the conduct of Lord Lester of Herne Hill

REPORT FROM THE COMMITTEE FOR PRIVILEGES AND CONDUCT

Events to date

1. In our last report on the conduct of Lord Lester of Herne Hill QC, published on 12 November 2018, we unanimously endorsed the findings of the independent Commissioner for Standards that Lord Lester had breached paragraph 8(b) of the Code of Conduct by failing to act on his personal honour. Specifically, she found that Lord Lester had, in the course of his parliamentary duties, sexually harassed a member of the public and offered her corrupt inducements to sleep with him.

2. We agreed the report after carefully considering Lord Lester's appeal against both the Commissioner's findings and the Sub-Committee on Lords' Conduct's recommendation that he be expelled from the House. It was, and remains, our view that Lord Lester's appeal against the findings did nothing to undermine the Commissioner's thorough and fair investigation and report. We did however in part uphold Lord Lester's appeal against the Sub-Committee's proposed sanction, recommending instead that he be suspended from the House until 3 June 2022.

3. When the Senior Deputy Speaker tabled a motion seeking the House's agreement to our report, Lord Pannick QC (who has advised Lord Lester throughout this process) tabled an amendment calling for the report to be remitted to us on the grounds that the Commissioner "failed to comply with paragraph 21 of the Code of Conduct which required her to act in accordance with the principles of natural justice and fairness". Following a lengthy debate on 15 November, the amendment was agreed to on a division by 101 votes to 78. Accordingly, the report was remitted to us and as a consequence the House's final decision on the report and the recommended sanction of suspension was deferred.

This report

4. We met on 20 November and 10 December to consider the debate of 15 November. This report addresses the key points raised in that debate, providing further information and analysis to help the House take what we hope will be a final decision on the case. It addresses the criticisms made of the process, particularly those which relate to:

   (a) the requirement to ensure fairness and natural justice for both the complainant and the member;

   (b) whether cross-examination is either necessary or appropriate in investigating a complaint—particularly of sexual harassment—as part of an internal disciplinary process;

   (c) in the absence of cross-examination, the requirement for the investigation to be robust in testing the evidence and the steps the Commissioner took to ensure the robust testing of the evidence;

(d) the standard of proof required for the Commissioner to reach her finding;

(e) issues around legal representation.

We remain firmly of the view that the Commissioner conducted herself to the highest standards of fairness and rigour required for an investigation into a complaint of this nature.

5. We hope that, having read this supplementary report, the House will agree to the Committee's original recommendations, and to the consequential resolution to suspend Lord Lester. We would like to take this opportunity to reiterate the offer we made in paragraph 17 of our last report that if any member of the House, ahead of the debate, wishes to see the appendices to the Commissioner's report or the appendices to Lord Lester's appeal documentation they should contact the Clerks of the Journals.[1]

6. We publish with this report three appendices. Appendix 1 is a letter we received from staff of the House about the impact of the debate on our last report. Appendix 2 is a submission we received from Lord Lester together with our own commentary on the points he raises. Appendix 3 is a submission we received from the complainant, Jasvinder Sanghera.

Comparisons with other organisations

7. During the debate, it was suggested that the Commissioner had failed to meet the standards of natural justice and fairness and that Lord Lester had been denied procedural protections that would be standard in any other disciplinary context.[2] As we shall outline, such assertions were and remain wrong. Many organisations analogous to the House of Lords apply similar processes and in particular do not allow cross-examination. Throughout this report we shall give examples of where other organisations take the same approach as this House.

8. Comparisons were also made to legal processes which implied that, if an internal disciplinary system does not have all the features of the UK criminal court process, then it is unfair. This comparison is in our view misguided. The internal disciplinary systems of most legislatures and professional bodies differ from court processes (see paragraph 17ff). What the House is determining in this case is not a criminal charge or even the deprivation of a civil right. Rather, as the European Court of Human Rights found in a case brought by the former MP Geoff Hoon in 2014, this case concerns a *political* right: that of participating as an active member of Parliament.[3]

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1 Two sets of documents have not been published so as to preserve the anonymity of witnesses. These are the appendices to the Commissioner's report and the appendices to Lord Lester's appeal.

2 HL Deb, 15 November 2018, col 1995

3 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: https://hudoc.echr.coe.int/eng?i=001-148728#{%22itemid%22:[%22001-148728%22]}. 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. Lord Lester came to the same conclusion in a debate in this House in 2009.

Criticisms of the investigation

9. We now turn to each of the criticisms made on 15 November about the process of the investigation. We start by reminding members that the process is one agreed by this House and kept under constant review by the Sub-Committee on Lords' Conduct. It is a process set out in the Code of Conduct which each of us signs at the start of each Parliament.

The requirement to ensure fairness and natural justice for both the complainant and the member

10. Paragraph 21 of the Code of Conduct states that the fundamental requirement is that the Commissioner, the Sub-Committee on Lords' Conduct and this Committee "shall act in accordance with the principles of natural justice and fairness". To that list of actors we might also add "the House". Several members advanced the argument that in cases such as this cross-examination (either by the complainant's counsel or independent counsel appointed by the Commissioner) is a central requirement of natural justice and fairness and that, because there was no cross-examination, the processes followed in this investigation did not provide natural justice.[4] We disagree.

11. There was considerable discussion in the debate about the precise meaning of natural justice, which is not a rigid concept. 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.

    We believe that it would be hard for Lord Lester to disagree with this given the similar characterisation of natural justice and fairness he gave when arguing that these principles were met by the House's disciplinary processes in the cases of Lord Truscott and Lord Taylor of Blackburn.[5] Lord Lester—like those members investigated before him—had the benefit of all these features of natural justice and fairness in the present case.

12. Lord Lester was given notice of the case against him by the Commissioner who met him on 8 February 2018 and provided him with the details of the complaint and the decision of the Sub-Committee to allow the complaint to be investigated under the personal honour provision. He was given an unredacted copy of the complainant's statement and those of her witnesses T, A, N and M and was given over six weeks to formulate his response to the complaint.

13. During the investigation Lord Lester was given the opportunity to respond fully to the allegations and was invited to comment on the evidence provided by the complainant and others at every turn. The Commissioner's report shows that every relevant point raised by Lord Lester was raised with the complainant, who responded at interview or in writing. The report also shows how the Commissioner evaluated this evidence, and how she reached her conclusions on each point.

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4 HL Deb, 15 November 2018, cols 1995-1997
5 HL Deb, 20 May 2009, col 1410

14. Lord Lester, as the Guide to the Code stipulates,[6] was shown a draft of those parts of the Commissioner's report dealing with issues of fact, so that he had an opportunity to comment on them, which he did. Despite all these opportunities, Lord Lester failed to provide some evidence until after the end of the investigation and made points in his appeal that he had not made during the investigation, even though he had been repeatedly encouraged by the Commissioner to provide her with any relevant material and views. The fact he did not take up these opportunities is not the fault of the Commissioner.

15. Lord Pannick has repeatedly asserted that if someone is suspended from a darts or golf club for harassment they would have a right to a more thorough process than ours.[7] We disagree. A local sports club will have its own internal rules and procedures for deciding when to suspend or expel a member. These are unlikely to feature an experienced independent investigator and two stages of appeal like ours. When someone is suspended or expelled from a sports club, the matter is essentially a contractual one. As Lord Justice Denning (as he then was) said in the case of *Lee v Showmen's Guild of Great Britain [1952] 1 All E.R. 1175, 1181*, the courts will check that there is fair play. They will check that the person has notice of the charge and a reasonable opportunity of being heard. They will check that the club observed the procedure laid down by the rules, but will not otherwise interfere. Applying these principles, Lord Lester had nothing less than would be accorded to a person suspended from a sports club and, as we have said, rather more. As we show at paragraphs 18, 43 and 47, other legislatures and professional bodies have systems very similar to our own.

16. Natural justice applies to the member under investigation. Fairness must apply to both the complainant and the member being investigated. In the debate on 15 November the concept of fairness was almost exclusively interpreted—with some notable exceptions—as fairness for Lord Lester alone. But the concept of fairness applies equally to the complainant, particularly in an investigation of sexual harassment and abuse of power. Some of those who spoke in favour of the amendment were very critical—wrongly in our view—of the basic unfairness of the existing procedure. As members sitting in judgment on a peer we have a duty to ensure that we act in accordance with the principle of fairness. The complainant has publicly and forcefully referred[8] to the fact that Lord Pannick, who has made it clear from the outset that he is a close friend and adviser to Lord Lester, was one of those who sat in judgment on Lord Lester when the matter came before the House and campaigned in favour of the points he intended to put to the House in a national newspaper the day before the vote and has continued to campaign in the media since.[9] Nor was he the only member to do so. By contrast, the complainant had no such connections in the House to campaign on her behalf, even were it appropriate to do so. We agree with her point.

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6 Guide to the Code, paragraph 136

7 See for example Thunderer column in *The Times*, 14 November 2018 and HL Deb, 15 November 2018, col 1997.

8 For example on the Today programme, BBC Radio 4, 16 November 2018.

9 See for example The Times, 29 November 2018, *"Lord Lester is entitled to a fair hearing and critics are missing the point"*

Whether cross-examination is either necessary or appropriate in investigating a complaint of sexual harassment as part of an internal disciplinary process

17. Some members argued that it was manifestly unfair not to allow cross-examination in this case, involving (as it did) the credibility of both the complainant and Lord Lester. It was suggested that cross-examination in such a case is inherent in the very concept of fairness[10] and that to deny Lord Lester the right to have the complainant's evidence subjected to cross-examination was to deprive him of something that trade unionists, City of London employees or golf club members would be entitled to if they were subject to internal disciplinary proceedings. We disagree.

18. Cross-examination in court cases is a long-standing feature of Anglo-American law and of the law of other countries based on the English common law. But it is not the only way of running a fair and robust process that conforms with natural justice. Cross-examination is not an established feature of other systems of law that uphold the principles of natural justice. Nor is it 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.

19. 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.

20. Paragraphs 124-127 of the Guide to the Code make clear that the system designed by the House of Lords in 2009 is meant to be inquisitorial rather than adversarial. The Leader's Group which designed the system deliberately took this decision in order to move away from the previous system which had been described as amounting to "a lawyers' charter".[11]

21. It was asserted during the debate[12] that the Commissioner should have chosen to have recourse to cross-examination and that it was allowed by the Code. We disagree. The Guide to the Code says: "Nor do members accused of misconduct have any entitlement to cross-examine complainants, though they are given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied by complainants or others." The present Commissioner, her predecessor and the Sub-Committee which previously conducted these investigations have never interpreted the Code as giving latitude for cross-examination of any kind. Other members subject to investigation have in the past asked the Sub-Committee to consider the possibility of cross-examination and all were robustly told it was not part of the process. To publicly and repeatedly criticise the Commissioner for

10 HL Deb, 15 November 2018, col 1996

11 Report of the Leader's Group on the Code of Conduct, 28 October 2009, paragraph 72: https://publications.parliament.uk/pa/ld200809/ldselect/ldlead/171/171.pdf

12 For example, see the speech of Lord Pannick, HL Deb, 15 November 2018, col 1996.

reading the Guide and Code exactly as the House intended is, we believe, an inappropriate way to treat a public servant.

22. In inquisitorial proceedings, the judge plays a more active role in the proceedings than in an adversarial system, examining the witnesses, and scrutinising and testing the evidence. Oral cross-examination of the parties and of their witnesses by lawyers for the other side is not a feature of this type of proceeding. Of course, the evidence must be tested by the judge - and we consider in detail below how the Commissioner tested the evidence in this case (see paragraphs 30ff).

23. 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 a particular technique, honed by generations of lawyers versed in the common law tradition, but by no means a fundamental feature of all systems of law, and indeed cross-examination may be inappropriate for dealing with complaints of sexual harassment.

24. In arriving at this conclusion, we reflected on the cogent argument of Lord Lester himself in this House in 2009 in a case where the lawyers for Lord Taylor of Blackburn argued that Lord Taylor had been denied basic procedural safeguards guaranteed by domestic and international law, including the right to test the evidence against him through cross-examination. Lord Lester then argued that it was entirely misguided to say (amongst other things) that cross-examination was an essential safeguard in proceedings involving possible suspension from the House.[13] Lord Lester was right in that case, and it is equally true of the present case.

25. We further note that 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" which is what one member stated was necessary in the debate on 15 November.[14]

26. We asked for advice on this point from Dr Helen Mott, a specialist in understanding the psychology of the perpetration and experience of sexual harassment who advised the bicameral steering group which proposed the new Independent Complaints and Grievance Scheme. She told us that best practice in cases like these is for an experienced, trauma-informed investigator to test the evidence while subjecting reporting parties to as little trauma as possible and that this means using an inquisitorial process and avoiding repeated questioning in stressful situations. If any member of the House, ahead of the debate, wishes to see Dr Mott's full advice they should contact the Clerks of the Journals.

27. Our procedure, which depends on dealing with these cases through interviews by an experienced investigator (which, properly handled, can be as penetrating as the case demands) is well-suited to cases such as this, and

13 HL Deb, 20 May 2009, col 1410
14 Lord Woolf, HL Deb, 15 November 2018, col 2007

allows the robust testing of evidence at the same time as minimising the risk of the process re-traumatising the complainant.

28. Finally, we note that one of the purposes of cross-examination is to test the credibility of competing claims. No cross-examiner can do this without being provided with material which would form a proper basis for challenging each account. However, in this case Lord Lester never advanced an alternative account beyond the assertion that what the complainant was saying was a "pack of lies".

29. The question the Commissioner had to decide was therefore whether the complainant was telling a "pack of lies" as suggested by Lord Lester, or not. To accept that it was a pack of lies the Commissioner would have had to accept that not only was the complainant lying now, but that she decided to sow the seeds of this lie twelve years ago by faking distress and reporting her story to witnesses of high standing, including late at night from Lord Lester's spare room.

Robust testing of the evidence

30. In the absence of cross-examination, it is vital that evidence is robustly tested by a competent investigator. This is exactly what happened. During the debate on 15 November there were various areas where members suggested that the evidence needed more vigorous testing. These included claims that:

- The Commissioner did not contact all the witnesses proposed by Lord Lester;
- The complainant was not adequately questioned by Commissioner about the "affectionate" book dedications;
- Witnesses were not interviewed in person;
- The Complainant's delay in making the allegations was not properly probed;
- Confusions about timelines were not properly probed;
- The Commissioner did not properly probe the alleged offer of a peerage;
- There was a misunderstanding of what constitutes corroboration by witnesses; and
- The Commissioner made herself a part of the appeal process.

Having gone back and reviewed all the evidence in this case we remain of the view that the Commissioner was appropriately robust in testing the evidence in each of these areas. We are mindful that the Guide to the Code is clear at paragraph 144 that the Committee for Privileges and Conduct and the House should not re-open the Commissioner's investigation, but given the circumstances we feel bound to draw the House's attention to the procedure the Commissioner followed.

31. **Not contacting all the witnesses proposed by Lord Lester.** The Commissioner and Lord Lester discussed on 10 April Lord Lester's list of twelve potential witnesses. They both agreed that the Commissioner would speak to the ones he was working with at the time who might have seen

him working with the complainant and only speak to the others if concerns were raised about his behaviour. This is summarised in paragraph 62 of the Commissioner's report.

32. **The book dedications**. The Commissioner dealt fully with the issue of the complainant's two friendly book dedications at paragraphs 111–119, 143–144 and 191–197 of her report. These paragraphs show that the matters drawn to her attention by Lord Lester and S were put to the complainant and that the Commissioner sought further evidence by asking the complainant for evidence of her normal sign off. The complainant provided explanations which the Commissioner found credible. These explanations included the complainant saying that one of the dedications was written during a public event when Lord Lester had specifically asked her to sign the book "with love", and that she did so because she was uncomfortable and intimidated (paragraphs 113 and 114). There is no right or predictable way for a victim of sexual harassment to behave, including in their manner towards the alleged perpetrator. The Commissioner tested the complainant's actions in this case and her finding is addressed at paragraphs 144 and 194 of her report.

33. **Complaints that witnesses were not interviewed in person.** Formal transcripts were taken for the Commissioner's interviews with Lord Lester, Lady Lester, Lord Lester's witness B and the complainant. These were all seen by members of this Committee. Paragraph 17 of our last report stated they were available for any members of the House to view, but nobody asked to. Other witnesses were interviewed by phone and a formal note of those interviews was agreed with the interviewee afterwards; again these notes were seen by this Committee.

34. **The delay in making the allegations**. During the debate it was suggested that the 12-year delay in making the allegations called into question the complainant's motives and truthfulness. The Commissioner accepted and found credible the complainant's detailed explanation that she did not wish anything to distract from the campaign for forced marriages legislation; that she did not think she would be believed; that she was worried that if she was not believed then it could damage her work and finally she was unsure whether the House of Lords Code of Conduct covered the alleged conduct (see paragraph 120 of the Commissioner's report).

35. The House should be mindful of the fact that in 2007 the House had no independent Commissioner or other similar person for a complainant to contact. Any complaint would need to have been made to the Chairman of the Sub-Committee on Lords' Conduct. It should be equally mindful that there is no right or predictable way for a victim of sexual harassment to behave, including when she reports the alleged harassment. This is recognised in the Crown Court Compendium for judges in criminal trials which specifically states that victims may delay reporting "for some time" and we are sure this is something the House would recognise.[15]

36. We refer again to the advice we received from Dr Helen Mott. She explained that a decision to come forward some time after an event is often carefully and deliberately made by victims and may be related to the point at which they have processed trauma, feel able to face stigma, are in a stronger position to speak out, or when they judge that the balance of risks and threats may

15 Ch 10–4 and Ch 20, https://www.judiciary.uk/wp-content/uploads/2016/06/crown-court-compendium-pt1-jury-and-trial-management-and-summing-up-june-2018a.pdf

have shifted so that the odds of achieving a positive resolution no longer seem insurmountable.

37. **Timelines**. The chronology of events, it was argued in the debate, undermined the Commissioner's conclusion. The Commissioner dealt with chronology in her comments on the Grounds of Appeal (paragraphs 82–91) and in her response to Lord Lester's late submissions. Further, in the independent assessment of the evidence Camilla Palmer QC (Hon)[16] told the Commissioner that she would expect some confusion about timelines after 12 years and it was unlikely that clarity would be achieved through further probing. We specifically considered that issue in the appeal and we entirely endorse that assessment.

38. **Probing the offer of a peerage**. Lord Lester maintained in his appeal that the Commissioner did not question him over the allegation that he offered to help the complainant get a peerage if she slept with him. However, this accusation was put to him several times. It was first put to him in the complainant's statement (unpublished Appendix A at paragraphs 27–28) and he replied in his statement of 26 March (unpublished Appendix M at paragraph 12). The Commissioner did not subsequently raise the allegation with him given his clear and unequivocal written response. Lord Lester did not himself choose to raise the allegation in his interview with the Commissioner. During that interview the Commissioner did ask him about the totality of the allegations, in the context of asking him whether he thought the witnesses had been telling the truth when they said that she had contacted them at the time. He said that they had told "a pack of lies" about all the allegations (pp110-112).

39. The complainant in her statement of 17 May, having been sent Lord Lester's statement of 26 March, maintained the truth of her original allegations and specifically mentioned the peerage point (unpublished Appendix R, paragraphs 3 and 18). This statement was sent to Lord Lester, who replied on 25 May (unpublished Appendix U) in which he reaffirmed his statement of 26 March, but did not otherwise refer to the peerage allegation. He was later sent the factual parts of the Commissioner's draft report, for comment, which contained the complaint. His response (unpublished Appendix Z) raised a criticism that the Commissioner had not asked him about the peerage point when she interviewed him, but he did not take the opportunity to address the allegation directly.

40. **Corroboration by witnesses.** Various points were made in the debate about the criminal law on corroboration in cases of alleged sex crimes. This was not a criminal investigation and there was no criminal charge, meaning that the criminal law on corroboration was not in issue. Nevertheless the Commissioner herself recognised that she was entitled, indeed bound to look for independent support to test the credibility of the complainant's statement. On 15 November Lord Woolf took a very narrow view of what constitutes corroborative evidence when he stated that "A complaint is not corroboration but it is very easy to see it as such, and the commissioner in this case saw it as corroboration."[17] In English criminal courts there is now no requirement for corroborative evidence, and in Scotland where the requirement still exists the evidence of contemporaneous accounts while the

16 Camilla Palmer QC is an experienced employment solicitor, an employment tribunal judge and the founder of the legal employment settlement charity YESS (Your Employment Settlement Service). She was named as one of six honorary Queen's Counsel this year.

17 HL Deb, 15 November 2018, col 2007

incident was taking place would be accepted as supportive of the evidence of the complainant. Contemporaneous reports of the incidents made to third parties are plainly relevant in cases like this.

41. The Commissioner decided to take into account contemporaneous evidence and she found some very striking examples, including the complainant's late-night phone calls to witnesses T and H from Lord Lester's house where T specifically remembered the complainant being audibly distressed and saying she felt so unsafe she had put a chair under the door handle. Another example is the recollection by T that when she accompanied the complainant to the Andrew Marr Show Lord Lester greeted her presence with "disgust" and asked if she was the complainant's "chaperone".[18] These were important pieces of evidence and the Commissioner attached significance to them. We consider the Commissioner entirely justified in so doing.

42. **The Commissioner made herself a part of the appeal process.** During the debate the Commissioner was criticised for submitting papers to us during the appeal process. We regard this as unfounded criticism. Much of Lord Lester's written appeal focused on the way the Commissioner had conducted the investigation. We therefore knew that to decide on the appeal we would need to hear the Commissioner's response to some of the criticisms. The Guide to the Code of Conduct states that during the appeal the Committee may also take evidence from the Commissioner.[19] We accordingly arranged for the Commissioner to address the Committee and she submitted a written response to the points raised by Lord Lester, a response which we shared with Lord Lester. In the event we decided that her written submission covered any questions we would have wished to ask.

Standard of proof

43. During the debate several members criticised the standard of proof required in this case. Some members went so far as to suggest that the Commissioner should have been required to apply the criminal law test of beyond reasonable doubt.[20] The Code itself is clear that all investigations under the Code should be tested against the civil standard of proof—the balance of probabilities. This standard of proof is the same as that employed by a range of organisations, such as the Scottish Parliament, the Judicial Conduct Investigations Office and the Medical Practitioners Tribunals which hear complaints against doctors.

44. Other contributors to the debate accepted the civil standard of proof but suggested that the Commissioner had not understood that in serious cases a simple 51:49 test of probabilities is inappropriate and cogent evidence is required to back up any finding. In fact, the Commissioner did accept that the balance of probabilities is a guaranteed floor, but not necessarily a ceiling, to the appropriate standard of proof. She explained in her report:

> "In my view, this case is one which requires strong evidence to support a finding that the allegations against Lord Lester are more likely than not to be true… Therefore, in carrying out the investigation, I have followed up all challenges and disputed points, except those that are immaterial

18 Committee for Privileges and Conduct, *The conduct of Lord Lester of Herne Hill* (2nd Report, Session 2017–19, HL Paper 220), Annex 2, paragraph 136

19 Guide to the Code, paragraph 143

20 For example, HL Deb, 15 November 2018, col 2012

> or impossible to verify, in order to test the strength of the evidence as hard as I could."[21]
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> "My decision must apply the standard of the balance of probabilities. Where the allegations are particularly serious, it is important that the evidence is suitably strong and cogent. Applying the test of the balance of probabilities I find the complaint upheld, on the basis of the strong and cogent evidence of the complainant and her witnesses."[22]

45. In commenting on Lord Lester's Grounds of Appeal the Commissioner said:

> "If there had been no corroborative evidence from the initial witnesses, and no other corroborative or supporting evidence, and I had been asked to decide if the complainant's unsupported allegations made it more likely than not that Lord Lester had behaved as alleged, despite his denial, I suspect that I would have found that burden of proof had not been met, as the evidence would have been 50/50."[23]

Legal advice and representation

46. Some members suggested that Lord Lester should have had the right to be represented by counsel. Standing Order 66 of the House of Lords (power to hear counsel) forbids the Committee for Privileges and Conduct from hearing parties by counsel unless so authorised by Order of the House. And the practice of the Committee, following paragraph 143 of the Guide, has always been to require members appealing a sanction to represent themselves rather than to speak through a representative, legal or not. This does not mean that members cannot receive legal advice and indeed Lord Lester received legal advice throughout the investigation and appeal. He was accompanied by his solicitor when he attended his interview with the Commissioner on 10 April to discuss his statement and Lord Pannick, an eminent advocate in his own right, advised him during the investigation and afterwards. Both Lord Pannick and Lord Lester's solicitor accompanied Lord Lester to the appeal hearing and were given the opportunity to confer with him in private, which they did.

47. Lord Lester could only have been represented by Lord Pannick during his appeal hearing if there had been a motion in the House to dispense with Standing Order 66, and if we had then dispensed with the requirements of paragraph 143 of the Guide. Lord Lester did ask us whether Lord Pannick could represent him at his appeal hearing and we explained that to do this a motion would have to be moved on the Floor of the House—something which the Senior Deputy Speaker offered to facilitate. Lord Lester replied to confirm that he understood the position and confirmed he did not wish a motion to be tabled. In practice, Lord Pannick effectively represented him in his final appeal to the House on 15 November when he acted as Lord Lester's advocate during the debate.

48. While the rules around legal representation vary between organisations, a considerable number of them take the same position as the House. For

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21 Committee for Privileges and Conduct (2nd Report, Session 2017–19, HL Paper 220), Annex 2, paragraph 155-156

22 Committee for Privileges and Conduct (2nd Report, Session 2017–19, HL Paper 220), Annex 2, paragraph 242

23 Committee for Privileges and Conduct (2nd Report, Session 2017–19, HL Paper 220), Comments from the Commissioner on Lord Lester's Grounds of Appeal, paragraph 70

example, when the Government investigates a Minister for alleged breaches of the Ministerial Code (including allegations of bullying and harassment), he or she is not permitted legal representation. Similarly, judges being investigated by the Judicial Conduct Investigations Office have no formal right to legal representation.

Independent verification of the Commissioner's approach to the evidence

49. During the debate some members suggested that the Commissioner would have benefited from expert advice on how to conduct such investigations. As we have noted, she is an extremely experienced investigator. However, because the Commissioner usually works with others in different roles, she felt it was good practice that she should run the evidence past someone who would be willing and able to point out if she had overlooked anything. As noted in paragraph 90 of her report, the Commissioner sent all the evidence in this case to Camilla Palmer QC (Hon), a solicitor and employment tribunal judge with considerable experience in dealing with allegations of sexual harassment and discrimination in the workplace. The Commissioner specifically asked for views on with whom else she should test evidence, what other questions she might ask and whether she was right not to interview the witnesses Lord Lester suggested who would attest to his conduct around people with whom he has worked.

50. In her response Camilla Palmer stated that is was clearly difficult for witnesses to remember exactly what happened so long ago and that she would expect some discrepancies in the dates, and that she doubted there was much to gain from probing these areas much further. She went on to say that that she had found no missed steps and made some small suggestions of areas where further independent verification could be sought. The Commissioner took these suggestions into account. At no point did Camilla Palmer suggest that the Commissioner's questioning of the complainant, Lord Lester or the witnesses was deficient in any way.

Changing the procedures now

51. Some members suggested in the debate that the fact that we are considering changes to the process for investigation of complaints in the light of the new Independent Complaints and Grievance Scheme (ICGS), which was implemented in the House of Commons in July, in some way supported an assertion that the process used in this case was deficient. This is unfounded. We are proposing to introduce the ICGS for allegations of bullying, harassment and sexual misconduct (but not for other complaints under the Code) not because the current system is unfair to *members*—it is not. We are doing so because we believe the current system to be unsuitable for *complainants*, who may understandably be daunted about exposing themselves to the glare of the media spotlight, or about being subject to debate in Parliament, and who have not hitherto been offered any support other than that which the Commissioner herself can provide. The ICGS will bring the House into line with best practice in the field.

52. Importantly, like our current system, the ICGS will not allow cross-examination and will operate to the civil standard of proof.

Impact of debates in the House

53. The debate on 15 November inappropriately strayed beyond points about the process and into implied and explicit criticisms of the complainant. This risked damaging the reputation of the House. More troublingly, we are concerned that some of the contributions to the debate will have deterred other victims of bullying, harassment and sexual misconduct from coming forward. In particular, we draw attention to the letter we received from staff of the House in the light of the debate (see appendix 1).

54. We also wish to express our regret that the amendment and its supporters directly criticised the Commissioner for Standards, without any apparent acknowledgement of the procedures drawn up by the House with which she was bound to comply. The Commissioner has seen her professional reputation impugned by some members in the debate and by members using their influence in the national media, yet she is not permitted to respond. Some of the supporters of the amendment have suggested that the Commissioner had latitude to vary established and codified procedures, when she did not (see paragraph 21).[24] This is all the more regrettable when no member of the House, other than those on this Committee who had read all the relevant papers, took up the opportunity they were given to read the confidential annexes to the report (not published in order to preserve the witnesses' anonymity) that refute many of the criticisms made of the Commissioner.[25] We retain full confidence in the Commissioner's abilities, and remind the House that she is an experienced lawyer, investigator and judge of many years' standing who was appointed by this House specifically to investigate alleged breaches of the Code.[26]

55. It is our hope that, in deciding how to approach the forthcoming debate on this supplementary report, members will carefully consider the impact of their words on the complainant, Jasvinder Sanghera, who we have concluded was a victim of sexual harassment. Ms Sanghera has already been subjected to one debate in the House during which some members used their position to make wholly inappropriate comments about her character and behaviour.[27] It would be entirely inappropriate for comments of this nature to be made again.

56. This is a self-regulating House. In coming to a conclusion on this report we should all recognise our serious responsibility as members of this house and act accordingly. In considering conduct reports each of us is under the same duty to act in accordance with natural justice and fairness, and be seen so to do. One of the key principles of a fair system is that the judge should be

24 Indeed when Lord Lester wrote to Lord Brown of Eaton-under-Heywood, the chair of the sub-committee on Lords' Conduct, setting out concerns about the procedure, Lord Brown was clear in his reply that the Commissioner was bound to investigate the complaint in accordance with the procedures as laid down in the Code and Guide to the Code (see Committee for Privileges and Conduct (2nd Report, Session 2017–19, HL Paper 220), Annex 2, paragraph 53).

25 Paragraph 17 of our Report into the Conduct of Lord Lester stated that "If any member of the House, ahead of the debate, wishes to see the appendices to the Commissioner's report or the appendices to Lord Lester's appeal documentation they should contact the Clerks of the Journals." Not one member of the House contacted the Clerk of the Journals.

26 The Commissioner is an experienced lawyer and mental health tribunal judge. She is a former President of the Law Society and she is also an experienced investigator who has led multiple investigations in her role as Senior Associate at Verita, a specialist investigatory consultancy.

27 Dr Helen Mott drew our attention to the fact that in the debate on 15th November "reputation" was invoked (positively) 15 times to describe Lord Lester. It was not invoked once to describe the complainant. At the same time, the complainant's credibility and motivations were questioned.

independent and unbiased. In particular, members who are friends of any member subject to a complaint under the Code must put aside their own personal feelings when deciding how to exercise their power as part of the ultimate appeal body, ensuring that they comply with the requirement of paragraph 7 of the Code of Conduct to "resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest".

Conclusion

57. The debate on 15 November seemed to be characterised as a split between the legally qualified members of the House and the Committee which by implication did not understand what constitutes natural justice and fairness. This is a misunderstanding: highly experienced legally-qualified members of the House sit on both the Sub-Committee on Lords' Conduct and the Committee for Privileges and Conduct, including two former Lord Chancellors and two retired Supreme Court justices. These are the legally qualified members that this House chose to appoint to those committees to make decisions under the Code of Conduct applying the principles of natural justice and fairness. These are the members who looked at the whole body of evidence, including the unpublished evidence that no other member of the House asked to view.

58. We are of the unanimous opinion that the process set out by the House in the Code and Guide, and followed in this case, was fair, understood by all parties and conducted entirely appropriately. We are concerned that many of the participants in the debate on 15 November were not fully aware of the care and professionalism of those charged with operating our scheme and may have been led to substitute their own interpretation of such evidence as they heard. That led to the House undermining the processes in the Code which were put in place with some care after significant problems that came to light over a decade ago about members' conduct. These processes were designed to be independent, transparent and credible in the House and beyond. We urge the House to support the decision reached in this case.

Recommendation

59. **We recommend that the House should endorse the conclusions of the independent Commissioner for Standards that Lord Lester of Herne Hill breached the requirement of the Code of Conduct to act on his personal honour, by sexually harassing the complainant and offering her a corrupt inducement to sleep with him.**

60. **We further recommend that Lord Lester of Herne Hill be suspended from the House until 3 June 2022.**

APPENDIX 1: LETTER TO THE CHAIRMAN FROM LORDS STAFF

On Monday 19 November the Chairman received the letter below signed by 74 members of House of Lords staff. The Chairman was asked to circulate the letter to all other members of the Privileges and Conduct Committee and did so. Names have been redacted for the purposes of this report.

> "Dear Senior Deputy Speaker,
>
> We are writing to express our disappointment in the outcome of the recent debate on the House of Lords Committee for Privileges and Conduct's report on the conduct of Lord Lester of Herne Hill, and the tone of many of the comments made in the debate.
>
> We were dismayed to see that the result of an investigatory process which has been created and approved by Members was so easily disregarded by those same Members, none of whom had previously objected to the process and many of whom referred to their friendship with the accused.
>
> The unique nature of our place of work creates a power imbalance between staff and Members. Instances of bullying, harassment and sexual misconduct by Members towards staff are far too common. We need to have confidence that allegations of bullying, harassment and sexual misconduct against Members in the context of their parliamentary work will be properly considered and complainants not subject to humiliation or criticism. Given the absence of any other process, a complaint to the independent Commissioner for Standards is the only available route. Following last week's debate, we no longer feel that any such complaint would result in a fair and satisfactory outcome.
>
> The House of Lords Commission has set as an objective of the Administration "Making Parliament safer" and valuing "Diversity, inclusion and respect for others". We urge you, and the Privileges and Conduct Committee, to do everything within your power to make sure that these aims are realised.
>
> We have signed this on the basis that our names will only be shared with members of the Privileges and Conduct Committee."

APPENDIX 2: FURTHER CORRESPONDENCE FROM LORD LESTER OF HERNE HILL

Introduction from the Committee

1. Since the House debated our 2nd Report on 15 November (HL Paper 220), the Chairman has received a letter from Lord Lester dated 4 December which included a request to publish it with our report. We do so here, but we have not published the summary of the opinion of David Perry QC which is mentioned in Lord Lester's letter as the full opinion was published as an appendix to Annex 3 of our 2nd Report. We offer the following comments on the letter.

2. Lord Lester's letter asks for a thorough independent investigation, legal representation and evidence tested by cross examination, and for each allegation to be identified individually and investigated in detail to see if it has been proved to the required standard of proof. None of these requests is new—Lord Lester has made them before, including in his appeal to the Committee—and our report sets out why we consider that these requests remain misguided.

3. Lord Lester's letter asks us to correct what he describes as the misapprehension in the debate on 15 November that the fairness of the procedure for investigating sexual harassment complaints in the House of Lords has not been criticised before now. In doing so, he cites various Parliamentary documents. We have researched each of these documents and offer the following response to why they are not relevant in the way Lord Lester suggests.

Select Committee on Parliamentary Privilege in 1967, First report of the Select Committee on Standards in Public Life in July 1995, 21st Report of the Committee on Standards and Privileges in 1998, Report of the Joint Committee on Parliamentary Privilege in 1999

4. None of these reports mention sexual misconduct. The 1967 Select Committee report reference relates specifically to complaints about contempt where the House of Commons process could result in the imposition of a penalty of imprisonment against the complainant. Unlike our report, it is not a report about internal disciplinary processes. The 1995 report refers only to the House of Commons and although cross-examination was recommended for some internal disciplinary proceedings the recommendation was never taken forward. The 1998 report covers only House of Commons procedures that should apply if the question arose of an appeal against the Commissioner's findings as to the facts of any complaint against a Member. The recommendations for an external appellate body were not accepted by the Commons. The 1999 report, chaired by Lord Nicholls of Birkenhead, focussed on how contempts of Parliament, rather than internal disciplinary cases under the Code of Conduct, should be investigated. The recommendations were not referred to in the debate in the House of Commons and the report was not debated in the House of Lords.

A Written Answer by the Senior Deputy Speaker on 16 November 2017

5. The Committee has considered improvements to procedures for investigating complaints of bullying, harassment or sexual misconduct and will report in

the new year. The improvements we will recommend are aimed at providing better support for the complainant, rather than the member, in such cases.

Dame Laura Cox Independent Inquiry Report of October 2018 into Bullying and Harassment of House of Commons Staff

6. This was a report into the treatment of House of Commons staff. Dame Laura's recommendations relate only to the Commons Code of Conduct which, unlike the Lords, had no flexibility to allow investigations of bullying, harassment or sexual misconduct. A separate independent inquiry will cover the House of Lords.

7. Finally, Lord Lester asks that as members of the Committee for Privileges and Conduct we do not vote on the matter again, and that any vote must be free of formal or informal whipping. It would be extraordinary if members of a Select Committee that heard Lord Lester's appeal and reported its findings to the House were then unable to support that report if the House is asked to vote on it.

Letter to the Chairman from Lord Lester of Herne Hill

I am writing in advance of the meeting on 10 December 2018 at which I understand the Committee will consider the appropriate way forward in the complaint against me. I should be grateful if you would please circulate this letter to the Committee.

As you know, on 15 November 2018 the House resolved that this matter should be remitted to your Committee to consider next steps. This was because the House considered that the Commissioner had failed to comply with paragraph 21 of the Code of Conduct which required her to act in accordance with the principles of natural justice and fairness. The House asked you to ensure that I would now be given a "fair crack of the whip".

I understand that the Committee is minded not to accept the vote of the House. This is surprising in particular since the Committee did not give reasons for rejecting my appeal, which included the opinion of David Perry QC and important contemporaneous evidence.[28] Members of the Committee spoke and voted in the debate on 15 November 2018.

I now ask please for the allegations against me to be fairly and robustly investigated. I have been asking for this since the beginning of this investigation.[29] The Committee has been tasked with improving these procedures.[30] I propose the following steps, to ensure that the flaws in the investigation identified by David Perry QC are not repeated (I attach a summary of his opinion):

(1) A thorough investigation by an experienced and expert person or people, independent of Parliament and this Committee.

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28 As you will recall, this was submitted in response to the new timeframe for the allegations that were set out for the first time in the Commissioner's report. The Commissioner sought to exclude this evidence from the Committee's consideration on the grounds that it would be "wholly unfair to her decision" to do so.

29 For example, in my letters of 28 February, 15 March, 26 March and 11 July 2018, my interview of 10 April 2018, my Grounds of Appeal of 15 October 2018 and my oral submissions on 1 November 2018.

30 For example, on 4 July 2018 the House of Lords Commission invited the Sub-Committee on Lords Conduct to consider and report on how to integrate new processes and procedures for investigating bullying, harassment and sexual harassment into existing processes for investigating breaches of the Code of Conduct.

(2) Legal representation, and the opportunity to have evidence tested rigorously by cross examination, or by the equivalent in an inquisitorial process.

(3) Each allegation said to breach the Code to be identified individually and investigated in detail to see if it has been proved to the required standard of proof.

Such a process can be accommodated in the current Code or Guide to secure natural justice. It would restore confidence in the system and send a strong message that both Houses of Parliament take seriously their task of investigating complaints of sexual harassment and bullying in accordance with the rule of law.

I agree entirely with those who spoke during the debate about the importance of women (or men) being encouraged to make complaints about this unacceptable behaviour. I make no personal criticism of the Commissioner; she states herself that she is accustomed to working with experienced colleagues when conducting investigations but did not have the option of doing so in this case.4[31] A fair, user friendly and robust process for investigating complaints is in the interests of everyone - complainants, respondents, and Parliament, which sets legal standards for everyone else.

I would be grateful if you would correct the misapprehension in the House on 15 November 2018 that the fairness of the procedure for investigating sexual harassment complaints in the House of Lords has not been criticised before now, and that members have hitherto accepted that the type of investigation that took place in my case is a fair one. The truth is that there have been repeated calls for reform of these procedures for decades:

In 1967 the Select Committee on Parliamentary Privilege considered criticisms of the procedure adopted by the Committee of Privileges for investigating complaints, which "may be summed up in the general contention that the procedure falls short of compliance with the principle of natural justice". The Select Committee recommended that a Member "whose reputation appears to be substantially in issue" should be permitted legal representation, and "the rights to cross-examine and re-examine witnesses".[32]

The first report of the Select Committee on Standards in Public Life in July 1995, which recommended establishing a Parliamentary Commissioner for Standards, envisaged that the process would involve witnesses giving evidence in person and the right to cross examine them.[33]

In 1998, the 21st Report of the Committee on Standards and Privileges, which considered appeals and remittals in this context, recommended that there should be an external appellate body and an "authoritative and independent" tribunal for remittals with "forensic expertise for re-hearing witnesses and considering documents, made up of "three eminent and independent persons (including an experienced lawyer)" who could hear counsel and permit the cross examination of witnesses.

In 1999, the Joint Committee on Parliamentary Privilege (chaired by Lord Nicholls of Birkenhead) recommended that disciplinary proceedings in Parliaments should be brought into line with "contemporary standards of fairness, including rights

31 Report para 90.
32 Paras 17 and 185-9.
33 Paras 12 and 20.

guaranteed by the European Convention of Human Rights" with safeguards "at least as rigorous as those applied in the courts and professional disciplinary bodies".[34]

The Joint Committee recommended a procedure including a clear statement of precise allegations, legal advice and assistance, cross examination, a high standard of proof, and a legally qualified assessor to assist with the investigation.[35] In the case of a remittal / rehearing, the Report recommended that this Committee should refer the case to an ad hoc tribunal, consisting of three eminent independent persons (including an eminent and experienced lawyer), and that the re-hearing would include legal representation and adversarial cross examination.[36] As its Report noted, these recommendations accorded with those of previous select committees.[37] The Joint Committee made clear that only a fair process along the lines they recommended would avoid a recommendation that there should be judicial review by the courts.[38]

A year ago, as Deputy Speaker, you stated in a Written Answer that "the procedures and processes for investigating complaints made under the Code were not designed with complaints of this kind [that is of sexual harassment] in mind and this is something … the Committee for Privileges and Conduct will need to consider."[39]

In October 2018, Dame Laura Cox QC in her report into harassment and bullying in Parliament referred to the lack of proper procedure in this area as "frankly astonishing" and "an institutional failure". She noted the irony of Parliament legislating on standards for the rest of the country without having proper procedures itself.[40] Her report recommends[41] that investigations should be conducted by a distinguished senior lawyer or retired judge, highly experienced in handling sensitive cases of this kind and in analysing evidence and finding facts, and there should be legal representation where appropriate. She states that the current system in which the Committee has overall control of the Commissioner and appeals should be abolished in order to ensure independence from Parliament.[42]

I would be grateful if you would confirm how you will proceed in light of the above, and that you will attach this letter and attachment if you decide to report to Parliament again. If there is another vote, it is important that (a) members of this Committee do not vote again and (b) it must be a genuinely free vote,

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34 Para 281.

35 Para 280 and 290.

36 Paras 290-1.

37 For example, the Select Committee on Parliamentary Privilege, HC (1967-68) 34, paragraphs 184-191; and the First Report of the Select Committee on Standards in Public Life, HC (1994-95) 637, Appendix 2(b), 'modus operandi'; 21st Report of the Committee on Standards and Privileges, appeal procedures. HC 1987-8.

38 Para 299.

39 HL 2917,16th November 2017.

40 On 11th September 2018 the House of Lords Commission agreed to allow Dame Laura Cox QC's inquiry to also cover Peers, Peers' staff and House of Lords staff.

41 See in particular paras 57, 229, 295, 359-405.

42 Laura Cox QC said this is so that members so not "continue to sit in judgment on their colleagues in these difficult and sensitive cases… The lack of trust and confidence in procedures, which has so damaged the reputation of the House, will hardly be alleviated by such a process. And it risks bringing the Committee into serious disrepute… This is not to criticise the important and valuable work of the Committee, or the expertise and commitment of any of its individual members. But the system now in place fails the fundamental tests of independence and impartiality." The Lord Chief Justice, Lord Bingham of Cornhill, gave evidence to the 1999 Joint Privileges Committee strongly supporting the need for a right of appeal to an outside judicial tribunal; HL Paper 43-II, page 112.

free of formal or informal whipping on party lines. As the Joint Committee on Parliamentary Privilege put it in 1999:

> "none of the members of the committee should vote in the House, although the chairman and other members of the committee should be eligible to participate in the debate. Traditionally, such debates are well attended, and members do not divide on party lines. We see no reason to doubt that this tradition will be carefully respected."[43]

43 Para 298 and 7th recommendation.

APPENDIX 3: SUBMISSION FROM JASVINDER SANGHERA

Covering note from Jasvinder Sanghera

This is to confirm that I consent to the publication of the attached letter dated 23 November 2018.

I should make it clear that although it is sent by my lawyers it, represents what I wished to say and I approved it before it was sent.

The reason it was drafted by my lawyer was that a number of legal points had been raised by Lord Lester of Herne Hill QC, David Perry QC and Lord Pannick QC. My understanding was that following the debate of 15 November the matter was to be re-considered by the Privileges Committee in the very near future and that it was therefore necessary for my letter to be sent very promptly. It seemed to me best if the letter was signed by my lawyer, given its content and the fact that there would have been some logistical difficulties in my going through the letter in detail and sending it out under my own signature. My lawyer at the time it was drafted was in Los Angeles and then flying to Costa Rica with the attendant time differences and difficulties of communicating.

Letter from David Hooper

On behalf of Jasvinder Sanghera CBE, who I represent, I hope it might be possible to make a few observations as to the procedure recommended by the majority in last Thursday's vote in the House of Lords. Ms Sanghera as the Complainant is a witness to and not a party to the proceedings. On her behalf it is respectfully requested that as the person most severely affected by any decision to reverse or amend the Committee's earlier decision she might be permitted to make some representations to the Committee.

On her behalf I do not seek to say anything about the criticisms made about certain aspects of her evidence except insofar as they are relevant to the issue of cross-examination or to the details of the way in which the hearing of the complaint was handled by the Commissioner. The disputes as to the evidence were set out in detail in the Commissioner's report and as to the way in which the Commissioner handled the complaint were addressed in Lord Lester's points of appeal and the consideration of that appeal by the Privileges Committee.

I would like to focus on the cross-examination issue and make the following points:

1. The failure of the process to include cross-examination does not of itself make the process unfair, which seemed to be the underlying gravamen of the criticism of the procedure followed by the Commissioner.

2. While it is, of course, of paramount importance that the standard of proof is attained and that the procedure achieves the highest standards of fairness for members accused of breaches of the Code of Conduct, there is a counterbalancing need for fair treatment of complainants coupled with a procedure which is not unduly onerous for those making complaints. While their rights will necessarily be subordinate to those of the member who is accused of breaches of the Code of Conduct and therefore entitled to the protection of the required standard of proof, the rights of and burden placed upon complainants such as Jasvinder Sanghera are nevertheless important considerations. Restarting the process after it has run for a year and ordering a re-hearing with cross-examination – a procedure considered but rejected

earlier in the proceedings would in the contention of the complainant be unfair.

3. She gave evidence to the Commissioner as to the effect the original conduct complained of had on her. This has been compounded by the publicity this matter has engendered with her being accused of lying (an accusation which the Commissioner firmly rejected). Evidence has been provided to Sunday newspapers (such as the Mail on Sunday on 18 November 2018[44]) about matters such as the facsimiles of the book dedications (so far as the Complainant is aware, the facsimiles of those dedications were not published in the Commissioner's report) with the aim of discrediting her as well as the procedure followed by the Commissioner. This material would appear to have been supplied to the newspaper by someone close to Lord Lester as part of a press campaign to discredit Jasvinder Sanghera prior to the debate. It is worth noting that the article in the Daily Mail (by the brother of a member of Lord Lester's chambers) quotes Lord Lester as saying "The so-called appeal was a complete charade. I'd expected to be treated fairly. Instead I was treated despicably. The abuse of power was not by me, but by them. What they have done is tyrannous."

4. It is our understanding that, in addition to briefing the media and legal journalists on background to the matter, Lord Lester arranged for IPSO to issue a warning to the press not to contact Lord Lester or his wife. In direct breach thereof, Lord Lester gave a series of "exclusive" interviews to the Mail on Sunday, Sunday Times and Jewish Chronicle.

5. The debate itself took place within 72 hours of the Committee's report being published. Much of the evidence could only be obtained on application to the Clerk to the Committee. It is believed that the Clerk's copy was not read by any Peers beyond the committee, Lord Pannick and Lord Lester. In addition to the report Peers therefore had to rely on selected extracts from a protracted process relied upon on behalf of Lord Lester and what they had read in the press. The debate in the House of Lords therefore had to proceed on necessarily selective parts of the evidence placed before the Commissioner.

6. For her part Ms Sanghera has participated to the best of her ability in a process which has taken the best part of a year. She has given evidence to the Commissioner and answered all the points put to her by the Commissioner in regard to matters challenged by Lord Lester. She had understood that the procedure followed by the Commissioner was in accordance with the Code of Conduct, that the Commissioner had obtained guidance from the Conduct Sub-Committee as to the appropriate procedure and the procedure followed had been upheld on appeal. Were she now to be subjected to cross-examination, it would make the process very onerous for her in that it would involve going back to square one and could deter future complainants.

7. On the issue of cross-examination the Complainant's position is that the Guide to the Code of Conduct has produced a framework which excludes cross-examination. The Complainant in this regard relies on the fact that the proceedings are inquisitorial and not adversarial (paragraph 124), that there is no entitlement to cross-examine, although members have the opportunity to challenge the facts they dispute (paragraph 127) and that the proceedings

44 https://www.dailymail.co.uk/news/article-6402077/Lord-guilty-offering-peerage-sex-offers-story.html

have the quality of informality (a feature that Lord Lester has criticised) (paragraph 126).

8. The history of the procedure appears to be that originally allegations of misconduct were investigated by the Conduct Sub-Committee, as happened in the case of Lord Taylor and three others in May 2009. The Code of Conduct which is now used was drawn up in 2010. The first Lords Commissioner for Standards, Paul Kernaghan, was appointed on 25 May 2010. The Commissioner has the resources to conduct investigations and staff to support her, which might not have been previously available to members of the Sub-Committee. The procedure adopted by the House of Lords appears to be in line with that adopted by the House of Commons.

9. The Code of Conduct is stated to be subject to regular review and it has been reviewed seven times since 2010.

10. The Code of Conduct would appear to draw on the principles enunciated in the debate on 20 May 2009 on the report in the case against Lord Taylor and three others. That debate appeared to establish principles, enunciated amongst others by Lord Lester, that the process was a disciplinary procedure as part of the powers of self-regulation and not a Court of Law, that cross-examination was not permitted, that the proceedings should be conducted in accordance with fairness and natural justice and that the process was compliant with the principles of the European Convention on Human Rights.

11. In an enquiry conducted by the Standards Commissioner, the Complainant is not a party but a witness. If he or she were to be cross-examined, there would be no scope for the member to be cross-examined. It would be inappropriate for the Commissioner who is in effect the Judge of the facts to cross-examine the member. There is at present no provision for there to be Counsel to the Commissioner to carry out the task of cross-examination. To appoint such Counsel would involve a significant amendment to the procedure and is something which, in the Complainant's contention, is a course which would require to be appropriately considered and enacted, if deemed appropriate. That is a matter for review in the future. It is not part of the present procedure and should not be adopted when in effect these proceedings are concluded and have been reviewed in the appeal process.

12. For the Complainant to be cross-examined but the member not to be cross-examined would in the contention of the Complainant produce a playing field that is not level and which might deter complainants from bringing complaints, particularly in cases of sexual harassment and abuse of power. Such a procedure would undermine the confidence of the public in the independence and fairness of the procedures that the Code of Conduct was designed to promote. It could also give rise to the perception of one rule for those with powerful friends and another for the small person to adopt the words used by Baroness Hussein-Eve in the debate of the present report of the Committee.

13. An inquisitorial procedure is a perfectly proper system to follow. It is in line with the way proceedings are conducted in mainland Europe, e.g. the Juge d'Instruction.

14. Advocates of cross-examination sometimes call up the dictum of John Henry Wigmore that cross- examination is "the greatest legal engine ever invented

for the discovery of the truth". The alternative argument is that it can on occasions operate as a blunt instrument. In a speech given by Lord Neuberger on 24 February 2017 at the Faculty of Law, Oxford University he suggested that cross-examination was not without its problems in certain instances:

> "honest people especially in the unfamiliar artificial setting of a trial will often be uncomfortable, evasive, inaccurate, combative or maybe even worse compliant…there is an argument for saying that at least in some cases, it is safer to assess the evidence without the complicating factor of oral testimony"[45]

In the present instance there is in fact oral as well as written testimony which is tested by questioning by the Commissioner and subject to responses in contradiction by the member. In this context the Complainant would draw attention to the commentary by Professor Penny Cooper in Mental Capacity Report Practice and Procedure[46] which draws on research conducted by Professor Cooper and others which is reported in the International Journal of Evidence and Proof[47] that there is a lack of scientific evidence that establishes that cross-examination is the most effective way of establishing the truth. They observe that skilful cross-examination is based more on "craft" than science. These observations were made in the context of cross-examination of vulnerable witnesses but they have a wider application.

15. In the present case the inquisitorial process was conducted over many months. It can be tested by way of example against one of the criticisms Lord Lester has made of the process namely in relation to the terms of book dedications by Ms Sanghera which he contended were inconsistent with and contradictory of her complaint and an illustration of why cross-examination was essential. The inquisitorial process, however, enabled the Commissioner to give the Complainant the opportunity to respond in detail to this allegation. This enabled the Commissioner to evaluate the conflicting contentions, as she sets out on page 30 of her report (using the page numbering in the Committee's Report). The Complainant was able to obtain over a period of some weeks emails she had received from Lord Lester from the archive of the University of Derby showing the terms in which he had written to her (whose server she had been using) and to obtain examples of how she signed off emails to other people. It was, of course, for the Commissioner to attach such weight as she thought appropriate to such materials, but an inquisitorial procedure enabled them to be produced and commented upon by Lord Lester, whereas it is most likely that this would not have been possible under the cut and thrust of cross-examination. The complainant's contention is that an inquisitorial process does enable the Commissioner to receive and evaluate the relevant evidence and that the adversarial process of cross-examination does not achieve that result and is tilted in favour of those with the best lawyer – likely to be the member if he has the right to cross-examine and no-one else, or certainly not the complainant, does.

16. In fact on the issue of the dedications the Commissioner reviewed the documentary evidence provided in response by the Complainant, such as emails sent by Lord Lester to her and her account of the books given

45 https://www.supremecourt.uk/docs/speech-170210.pdf
46 http://www.39essex.com/wp-content/uploads/2017/03/Mental-Capacity-Report-March-2017-Practice-and-Procedure.pdf
47 http://sro.sussex.ac.uk/79273/1/Ormerod_the_international_journal_of_evidence_and_proof_aug18%28author%20copy%29.pdf

to her by Lord Lester one of which, Shakespeare's Sonnets, she provided to the Commissioner. There is no reason to suppose that allowing cross-examination would have persuaded the Commissioner to reach a different decision or that it would have produced different evidence. However this was possible under the inquisitorial process. It is unlikely to have been possible with cross-examination. The complainant's contention is that the inquisitorial process in this instance provides the best evidence. At each stage the Commissioner provides to "the opposing party" the opportunity to comment on or contradict "the other side's" material.