

**The Independent Expert Panel**

# Appeals, referrals and sanctions

**Guidance for the parties**

February 2021

## **The Independent Expert Panel**

The Independent Expert Panel was established by resolution of the House of Commons on 23 June 2020. The Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament’s sexual misconduct policy or the bullying and harassment policy, under the Independent Complaints and Grievance Scheme.

### **Current membership**

Mrs Lisa Ball  
Monica Daley  
Mrs Johanna Higgins  
Sir Stephen Irwin (Chair)  
Professor Clare McGlynn  
Miss Dale Simon  
Sir Peter Thornton  
Dr Matthew Vickers

### **Contacts**

All correspondence should be addressed to the Secretary to the Panel. The Panel’s email address is [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk).

## **Independent Expert Panel Appeals, referrals and sanctions: guidance for the parties**

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## Part A: Guiding principles

- 1) The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality.
- 2) We understand the seriousness of, and the harm caused by, bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 3) Our aims are to:
  - a) help embed positive steps directed at improving the culture and behaviour of Members, staff and the wider Parliamentary community, and
  - b) support the commitments made by the House of Commons to the Independent Complaints and Grievance Scheme (ICGS).
- 4) To this end we:
  - a) Recognise that the ICGS is a workplace complaints and grievance scheme, not an adversarial process;
  - b) Adopt policies and procedures that are as understandable, accessible and straightforward as they can be while being consistent with natural justice;
  - c) Act in accordance with the principles of equality and diversity, being mindful of intersecting inequalities, the well-being of the parties and the need to protect potentially vulnerable people;
  - d) Ensure that the parties are able to make their case;
  - e) Determine cases flexibly, recognising the unique circumstances of each case;
  - f) Are guided by the need for timeliness and proportionality in our procedures and decisions;
  - g) Protect the confidentiality of proceedings and the identity of complainants/reporters and witnesses, handling data appropriately, while being open about the outcome of cases;
  - h) Publish timely information about how we work, engaging with the parliamentary community and others to promote understanding, listen and learn;
  - i) Abide by the Seven Principles of Public Life (the Nolan principles).

## Part B: This guidance – what you can expect

- 5) The Independent Expert Panel (the Panel) hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament’s sexual misconduct policy or the bullying and harassment policy, under the Independent Complaints and Grievance Scheme.<sup>1</sup>
- 6) This guidance is for use by you as a complainant/reporter or respondent/responder. It is intended to help you<sup>2</sup> understand what happens and what your options are once the Commissioner has made her decision. Since each case is unique, the guidance does not cover every eventuality or possible outcome, but we hope you will find it a useful starting point.
- 7) The guidance is split into parts. It has been designed so that you need to refer only to that part of the guidance that applies to the current stage of the process for your case.
- 8) We will keep you updated at each stage of the process and tell you what happens next in your case. If we need to ask you for further information, we will give you sufficient time to respond. Please keep an eye out for emails from us.
- 9) You can get in touch with us at [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk) at any time to find out more, or see our webpages [here](#).<sup>3</sup>
- 10) As our procedures develop, we will publish a fuller practice and procedure guide to assist you.

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<sup>1</sup> Independent Complaints and Grievance Scheme: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/>

<sup>2</sup> In this guidance ‘you’ means both the complainant/reporter and the respondent/responder. Where there are differences in the guidance for the two parties, this will be clearly indicated.

<sup>3</sup> Independent Expert Panel: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/>

## Part C: Appeals against a decision of the Commissioner

- 11) You may appeal against a decision of the Commissioner if you are the complainant/reporter or the respondent/responder. Whether or not to appeal is a question that only you can decide. To help you make that decision, this section of the guidance sets out how you can appeal and what will happen next.
- 12) The Panel does not re-investigate the allegations during an appeal, nor does it take fresh decisions on the basis of the investigation. The role of the Panel in an appeal is to review the decisions taken by the Commissioner.

### How to submit an appeal

- 13) You should put your appeal submission in writing. The submission should use numbered pages and numbered paragraphs and must include the case reference number given to you by the Commissioner, your name and the date of submission. Your submission may be disclosed in full to the other party so you should not include any personal contact information. The submission must be saved as a PDF. We can provide a template document to help with formatting.
- 14) Your appeal submission should be sent with a separate letter addressed to the Chair of the Independent Expert Panel (Sir Stephen Irwin). The letter should be from you (not your adviser), signed and dated, and include the case reference number given to you by the Commissioner. If you are unable to provide a scanned signature, we will accept a typed signature, so long as we can verify that the document is from you (for example, sent from your known email address). Your letter should be saved as a PDF and emailed to [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk). Note that, due to Coronavirus restrictions, the Panel does not have an address for correspondence by post.
- 15) We will endeavour to make any reasonable adjustments you need to help you submit your appeal. You can ask for this help in confidence before you submit your appeal.

### Deadline for appeals

- 16) You should submit your appeal within **20 working days** of being notified of the Commissioner's decision. Normally, this means four weeks, but can be a little longer where there are bank holidays. The Commissioner's letter will give you the actual date by which you need to appeal. The deadline will be 5pm on this date.
- 17) The deadline may be extended where there are mitigating circumstances. If you think that you need an extension you should request one as early as possible and before the appeal deadline. You will need to say what the mitigating circumstances

are and may need to provide evidence of these. We will consider your request as quickly as possible, but there is no guarantee that the deadline will be extended.

- 18) If you do not wish to appeal, you can confirm this in writing by email to us before the deadline. The case can be concluded more quickly if we know sooner rather than later that there will be no appeal. This can benefit both parties. If we think you are unlikely to appeal (for example, because your complaint has been upheld in full), we may ask you to confirm this. You do not have to tell us.

### **Grounds for appeal**

- 19) Your appeal can be brought under one or more of the following grounds:

- a) The investigation was materially flawed in a way that affected the decision of the Commissioner;
- b) The process followed by the Commissioner was procedurally flawed or her decision was unreasonable;
- c) The decision of the Commissioner on sanction was unreasonable or disproportionate;
- d) Credible fresh evidence has become available, which could not reasonably have been presented before the Commissioner made her decision, and which, if accepted, has a real prospect of affecting the outcome; and/or
- e) Exceptionally, there is another compelling reason that an appeal should be heard or allowed.

- 20) Your appeal submission should set out which of the above grounds you think apply. You can raise a number of different issues under different grounds. We will be flexible in assessing the issues you have raised against the different grounds.

### **What to include in your submission**

- 21) You should include as much detail as you think we will need to consider the appeal and to understand the nature of the issues you have raised. We may ask you for more information.
- 22) Where your appeal is wholly or partly on the grounds of credible fresh evidence you may include that evidence in the appeal submission (for example, attaching a copy of a text message or email), or you may provide a summary (for example, 'Witness X has come forward and will give evidence that the incident did/didn't happen'). If you wish to submit a large volume of new evidence, contact us in advance of submission.

### **What happens if the other party appeals?**

- 23) Once the deadline for appeals has passed, we will inform you if the other party to the case is appealing the Commissioner's decision. Depending on the issues raised, we may ask you for information before considering their appeal.
- 24) If both the other party and you appeal (for example, where the Commissioner partially upholds a complaint) we will inform you both of this on the same day.

### **How appeals are managed**

- 25) Once an appeal has been submitted, the Chair of the Panel will appoint a sub-panel of three Panel members to consider it. You can see who the members of the Panel are [here](#).<sup>4</sup> We will let you know who has been appointed to hear the appeal.
- 26) There are two stages to each appeal. The sub-panel will first consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and if there is any substance to the grounds. After this first stage, the sub-panel will consider whether to disclose your appeal submissions to the other party.
- 27) The sub-panel will then consider the substantive appeal and reach a conclusion on the merits. We may request additional evidence but will not conduct a re-hearing of the case. We will normally decide the appeal on paper.
- 28) The process is inquisitorial: if you are asked to attend a hearing in person you may be asked questions by the sub-panel, but you will not be cross-examined by the other party. Similarly, you cannot subject the other party to cross-examination.
- 29) We will apply the civil standard of proof – the balance of probabilities – as applied by the Commissioner and throughout the wider ICGS.
- 30) Some appeals can be dealt with quickly; others are complex and may require more meetings of the sub-panel and/or requests for further information from you or the other party.

### **Conclusion of an appeal**

- 31) The sub-panel will make a decision on the appeal and say whether or not the complaint has been upheld. The sub-panel will report its decision to the Chair of the Panel. Depending on the outcome, we may then need to go on to consider the question of sanction.
- 32) In cases where the complaint has not been upheld, no sanction will be imposed. You will be notified of the outcome of the appeal and a report may be published. See Part F for more information about reports.

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<sup>4</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>



33) In cases where the complaint has been upheld, we will notify you of the outcome of the appeal and then go on to determine the sanction to be imposed. See Part F for more information about sanctions.

34) You cannot further appeal the decision of the sub-panel on an appeal.

## Part D: Referrals and determination of sanction

35) This part of the guidance will help you to understand what happens when we are considering what sanction should be imposed in your case. This is referred to as 'determination of sanction'.

### When we will determine the sanction to be imposed

36) Where the Commissioner has referred a case to the Panel for determination of sanction, we will consider the referral after the deadline for appeals has passed and neither party has appealed. If both parties confirm in writing that they do not wish to appeal, we may proceed to determination of sanction before then.

37) Where the Commissioner has referred a case to the Panel for determination of sanction and one or both parties appeals, we will conclude the appeal before going on to consider the referral.

38) Following an appeal in a case that was not referred by the Commissioner, we will also determine any sanction to be imposed, rather than remit the case back to the Commissioner.

39) We will not determine sanction in any case that involves a former MP who now sits in the House of Lords. Any sanction on a member of that House relating to their historic behaviour as an MP will be proposed by the House of Lords Commissioner for Standards.

### How we manage determination of sanction

40) The Chair of the Panel will appoint a sub-panel of three Panel members to determine sanction. You can see who the members of the Panel are [here](#).<sup>5</sup> If there has been an appeal, the same sub-panel will normally also determine sanction, but sometimes a different sub-panel will be appointed. We will let you know who has been appointed to determine sanction.

41) Before determining sanction, we will give you an opportunity to express your views on anything relevant to the matter of sanction, including any views you may have on the appropriate outcome. We will let you know how you can do this. If you prefer, you may refer us to earlier statements or documents.

42) If you are the complainant/reporter, you may also wish to tell us how the conduct which has been found to be in breach of the relevant policy has affected you.

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<sup>5</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>

43) If you are the respondent/responder, we may ask you to reflect on proved facts and provide a reflective statement on your conduct before sanction is decided.

### **How we will approach the assessment of sanction**

44) In setting the appropriate sanction, we will follow the principles set out in Part A of this guidance and apply three further principles:

- a) the sanction should reflect the impact of the conduct on the complainant/reporter
- b) the sanction should reflect the nature and extent of the misconduct proved
- c) where possible, the approach to sanction should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community

45) We will consider:

- a) the findings of the investigation and the decision of the Commissioner
- b) all the relevant circumstances of the case
- c) all relevant aggravating and mitigating factors
- d) the views of the complainant/reporter
- e) the submissions of the respondent/responder
- f) any relevant precedent cases as developed by the Panel

### **Aggravating and mitigating factors**

46) The following lists of aggravating and mitigating factors are not exhaustive, and other factors are likely to arise on a case by case basis. Even where an aggravating or mitigating factor is present, we will decide what weight to give it.

47) Aggravating factors include:

- a) Abuse of power or authority
- b) Specific targeting of the complainant/reporter
- c) Vulnerabilities of the complainant/reporter, particularly those which were or should have been known to the respondent/responder
- d) Conduct motivated by or demonstrating hostility based on any of the protected characteristics (or presumed characteristics), of the complainant/reporter<sup>6</sup>

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<sup>6</sup> The protected characteristics under section 4 of the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, race, disability, age, sexual orientation.

- e) Failing to respond to relevant warnings or concerns expressed to the respondent/responder by others
- f) Retaliation or victimisation as a result of the complaint
- g) Breach of the confidentiality of the complaint by or on behalf of the respondent/responder
- h) Previous complaints about the respondent's/responder's behaviour, where relevant to the case in question
- i) Breach of previously agreed informal resolution or earlier sanction
- j) Non-cooperation with the investigation, the Commissioner, or the appeal or referral process (including delaying tactics)
- k) Withholding, concealing, or failing to volunteer relevant evidence

48) Mitigating factors include:

- a) Acknowledgment of breach and/or self-knowledge
- b) Genuine remorse (particularly early remorse)
- c) Steps taken to address behaviour
- d) Breach of the confidentiality of the complaint by or on behalf of the complainant/reporter
- e) Physical or mental ill-health, or other personal trauma

### **Sanctions we may impose**

49) Possible sanctions include (but are not limited to):

- a) An apology to the complainant/reporter in writing
- b) An apology in the House through the making of a personal statement or on a point of order
- c) Suspension
- d) Expulsion

50) If we determine a sanction that can only be imposed by the House, such as suspension or expulsion, the sanction will be voted on by the House without debate.

51) If the respondent/responder is no longer a Member, access to the estate may be restricted through withdrawal or refusal of a former Member's pass.

**Conclusion of a first determination of sanction by a sub-panel**

52) You will be notified of the outcome and a report may be published. See Part F for more information about this.

53) You can appeal this decision to another sub-panel.

## Part E: Appeals against sanction

54) If you are the respondent/responder, you may appeal against a first decision by a sub-panel on sanction. This appeal stage will consider only the sanction that has been imposed; you cannot re-open the Commissioner's decision or the decision of a sub-panel that decided an appeal against a decision of the Commissioner on the complaint.

### How to submit an appeal

55) You should put your appeal submission in writing. The submission should use numbered pages and numbered paragraphs and must include the case reference number, your name and the date of submission. Your submission may be disclosed in full to the complainant/reporter so you should not include any personal contact information. The submission must be saved as a PDF. We can provide a template document to help with formatting.

56) Your appeal submission should be sent with a separate letter addressed to the Chair of the Independent Expert Panel (Sir Stephen Irwin). The letter should be from you (not your adviser), signed and dated, and include the case reference number. If you are unable to provide a scanned signature, we will accept a typed signature, so long as we can verify that the document is from you (for example, sent from your known email address). Your letter should be saved as a PDF and emailed to [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk). Note that, due to Coronavirus restrictions, the Panel does not have an address for correspondence by post.

57) We will endeavour to make any reasonable adjustments you need to help you submit your appeal. You can ask for this help in confidence before you submit your appeal.

### Deadline for appeals

58) You should submit your appeal within **20 working days** of being notified of the sub-panel's decision. Normally, this means four weeks, but can be a little longer where there are bank holidays. The outcome letter will give you the actual date by which you need to appeal. The deadline will be 5pm on this date.

59) The deadline may be extended where there are mitigating circumstances. If you think that you need an extension you should request one as early as possible and before the appeal deadline. You will need to say what the mitigating circumstances are and may need to provide evidence of these. We will consider your request as quickly as possible, but there is no guarantee that the deadline will be extended.

60) If you do not wish to appeal, you can confirm this in writing by email to us before the deadline. The case can be concluded more quickly if we know sooner rather than later that there will be no appeal. This can benefit both parties.

## Grounds for appeal

- 61) Your appeal can be brought under one or more of the following grounds:
- a) the decision of the sub-panel on sanction was unreasonable or disproportionate;
  - b) credible fresh evidence has become available, which could not reasonably have been presented before the sub-panel made its decision, and which, if accepted, has a real prospect of affecting the outcome; and/or
  - c) exceptionally, there is another compelling reason that an appeal should be heard or allowed.
- 62) Your appeal submission should set out which of the above grounds you think apply. You can raise a number of different issues under different grounds. We will be flexible in assessing the issues you have raised against the different grounds.

## What to include in your submission

- 63) You should include as much detail as you think we will need to consider the appeal and to understand the nature of the issues you have raised. We may ask you for more information.
- 64) Where your appeal involves credible fresh evidence you can include that evidence in the appeal submission (for example, attaching a copy of a letter from your doctor), or you can provide a summary (for example, outlining the steps you have taken to address the behaviour). If you wish to submit a large volume of new evidence, contact us in advance of submission.

## How appeals against sanction are managed

- 65) Once an appeal has been submitted, the Chair of the Panel will appoint a sub-panel of three Panel members to consider it. This will be a different sub-panel to the one that originally determined sanction. You can see who the members of the Panel are [here](#).<sup>7</sup> We will let you know who has been appointed to hear the appeal.
- 66) There are two stages to each appeal. The sub-panel will first consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and if there is any substance to the grounds. After this first stage, the sub-panel will consider whether to disclose your appeal submissions to the other party.
- 67) The sub-panel will then consider the substantive appeal and reach a conclusion on the merits. We may request additional evidence but will not conduct a re-hearing of the case. We will normally decide the appeal on paper.

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<sup>7</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>

- 68) The process is inquisitorial: if you are asked to attend a hearing in person you may be asked questions by the sub-panel, but you will not be cross-examined by the other party. Similarly, you cannot subject the other party to cross-examination.
- 69) We will apply the civil standard of proof – the balance of probabilities – as applied by the Commissioner and throughout the wider ICGS.
- 70) Some appeals can be dealt with quickly; others are complex and may require more meetings of the sub-panel and/or requests for further information from you or the other party.

### **Conclusion of an appeal against sanction**

- 71) If the appeal is successful, the same sub-panel will go on to determine sanction. We will follow the steps set out in paragraphs 41 to 51. If the appeal is successful, we will normally reduce or change the sanction but may keep it the same. If the appeal is unsuccessful, the sanction determined by the first sub-panel will normally stand.
- 72) You will be notified of the outcome of the appeal and a report may be published. See Part F for more information about this.
- 73) There is no further stage of appeal.



## Part F: Confidentiality and reports

- 74) We will hold information about your case securely, and we will not reveal any details about the case while an appeal or referral is ongoing. This information may be accessed by the Chair of the Panel, members of any sub-panel to which a case has been referred and a small secretariat. We may share information in confidence with the Commissioner and her office, and with parliamentary staff, to help us determine or report on your case. As set out in paragraphs 26 and 66, we may also disclose information with the other party.
- 75) You can find out more about data protection in the House of Commons and see our privacy notices on the Parliamentary website [here](#)<sup>8</sup> and, for internal users, on the Parliamentary [intranet](#).
- 76) You must not share any information about the case with anyone else except your adviser. This is very important because a breach of confidentiality at any time might prejudice the process.
- 77) Following conclusion of a case, we may publish a report. We will do this in any case that requires a sanction to be imposed by the House or where we require an apology to be made in the House. We will normally publish a report in other cases where a complaint has been upheld, and where a complaint has not been upheld but the allegations have already been given publicity. We will not normally publish a report in cases where a complaint has not been upheld and confidentiality has been maintained but may do so if there is a subsequent breach of confidentiality.
- 78) We aim to keep our reports as short and concise as possible, summarising the key facts and clearly setting out our decision(s) and reasoning. The level of detail given about each case will differ from case to case.
- 79) If you are the complainant/reporter we undertake to limit the information included in any published report in such a way as to keep your identity confidential so far as possible, unless you choose not to remain anonymous. We will endeavour to discuss with you the approach to be taken in your case. You may refer publicly to any published report, but you should not share any information that is not included in the report.
- 80) If you are the respondent/responder you will be named in the report. You may refer publicly to any published report, but you should not share any information that is not included in the report. It is particularly important that you do not identify the complainant/reporter or reveal any information that could identify them except in a case where they have chosen not to remain anonymous.
- 81) If we do not publish a report, we will let you know the outcome of the case in writing. You must continue to keep the case and its outcome confidential.

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<sup>8</sup> <https://www.parliament.uk/site-information/data-protection/commons-data-protection-information/>

## Part G: Advice and support

- 82) The Panel's process is not adversarial, so you do not need to put your case in legalistic language. However, we recognise that you might wish to obtain advice and support from an Independent Sexual Misconduct Violence Adviser (ISVA), a trade union or staff representative or a lawyer. You can also seek support from a family member, friend or colleague.
- 83) You are allowed to share confidential information with your adviser or supporter in confidence. It is highly important that they maintain confidentiality and do not under any circumstances disclose information about the case to any third party. You must make these requirements clear to them.
- 84) An adviser (this could be, but does not need to be, a lawyer) can help you put together your appeal submission, but they cannot represent you. Any statement you make should be in your name and if you are asked to appear in person before a sub-panel your adviser can accompany you, but they cannot speak for you.
- 85) We understand that going through this process can be difficult and we will endeavour to deal with your case sympathetically and respond to your queries as quickly as possible.
- 86) The support services through the ICGS Helpline continue to be available to you (0808 168 9281 or [support@ICGShelpine.org.uk](mailto:support@ICGShelpine.org.uk)).

**Contact us at [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk)**