

**Consultation on the Code of Conduct and the Guide to the Rules relating to the conduct  
of Members of Parliament of 21 January 2016**

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## Letter from the Chairman of the 1922 Committee

Thank you for the opportunity to comment on the review of the Code of Conduct.

I am writing to you following discussions in the 1922 Executive and also to reflect other points raised with me by Members of the 1922 Committee.

The most contentious element of the existing Code and Rule would appear to be the interpretation (not the principle) of the prohibition on paid advocacy. It is essential that Members should not be in any doubt of the scope of this rule and also important that the House should not be deprived unreasonably of a member's particular expertise as a result of this rule.

Whilst it is obvious that a Member paid as a consultant to, or director of, a company or interest group should not raise questions or initiate proceedings on behalf of that company or group, there are some more complex situations that might arise. For example, if a Member serves as a member of the reserve forces, should he or she be prohibited from speaking about pay and conditions for the Services, or should a Member who retains an interest in the Civil Service pension scheme be precluded from initiating proceedings in relation to public sector pensions?

A further area of complexity arises in relation to overseas travel funded by a foreign government. Whilst it is clear that a Member should not allow himself to be perceived as having become a spokesman for a foreign government, it is not unknown for Members who have learnt a great deal about the situation in another country to wish to share their experiences with the House. Frequently the Member may wish to criticise aspects of policy or conduct in the visited country.

In all of these instances, it is the opinion of many colleagues that the public interest is adequately protected by full and proper registration of interests, and where appropriate the declaration of those interests during proceedings, should be sufficient guarantee that Members are behaving properly.

I would also like to endorse the views expressed by Charles Walker OBE MP, a Vice Chairman of the 1922 Committee in his letter dated 3rd February 2016. The duties set out in the Code and the principles of conduct in public life provide an appropriate framework within which Members might be expected to behave. Introducing new expectations which are inevitably subjective such as requirements of 'courtesy and respect' can only give rise to vexatious complaints. It may also result in Members becoming less accessible or less willing to engage in robust debate with members of the public. Either response would diminish our democracy.

*Graham Brady MP*  
Chairman  
9 March 2016

## **Letter from the Cabinet Office**

Thank you for your letter date 25 January inviting contributions to your consultation on the Code of Conduct for Members of Parliament.

The Code of Conduct for Members of Parliament is clearly designed to assist Members in the discharge of their duties to Parliament, their constituents and the general public. In addition to those obligations, Members of the House who are invited to join the Government are also bound by the Ministerial Code, which is the Prime Minister's guidance to his Ministers on the standards of behaviour expected of them and how they should discharge their official duties.

The Ministerial Code includes a requirement that Ministers must comply at all times with the Codes of Conduct for their respective Houses of Parliament and also any requirements placed on them by the Independent Parliamentary Standards Authority. It goes on to state that Ministers in the House of Commons must keep separate their roles as Minister and constituency Member. This is an important distinction which helps protect the political impartiality of the Civil Service and provides reassurance to the public that official resources are not being used for Party or constituency activities.

I would therefore argue very strongly that the Code of Conduct for Members of Parliament should continue to be kept very separate to the Ministerial Code, which is a matter for Government.

*Sir Jeremy Heywood KCB, CVO*  
Secretary of the Cabinet and Head of the Civil Service  
7 April 2016

## **Email from Andrew Challinor**

I would like to make the following submission in respect of:

Chapter 1: Registration of Members' Financial Interests

Category 1: Employment and earnings

Personal service companies ('PSC') are often set up by individuals (including Members of Parliament) as a tax-efficient way to provide trade or professional services to their clients. PSCs are commonly used to ensure payments are made to the owner / manager in the form of dividends rather than earnings (so maximising the tax-efficiency). Under current House of Commons guidance, earnings are required to be disclosed in the register (under Chapter 1, Category 1) but dividend income is exempted.

My submission is that dividend income from personal service companies operated by Members of Parliament is required to be disclosed in the Register of Members' Financial Interests in the same manner as earnings.

*8 February 2016*

## Letter/Email from Dr J Collins

*Question 1: What should the purpose of the Code be and should it have any other purpose(s)? How could the Code inspire confidence?*

The Code's purpose is clear and states that it is 'to be a guide to Members' behaviour, a means of addressing unacceptable behaviour, or a way of providing confidence to the public that Members maintain high ethical standards'

The Code currently does not inspire confidence.

1. It could inspire confidence if there was easy access to the Code for the public eg:
  - i. the 2015 updated Code is NOT available to download as a free-standing document and so has to be copied, tediously, page by page into a Word document;
  - ii. it is produced solely in pdf format. This makes it difficult for many of the public to copy and manipulate, and introduces an element of closed-access bias in the numbers and types of respondents to this exercise;
  - iii. access also requires information that the Commissioner Kathryn Hudson is seeking public views. Whilst I heard the information in February 2016 via a BBC Radio 4 Parliamentary programme, I have not seen any further advertisements. If I have missed them, I retract, but no Government advertisement has appeared on television to my knowledge recently nor have posters, newspaper or local radio advertisements been noticed. This adds again to the possibility of bias, non-representative decisions and to a democratic deficit.
2. Does not inspire confidence since MPs themselves decide I believe on how they should behave. In recent times, Parliamentary behaviour both in and out of the Chamber has been viewed with contempt, but worse still exasperation by the public—the MPs' voters.
3. Held in disrepute—in this respect the Code lacks appropriate public scrutiny and agreement. After so many scandals it appears that life for MPs has settled with apparently little change.

The Code appears to be edentulous with the 2015 complaints rectification list covered almost entirely by swiping envelopes for Party use from the House of Commons <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/allegations-the-commissioner-has-rectified/rectifications-2015-16/>

*Question 2: Where and how should the Code fit alongside the Ministerial Code?*

The Ministerial Code should embrace, follow and be consistent with the Code of Conduct such that anyone within Parliament bound by, and following, the Ministerial Code should not be in any jeopardy of being found to be breaching any aspect of the general Code of Conduct. Once appointed, a MP should not be permitted to follow, or be cajoled into, alternative standards, principles, practices or behaviours inconsistent with being in the first place a MP.

*Question 3: Does the three tier structure of the standards system help or hinder in achieving its purpose? How can this best be presented?*

How can the guide fulfil its first purpose 'guide to Members' behaviour' without stipulating behaviour or excluding behaviour from the 7 (Nolan) characteristics. Behaviour to constituents and others outside the House should be written in.

*Question 4: Should the Code be a principles or a rules-based document? If you could add one new rule, what would it be?*

It should be a series of more detailed examples regulating all main aspects of a Member's conduct and responsibilities.

*Question 5: Is the Code easy to understand, meaningful and relevant?*

No, and it's too much about preventing negative issues than in promoting positive issues rough best behaviour and practice.

*Question 6: What changes could be made to ensure the Code is understood by all its readers?*

*Question 7: Should the Commissioner be able to investigate alleged breaches of the general principles of conduct?*

Absolutely. Allegations of a breach of any general duty on a Member in respect of their constituents should be within the remit of the Commissioner.

I am wanting to send in a complaint to the Commissioner about the behaviour of a MP during a meeting with me 3 months ago. It was the first time I had met a MP without a member of his/her staff and he behaved in an extraordinary fashion as well as being completely unprepared. When I referred to a written series of points I needed to make and questions to ask he twice turned on me saying 'Oh you're tricky, tricky, very tricky' repeating the phrase many more times on the second occasion. Quite extraordinary!! Worse though was he led me into breaking medical confidentiality (I am a physician) by knowing that someone had entered the large room we were in—it had no closed doors which I also object to) and then asking me to tell him the name of a patient who wrote a letter to him that was a major part of our conversation about ambulance services in our area. I gave it and then when I asked how much time we had before his next constituent arrived, the person he'd allowed in said 'I'm here'. I

had to telephone the British Medical Association and the General Medical Council to inform them that I had been duped into this action and I personally told the patient what had happened later who was pretty appalled with the MP.

I find that behaviour is not one of the General Principles that Members are expected to observe (the Nolan principles)—surely an omission in a case like mine. Therefore hardly a powerful signal or show of leadership.

*Question 8: Should there be new rules;*

*a) clarifying the expectation that Members will treat others, whom they meet in the course of their work, with courtesy and respect; and/or*

Absolutely it should be e.g. politeness, courtesy, honesty, tolerance and helpfulness towards their constituents.

*b) emphasising the responsibility which Members have for the actions and behaviour of their staff?*

If you feel they are unclear or too ill-defined so as to lead to confusion and doubt, then yes.

*Question 9: Do the Code and the Rules cover the areas which they should? Do they reflect the seven principles of public life fully throughout? What amendments, if any, might be required?*

No wrt behaviour since this is not covered specifically in the 7 principles of public life.

*Question 10: Does the Rule set out in Paragraph 16 of the Code convey adequately the intention of the House in relation to Members' conduct of their public lives? What, if anything, could be done to explain this more clearly?*

The behaviour of my MP surely brings the House into disrepute—as would behaviours like that within the medical profession—but I have been told that the bar is set very high to have a case heard and indeed so it is written (by the MPs themselves!). This again is a potential bias that could affect the public's will to raise complaints and the House might not be receiving accurate feedback via the Commissioner because of this. Some constituents may feel that it is just too high a barrier to even raise an issue.

Frankly, this is the turkey voting for Christmas having MPs sit on a body that sets its own standards when in the public's eyes those standards are woefully and derisorily short and highly questionable, as has been shown by recent scandals and national / international coverage. A moat will never be regarded as just a moat thanks to Members of the House.

With a large majority of MPs (versus only 3 lay members) I view this review simply as a paper exercise. My suspicion is helped when looking at the paucity of complaints (76 in the year) and just over 10% leading to inquiries. Moreover the published 2015–16 list is also supportive

<http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/allegations-the-commissioner-has-rectified/rectifications-2015-16/> with 4 of only 5 MPs complaints upheld due to use of House of Commons envelopes for party political purposes. They can be rude, abrasive, ignore etc. constituents but those beans aren't counted. COME ON!

*Question 11: Are there any other issues which you think should be included in this review?*

That MPs should relinquish their majority on the Committee on Standards and the Code of Conduct for MPs should be approved by an external regulator subject to audit eg like the Bar Standards Board for the General Council of the Bar.

The Code should include unacceptable behaviour.

Far greater openness eg as alluded to above, it's too difficult to:

- a) get to material on how to make a complaint
- b) make a complaint—I was told that there was no-one to whom I could complain about a MP other than to his/her own office (!) or Parliamentary Party (!) or whip (!!)

Such measures could improve transparency and public confidence but ultimately sanctions, where appropriate, should be seen to be being distributed to offending Members. They can shout and scream to each other and make fools of themselves in their game in London SW1A 0AA but their standards need to be lifted outside.

*13 March 2016*

### **Letter from the Commissioner for Ethical Standards in Public Life in Scotland**

Thank you for your letter of 25 January inviting comments on your review of the Code and Guide. My comments are based on experience of the operation of the Code of Conduct for MSPs which, as you have pointed out in the consultation paper, is drafted on a significantly different basis. I am conscious that codes cannot be effective unless they are drafted so as to be in tune with the environment, particularly the culture of the institution, within which they are to be applied.

Q.1 Arguably, the second element of this question is the key to answering the first. A code which fails to inspire confidence would seem to be of little value. As to whose confidence must be inspired, the best answer would cover both those who are subject to the code and those whom they serve, i.e. the electorate. If the Code does not inspire the confidence of MPs, it is unlikely to be regarded as worth observing. If it fails to inspire the confidence of the electorate, then even its close observance would be pointless. However, it is doubtful if the Code can, in and of itself inspire confidence, as that is dependent in part on how it is seen to be applied and

enforced. The contribution of the Code will depend on whether it clearly and properly addresses potential mischiefs.

Q.2 I do not feel that I have enough knowledge of how this works in practice to be able to offer any view.

Q.3 The answer may differ according to the standpoint from which the three tier structure is viewed. Is it of assistance, or is it a hindrance, to anyone who might be considering making a complaint? There is, inevitably, a significant degree of subjectivity involved in interpreting and applying the general principles. It may not be wholly clear to the potential complainant how, or to what extent, they can be “taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct”. In that sense, there is a risk of their inclusion leading to a lack of clarity about the scope and effect of the Code. The Guide states that it “carries the authority of the House”, which implies an expectation that Members are required to comply with it. If it has as much force as the Rules of Conduct, is that clear to all who have an interest in the Code? If not, how are the different tiers to be distinguished? Paragraph 18 of the Code suggests that the Commissioner’s remit is limited to investigating specific complaints about the Rules of Conduct; that is not easily reconciled with the apparent authority of the Guide.

Q.4 Acknowledging that the current approach must have been considered appropriate for the environment in which the Code is applied, I would suggest that its validity should be tested by an assessment of whether it offers sufficient clarity for (a) those who are required to abide by the Code, (b) those who may think that they have reason to make a complaint, and (c) those who are required to assess and determine how to deal with complaints. My limited experience has been of the operation of a code in a different environment where the key principles are stated to be relevant only to interpretation of the detailed rules. Nevertheless, on grounds of fairness, I would be concerned if the alleged breach could not be framed sufficiently clearly for the Member to answer it. Equally, would a complainant be satisfied if the ultimate decision on the complaint turned on the interpretation of a general principle?

Q.5 The Code’s brevity makes it easier to understand than, for example, the Code of Conduct for MSPs. However, by the same token, it may be less easy to interpret.

Q.6 The answer to this question will depend on the approach taken in relation to the preceding, more general questions.

Q.7 This is also linked to previous questions. As noted in response to Q. 3, it may be that reporting on any investigation of an alleged breach of a general principle would involve making judgements which are necessarily subjective.

Q.8 (a) The obligation to treat others with respect is a feature of other codes with which I am familiar, and a regular source of complaints, which suggests that it is an issue of importance to those with whom elected representatives interact.

Q.8 (b) This would appear to be a helpful clarification in relation to paragraphs 14 and 15 particularly.

Q.9 The Code of Conduct for MSPs may offer for consideration a range of additional areas which some might argue the Code could or should cover.

Q.10 If experience elsewhere is any guide, it may be that social media could be relevant to paragraph 16 and to its interpretation in the light of paragraph 2.

Q.11 I have nothing to add at this stage.

*Bill Thomson*  
Commissioner  
10 March 2016

## **Letter from Northern Ireland Assembly Commissioner for Standards**

### **Introduction**

Following a report<sup>1</sup> of a review by the Committee of Standards and Privileges (“the Report”) the Northern Ireland Assembly approved a revised version of the Code of Conduct together with the Guide to the Rules Relating to the Conduct of Members (“the Assembly Code”). That Code will come into force at the start of the new mandate in May 2016.<sup>2</sup> These two documents may be of interest when carrying out the review of the Code of Conduct and Guide to the Rules relating to the conduct of Members of Parliament (“the MPs Code”).

### **Question 1**

*What should the purpose of the Code be? Should it have any other purpose(s)? How could the Code inspire confidence?*

The text of the current Code could be considered inward looking focusing as it does solely on Members. Given that it sets out Rules of Conduct which Members are required to follow the use of soft language such as ‘assist’ may not be appropriate. The purpose would be strengthened if it made clear that the Code was intended also to inform the public including those who wished to complain about a Member. It should also make clear that it sets out the minimum standards of conduct required of Members.

The purpose provision of the new Assembly Code addresses these concerns and may merit consideration.

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1 <http://www.niassembly.gov.uk/assembly-business/committees/standards-and-privileges/reports/review-of-the-code-of-conduct-and-guide-to-the-rules-relating-to-the-conduct-of-members/>

2 It is anticipated that the new Code will shortly be available on the Assembly website

## **Question 2**

*Where and how should the Code fit alongside the Ministerial Code?*

As it is not intended to re-visit the application of the Code to ‘Members in all aspects of their public life’ it would seem that Members who are Ministers will, when acting in a Ministerial capacity, be subject to both the Ministerial Code and the MPs Code. The ministerial conduct of a Member must surely be a part of his or her public life.

## **Question 3**

*Does the three tier structure of the standards system help or hinder in achieving its purpose? How can this best be presented?*

Whilst the current three tier approach may be familiar and understood by Members it may be confusing to the general public. It should be made clear which of the tiers are mandatory and which are aspirational and breaches of which tier(s) may found a complaint.

## **Question 4**

*Should the Code be a principle or rules-based document? If you could add one new rule, what would it be?*

The arguments for a principle or rules-based code are set out in paragraphs 130 - 142 of the Report. The solution adopted by the Assembly, namely, aspirational principles which can be used to interpret enforceable rules has much to commend it.

A new rule making Members responsible for the conduct of their staff, similar to Rule 19 of the Assembly Code, should be considered.

## **Question 5**

*Is the Code easy to understand, meaningful and relevant?*

The Code is meaningful and relevant but perhaps not easy for all the public to understand.

## **Question 6**

*What changes could be made to ensure the Code is understood by all readers?*

In addition to the revisions identified in the response to Question 3, there is a lack of clarity as to how the Duties of Members interact with the Rules of Conduct. The use of plain English throughout merits consideration.

### **Question 7**

*Should the Commissioner be able to investigate alleged breaches of the general principles of conduct?*

No. Allowing this would introduce an unacceptable level of uncertainty and would, based on the experience in Northern Ireland, be likely to increase the number of unmeritorious complaints received.

### **Question 8**

*Should there be new rules:*

- a) *clarifying the expectation that Members will treat others, whom they meet in the course of their work, with courtesy and respect; and/or*
- b) *emphasising the responsibility which members have for the actions and behaviour of their staff?*

There is merit in both such potential rules. The conduct aimed at would not, save in the most extreme circumstances, be caught by the rule in paragraph 16. However, any rule on courtesy and respect should not be limited to those whom Members *'meet in the course of their work'*. Rather it should be a general duty to treat everyone with courtesy and respect. The scope provisions would restrict that general duty to the conduct of Members in their public lives.

### **Question 9**

*Do the Code and rules cover the areas which they should? Do they reflect the seven principles of public life fully throughout? What amendments, if any, might be required?*

The coverage of the present rules, subject to the response to Question 8, appears satisfactory. The rules are compliant with the Nolan Principles. Consideration should be given to revising the text of the existing rules so that they have a common format. Each rule should start *'Members shall/shall not ...'*. Such a change would assist understanding.

### **Question 10**

*Does the Rule set out in Paragraph 16 convey adequately the intention of the House in relation to Members' conduct in their public lives? What, if anything, could be done to explain this more clearly?*

The need for any change to this Rule is not apparent.

## **Question 11**

*Are there any other issues which you think should be included in this review?*

Consideration should be given to widening Paragraph 18 to cover lobbying the Commissioner.

*Douglas Bain CBE TD Advocate*

Northern Ireland Assembly Commissioner for Standards

*9 March 2016*

### **Letter from Paul Kernaghan CBE QPM, Commissioner for Standards, House of Lords**

Thank you for your letter of 25 January 2016 inviting me to respond to your consultation on the review of the House of Commons Code of Conduct and Guide to the Rules for MPs.

I am happy to contribute to your review but I emphasise that the views expressed are mine; they in no way represent the views of the House of Lords. I am conscious that the two Houses of Parliament are separate entities with different functions and mandates.

Below are responses to some of the questions posed in your consultation paper. I would be happy to elaborate on any of the responses if that would be helpful.

#### *Question 1*

The current purposes seem appropriate. A parliamentary code of conduct will inevitably have the twin purposes of setting standards for members' conduct and ensuring public confidence.

#### *Question 2*

In the House of Lords, as in the Commons, the Commissioner's remit excludes alleged breaches of the Ministerial Code. This distinction has broadly worked in the Lords. There is a separate process for considering complaints that the Ministerial Code has been breached and it seems appropriate that such complaints are not normally investigated twice (though some conduct might breach both codes).

That said, I understand that an investigation into an alleged breach of the Ministerial Code takes place only when the Prime Minister feels one is warranted. Thus there is perhaps a subjective element to initiating investigations which might be contrasted with a more objective process for beginning investigations under the parliamentary codes of conduct.

*Question 4*

In the House of Lords members are required to act always on their personal honour. This is a general principle of long standing in the House. It sets a standard by which members must abide: the standard is not that of the individual member but that of the House as whole.

On several occasions members have been found to have failed to have acted on their personal honour by demonstrating a clear willingness to breach the Code of Conduct.

*Question 7*

In the House of Lords the seven general principles of conduct are taken into account when I am considering an alleged breach of another provision of the Code. I cannot consider a complaint which alleges only breach of one of the seven principles. The seven principles are particularly used as a guide to members in considering the requirement to act always on their personal honour.

*Question 8*

Parliamentarians should be held to the same standards in employing staff as other employers are. They should treat House staff and their own staff with respect and courtesy.

In the House of Lords there is a Code of Conduct for Members' Staff, which sets out the requirements expected of staff who have a parliamentary photo-pass or email account sponsored by a member.

*Question 11*

I am not sure if this matter is within the scope of your consultation, but if it is I respectfully raise the question of who recommends a sanction when the Code has been breached. It is evidently important that those recommending and deciding sanctions act objectively and impartially. It would undermine public confidence if the process was subject to inappropriate influence or irrelevant considerations. That seems particularly so given that the Recall of MPs Act 2015 now provides that a suspension above a certain level may trigger a recall petition and so lead to a by-election.

*Paul Kernaghan CBE QPM*  
*16 February 2016*

## **Letter from the Committee on Standards in Public Life**

Thank you for the opportunity to respond to your consultation on the Code of Conduct and Guide to the Rules relating to the conduct of Members of Parliament. Our response is attached.

The Committee on Standards in Public Life has considered the Code of Conduct for Members of Parliament a number of times in its history. The Committee's first report in 1995 recommended that the seven principles be set out and that all public bodies should draw up Codes of Conduct incorporating these principles.

The Committee has continued to press for a principles-based code and believes a principles-based approach is needed to set out clearly the expectations of behaviour of elected Members. Moreover, Parliament should demonstrate leadership in promoting and supporting the seven principles—and the Code of Conduct should reinforce these fundamental values.

Above all, any system for the regulation of Members' behaviour must, as a whole, command public confidence. If it does not, it risks bringing the system and Parliament more generally into disrepute.

In our responses to your questions and issues paper we have focused on matters of principle rather than operational detail.

*15 March 2016*

### *Introduction*

The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB). The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The Committee on Standards in Public Life established the Seven Principles of Standards in Public Life, which are Selflessness, Objectivity, Integrity, Accountability, Openness, Honesty and Leadership.

The Committee's terms of reference were updated in 2013: “...the Committee's remit to examine 'standards of conduct of all holders of public office' [encompasses] all those involved

in the delivery of public services, not solely those appointed or elected to public office.”<sup>3</sup> The Committee’s terms of reference were further clarified in a House of Lords written Parliamentary Question on 28th February 2013 to explain that the Committee’s remit means it “can examine issues relating to the ethical standards of the delivery of public services by private and voluntary sector organisations, paid for by public funds, even where those delivering the services have not been appointed or elected to public office.”<sup>4</sup>

## **Response to Parliamentary Commissioner’s Questions and Issues paper**

*Question 1: What should the purpose of the Code be and should it have any other purpose(s)? How could the code inspire confidence?*

The Code’s purpose should be to establish the standards and principles of conduct expected of all Members and to set the rules which underpin these standards. It acts as a reference by which the electorate judge the behaviour of MPs. As with the Civil Service and Ministerial Codes there must be a clear expectation that MPs will abide by the Code of Conduct.

If Members are seen to be acting in accordance with and held accountable to the Code then this will inspire confidence and public trust in its efficacy. Our view is that the general standard of conduct of Members is high but a single lapse by a Member can do a great deal of damage to public perceptions. The public mood following the 2009 expenses scandal remains unforgiving. An Ipsos MORI poll on trust Jan 2016 ranked Government Ministers and politicians generally the lowest (22% and 21% respectively) as trusted to tell the truth compared with the top three of doctors (89%), teachers (86%) and judges (80%).

Any code of conduct must be easily understood with a clear scrutiny and accountability framework. It must be fair, effective and in line with reasonable public expectations.

Alongside the code, Members need to remain vigilant in their conduct and those in leadership positions especially should demonstrate their commitment to the Code and Rules of Conduct so as to inspire others. The Committee reiterates its call for all those in public life, including Members of Parliament, to demonstrate leadership. Leadership in this context means actively promoting and supporting the principles and being prepared to challenge behaviour that falls short of the standard they set.

*Question 2: Where and how should the code fit alongside the Ministerial Code?*

The Committee believes there remains a need for a separate Ministerial Code, set out by the Prime Minister, in addition to the MPs’ Code of Conduct and the Lords’ Code of Conduct. The

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338963/Annual-plan-13-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338963/Annual-plan-13-14.pdf)[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338963/Annual-plan-13-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338963/Annual-plan-13-14.pdf)

<sup>4</sup> Hansard Column WA347

Ministerial Code highlights the additional responsibilities of government ministers. The Committee sees no evidence that Ministers do not understand that they have to respect both.

A key example of the difference between the Codes occurs in the rules on lobbying. Paragraph 11 of the Code of Conduct for Members of Parliament provides:

‘No Member shall act as a paid advocate in any proceeding of the House.’

Paragraph 7.25 of the Ministerial Code however provides much clearer restrictions:

“On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee.”

The distinction between the two Codes demonstrates the additional responsibilities and expectations that come with the Ministerial role. This example from the Ministerial Code provides a level of detail from which the other Codes might benefit. Used proportionately greater detail can provide greater clarity, which can only benefit Members and the public.

*Question 3: Does the three tier structure of the standards system help or hinder this?*

The Committee welcomes the approach whereby the standards system comprises both principles and more detailed guidance. The three tiered approach (which is broadly replicated across the UK’s Parliaments/Assemblies) of (1) the seven principles of public life; (2) the Rules of Conduct setting out the broad rules by which MPs are expected to abide, guiding the application of those principles; and (3) the detailed Guide to the Rules guiding members’ day-to-day conduct seems a sensible way of giving MPs guidance on both principles and the more detailed rules to help guide them in their conduct. Principles alone are not enough but an overly bureaucratic approach could also be counter-productive. However, it is essential that the collection of principles and rules are not fragmented or obscure or inaccessible as this may allow Members to argue that ignorance or doubt about the rules exist. It may also mean that there is a lack of clarity for members of the public as to the minimum standards and good practice that are required.

As well as the Principles and Rules based approach, the Committee emphasises the need for the right culture to exist. As we stated in our report “Standards Matter”:<sup>5</sup>

*Codes do not have an impact simply by existing. Principles and rules are necessary but not sufficient to create high standards. Organisation also needs the right culture, effective monitoring and strong leadership.*

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5 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228884](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884)

In addition to leadership one of the most effective ways of building the right culture is through appropriate education and training. Our *Standards Matter* and *Ethics in Practice* reports emphasise the need for Parliament to develop and deliver an induction programme that cover both the Seven Principles and the details of the Code of Conduct rules for MPs. Induction for new Members is essential to ensure that MPs are aware of the standards expected of them.

The Committee welcomes the House's attempts to address this need and notes the good attendance (93%) at the induction session held in 2015 following the General Election.

*Question 4: Should the Code be principles or rules-based document? If you could add one new rule, what would it be?*

The Committee has long held the view that rules cannot cover everything. Publishing rules and Codes of Conduct and even instituting independent scrutiny mechanisms are not sufficient on their own to maintain and/or raise standards in public life. The inclusion of principles in the document offers a powerful means of avoiding an overly bureaucratic approach, which we believe can be counterproductive.

We would encourage all MPs to take a wide view; MPs must understand how the public views their actions. Ultimately MPs must personally account for their own actions and decisions.

One area where we believe the Rules could be improved is around the issue of lobbying. Our 2013 report, *Strengthening Transparency around Lobbying*<sup>6</sup>, proposes series of practical steps which would strengthen transparency around the 'lobbied' so that an official, Member of either House, or Minister would be able to demonstrate probity to the outside world:

- More timely, detailed disclosure about all significant meetings and hospitality involving external attempts to influence policy decisions and these disclosure arrangements should be widened to cover special advisers and senior civil servants as well as Ministers, Permanent Secretaries and members of Departmental Boards.
- Public office holders who are outside the scope of the Freedom of Information Act (including Members of Parliament, Peers and Councillors) should be encouraged to disclose the same information.
- Impose restrictions on lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials. We welcome the news that there has been some progress on this issue.
- Require former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials.

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<sup>6</sup>[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/407530/2901376\\_LobbyingStandards\\_WEB.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf)

The Code of Conduct for Members of Parliament should be revised to allow complaints to be made against an MP who is a former Minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACoBA).

Consideration should also be given to whether Chairmanship of a Select or similar Committee brings with it a particular influence on matters of public policy that justifies the imposition of additional restrictions in relation to conflicts of interests.

The Committee is in favour of both a Principles and Rules-based approach. Rules need to address the most pertinent issues (e.g. lobbying) but should be proportionate.

*Question 5: Is the Code easy to understand, meaningful and relevant? And Question 6: What changes could be made to make sure the Code is understood by all its readers?*

The Code and rules should be accessible, clear and intelligible with clarity about rationales and intended outcomes. The Committee believes some of the language in the current code could be clarified—too often it is confined to generalities without providing concrete examples. We feel that more explanation around, for example, the rules around lobbying would be helpful. The Code is relatively short in length and whilst it need not run to the length of other, longer Codes there is scope to extend it in order to provide a more comprehensive guide for both Members and the electorate on certain points. For example the rules on business appointments and lobbying are areas, which the public need to have a greater degree of certainty when it comes to what is/is not appropriate conduct.

As we have advised, in order to maintain its relevance, the Code should continue to be regularly reviewed in order to give new Members and others a chance to consider it afresh in light of the lessons learned in the preceding Parliament. Account should also be taken of the impact of changing technologies/social media given that guidance is largely silent on that topic.

Finally, as stated above (Question 2) the Committee believes that induction, including scenario-based training, can be a means of making the Code coherent to Members.

*Question 7: Should the Commissioner be able to investigate alleged breaches of the general principles of conduct?*

The Committee recommended the establishment of the role of Parliamentary Commissioner in its first report of 1995. We continue to be of the view that the House needs an independent Commissioner—her role in overseeing registering interests and investigating breaches remains key in the Commons standards system. Breaches of the Code are the most public aspect of the role and it is essential that a mechanism for their investigation remain in place.

The Committee continues to believe that principles are needed to frame the rules by which MPs decide how to act. The principles remain the primary tenet guiding Members conduct, therefore the Commissioner must be free to investigate all potential breaches of those tenets.

In addition, it is possible that changes to any of the principles will be needed in the future which a Commissioner might wish to raise.

It is important that the person carrying out this role is able to do the job as they see fit. It remains critical that they are robustly independent. The Commissioner, as now, should have discretion as to whether or not to accept a case as well as control of the conduct of the investigation. Equally any approach must be balanced against frivolous or vexatious complaints—as previously advised in our 8th report.<sup>7</sup>

*Question 8: Should there be new rules:*

- a) clarifying the expectation that Members will treat others, whom they meet in the course of their work, with courtesy and respect; and/or*
- b) emphasising the responsibility which Members have for the actions and behaviour of their staff?*

The Committee is of the view that all Members should treat those whom they meet in the course of their work with respect and courtesy and is aware that other organisations, such as some Local Government Authorities have added respect to their codes of conduct. It is common practice in local government for bullying to be regarded as a breach of members' code of conduct.

We understand the House has a Respect Policy that sets out the rights and responsibilities for managers and staff in relation to House staff. It sets out formal and informal procedures. It may be the case that staff and officials of the House would welcome the addition of “respect” to the Code of Conduct.

In addition the Committee has long made the case for Members to lead by example, ensuring good practice and encouraging an ethical culture among their staff. This should include taking demonstrable action where appropriate.

*Question 9: Do the Code and the Rules cover the areas which they should? Do they reflect the seven principles of public life fully throughout? What amendments, if any, might be required?*

The Code and Rules seem to cover all the seven principles sufficiently but the Committee recommends that Parliament makes better use of its induction programme to increase awareness of the principles and the details of the rules and to embed ethical standards. We welcome the current review of the Code and recommend that it may be reviewed at least once in the life of each Parliament.

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<sup>7</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336882/8thInquiry\\_Fullreport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336882/8thInquiry_Fullreport.pdf)

*Question 10: Does the Rule set out in Paragraph 16 of the Code convey adequately the intention of the House in relation to Members' conduct of their public lives? What, if anything, could be done to explain this more clearly?*

Paragraph 16 states “members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its members generally”. This is a high bar; the word “significant” is subjective and open to interpretation. The rule seems clear that behaviour that may reflect badly on one particular Member would not necessarily be seen as a breach of this rule. However, as noted earlier, it is clear that single lapses of behaviour and judgement can bring the whole House into disrepute.

In our 2015 report *Ethical Standards for Providers of Public Service*<sup>8</sup> we refer to the construction firm Skanska's ‘Noticeboard Test’. This is an excellent lens through which the consequences of a decision can be considered. Mark Galloway, Executive Vice President Skanska UK states:

*“Imagine placing the decision you made on a public noticeboard. How would others view it, whether that's your colleagues, clients, supply chain or members of the public? If you feel it stands up to scrutiny then you've probably made the right decision.”*

*Question 11: Are there any other issues which you think should be included in this review?*

The Committee believes that ethics guidance and training that reflects public expectations should be included in Members' induction to the House and for those that go on to be Ministers. Such training should include the standards of behaviour and the relevant Codes.

In addition, the Committee's report *Ethics in Practice*<sup>9</sup> highlighted the value of scenario-based training. The advantage of this approach is that it enables members to test their understanding of the Code values and, crucially, to challenge their assumptions as to how principles might apply in practice. There is evidence<sup>10</sup> that suggests this type of approach to learning is more conducive to improved ethical behaviour, and “is more likely to be remembered on the job” than more compliance or rule-based approaches.

15 March 2016

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<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/481535/6.1291\\_CO\\_LAL-Ethical\\_standards\\_of\\_public\\_life\\_report\\_Interactive\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481535/6.1291_CO_LAL-Ethical_standards_of_public_life_report_Interactive_2_.pdf)

<sup>9</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336976/2902536\\_CSP\\_L\\_EthicsInPractice\\_acc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336976/2902536_CSP_L_EthicsInPractice_acc.pdf)

<sup>10</sup> Carol W. Lewis and Stuart C. Gilman, *The Ethics Challenge in Public Service: A Problem Solving Guide*, Third Edition (San Francisco: Jossey-Bass, 2012), p. 211

## **Email from Mr Sameen Farouk**

I have been advised by the Committee on Standards in Public Life to forward this email on to you for your consultation.

I'm afraid I have not had chance to properly read through the consultation but I hope you will take into account my observations, which were again triggered by the recent ICO case against an elected Member.

### *Questions 1–3*

I believe the code should have a much deeper purpose. It needs to uphold confidence of decision-making in parliament and in all those involved in them who are bound by the Nolan Principles. In doing so, it should specifically seek to uphold the principles where they relate to the protection of the privacy of constituents.

As part of the code, public funding granted for the use of MPs should be used to promote and involve people in the processes of parliament such as responding to Committees or Petitions. The Commissioner should also be willing to highlight and report best practice that is come across in the Annual Report.

The Code of Conduct on MP's should sit on top of the Ministerial Code where the Minister sits in the Commons. So the first duty of an MP is to the Code of Conduct after which they are subject to the Ministerial Code. This is because I want to see expenses paid to carry out official duties be subject to the principles of the Code of Conduct in terms of propriety (paragraph 6.1). This means that should I suspect expenses paid for by the public (e.g. via the House or HM Government) are being misused, I can raise a complaint to you instead of the Department (who have other priorities). You can then refer it should you wish.

Allowing the Code of Conduct to sit on top of the Ministerial Code means that it strengthens the case when complaints are made because they can be framed in line with the Nolan Principles (e.g. transparency and Accountability) and paragraphs 12 and 15 of the Code. It also allows us to be able to identify when Special Advisors or staff working in the Office of Ministers are also involved in any financial relationships which would undermine confidence in the Government and the work of Ministers in Parliament.

### *Question 4–6: Rules v Principles (Privacy)*

My advice would be to convert the Code of Conduct to a rules based document with principles identified through the enforcement of those rules. So where the current principles in the Code of Conduct exist, there should be a set of basic rules with examples on its interpretation. The principles, e.g. the Commissioner will only intervene in order to uphold the Nolan Principles allow it to become very clear that MPs will understand when they have overstepped the mark or misinterpreted what is permitted. As part of this discussion. My advice is to permit some

form of discretion for MP's which submit themselves to investigation when prompted. They should not have to wait for an ICO investigation.

One further rule change. My specific concern relates to the situation in Portsmouth.

Any MP, their staff or connected parties acting on their behalf found to have intruded or invade the privacy of their constituents must submit themselves to referral to the Standards Committee within 7 days. Failure to do will result in an automatic £1,000 deduction from Parliamentary Expenses. Failure to co-operate with any investigation will result in a £50,000 suspended penalty. If found in contravention of the Rules, the MP will need to apologise in writing to the constituent(s), place a notice in the local paper and accept financial liability for such intrusions subject to the determination of the Commissioner and/or accept a referral to the Information Commissioners Officer.

I think Ministers can nip many of the problems in the bud through an extension of the enforcement provisions such that the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) extends to cover activities regulated under Political Parties, Elections and Referendums Act 2000. The Commissioner can take account of those activities not covered by the regulated period. I do not think our local or national political parties do anywhere near enough to prevent the abuse of our personal privacy and intrusion into our personal lives as part of their work. They are responsible for the control of more and more personal data yet a few take a reckless approach or permit their staff to or their offices used for printing smear leaflets. They don't respect nor recognise the legal framework within our rights for unwanted intrusions.

The interaction between the Political Parties, Elections and Referendums Act 2000 and the role of elected members, MPs and their staff needs to be underpinned by revisions in the Code of Conduct.

I'm afraid the Code of Conduct itself is not so easy to understand. This is because I believe so many politicians working in MP's offices or making use of their access and facilities are clearly abusing it and finding new ways around it. MPs are often too busy to deal with things like this and stamp it out. The Office Manager may be intimidated by councillors or party chairs or their associates. For this reason, I am specifically asking for specific rules to be put in place setting out the specific nature of the relationship between MPs and their constituents.

The changes you would need to make to the Code of Conduct need to have specific provisions in relation to the following areas (1) harassment (2) intimidation (3) bullying (4) smearing (5) stalking (6) accountability. In particular, the Code of Conduct needs to emphasise as far as possible that the Standards Commissioner will never ever tolerate intimidation and bullying and MP's have their own responsibility to ensure it is firmly stamped out of politics. Any attempt whatsoever to do so or engage in behaviour classed as stalking or harassment should be referred to the police and vulnerable adults need to have somewhere to turn to.

Furthermore, I am going to ask you to challenge the Livingstone Judgement which meant the Code does not apply to their “purely private and personal lives”. I’m sorry, but the distinction needs to be redrawn such that all forms of communication and methods of communication used to constitute misconduct will be made available to the Commissioner for an investigation. For as long as someone is in a situation where they are perceived as an elected Member to exercise their influence or have obtained access to such matters, they will not have recourse to the Livingstone defence. The only exception to this rule is where the matter is under reasonable expectation to be considered a personal matter. I need to ask you to reconsider because I wish for the following rights to be specified in the Code.

The rights to privacy. The Human Rights Act (Article 8) is pretty clear, it is the qualified right for the respect of one’s established family life and a reasonable expectation of privacy. Wherein the same right also overlaps with Article 22 of the UN Disability Convention, specifically in the area of disabilities. Article 16 of the UN Convention of the Rights of the Child also has the same obligation in the area of children.

#### *Question 7–9*

I believe that I have answered your question but my answer to questions 7 and 8 would be yes. Should there be any doubt at all as to why, I am happy to then send you the Pascoe Report.

My answer to question 9 would be as already outlined.

#### *Question 10*

I believe this matter is in relation to the offer to solicit services in exchange for duties in the House and also the ability to access Parliamentary facilities. To my mind, this should be dealt with under specific rules. I would be specific on this issue. Having worked on Select Committees, I would like you to add the following:

I think there needs to be greater transparency in the course of working on a Select Committee or a Public Bill Committee, particularly where it relates to access to Parliamentarians—every MP should set out their meetings that they have had with any lobbyist or private party outside of Parliamentary staff including Government officials in connection to Committee proceedings. As a matter of routine, they should record (a) time (b) date (c) location (d) overview of information (e) action taken or agreed (f) further meetings. They should be prepared to submit that before a Committee meets and certainly before any inquiry concludes. If requested by a member of the public, failure to do so within 20 working days would subject the MP to a minimum £500 deduction of parliamentary expenses.

I believe in this instance, you may wish to turn to how Canada deals with this—all public office holders are subject to the Criminal Code’s general provisions on corruption, including bribery, influence-peddling and breach of trust. For example, breach of trust occurs when a Member pays a person for work not performed, accepts payment from a person in return for hiring that person as an employee or contractor, and uses public funds for private travel.

Furthermore, I wish to lower the bar for where the House can take action in the specific instance of the Public Sector Equality Duty. In this, I want to ask if the Rules can be amended such that MPs which fail to make reasonable adjustment to the needs of those who are disabled (whether MPs, staff, or members of the public) will be deemed as if they have brought the House into disrepute. This includes amending their constituency and their Westminster offices. I want to see Parliament accessible to all, and I get the impression that not all MPs play their part in this and they are oblivious to the damage they do.

#### *Question 11*

I would like to see malus provisions introduced for MPs. I believe this is overdue. They benchmark themselves against peers who operate in regulated environments with consequences for misconduct. Even in the private sector, professionals in financial services are vulnerable to losing pay through clawback of bonuses. No such thing happens to MPs and it is hard to continue to justify.

I would like to stress to you that we need to get a categorical grip on the culture of bullying, smearing and sneering in public life. MP's have to play their part through leadership and condemn or sack those involved in it including themselves. We cannot have a sense of impunity and this I believe is where the Commissioner can play a renewed role to ensure confidence in Public Life. Should you feel the matters are targeted or local, then I would ask that the Office initiate a sub-committee of local inquiries.

I believe in particular, your office should also open consultations on the conduct in public office of PCCs, elected mayors, councillors and MPs in all areas which are currently seeking devolution deals and reviewing their governance arrangements. Those areas that fail to pass your sense check should not be permitted any further progress on devolution until they sort out the underlying issues in terms of confidence in those representing themselves whether in Parliament or elsewhere.

*Sameen Farouk*  
*14 March 2016*

#### **Letter/Email from Mr Paul Flynn MP**

*What should the purpose of the code be?*

Parliament's prime task since the expenses scandal is to restore the public's trust in politicians and politics. We are failing. Parliamentarians are no longer trusted by the public to police our own affairs. This has been demonstrated with harmful headlines exposing sex, drugs, fraud and expenses scandals where the House has apparently made lenient judgements.

Standards Committees of both houses frequently adjudicate in favour of those accused. The perpetrators of alleged offences are more often than not found to have committed no breach of the Code of Conduct by the Commons authorities.

**The Commissioner on Standards has an unenviable role of applying the MP's code of standards to their actions in the event of a complaint. Continuing instances of behaviour bringing Parliament into disrepute raise questions on the effectiveness of the standards system and the Commissioner's role.**

**Recent results suggest either the rules or their interpretation are inadequate. A rule cannot be breached if there is no rule, no matter how untoward the action.**

**On occasions where a breach is deemed to have been committed consequences are ineffective. A breach of conduct is frequently resolved by an apology for a minor breach or a referral to the Committee on Standards for a more serious one. There is now widespread public and press perception that parliamentarians are closing ranks in defence of errant colleagues.**

### *Case Studies*

In July 2012 I made a complaint to the Standards Commissioner about Lord Blencathra's lucrative contract with the Cayman Islands. Following his appointment as Director of the Cayman Islands UK, in promotion of his services for hire, Lord Blencathra touted his lobbying skills at a press conference.

His activities included lobbying George Osborne to lower air passenger transport taxes on the Caymans and facilitating an all-expenses-paid trip to the Caymans for three senior MPs. Following my complaint, the Lords Standards Commissioner decided to hold an investigation to decide if a breach of the Code of Conduct had occurred.

Lord Blencathra was found not to have breached the Code of Conduct in his £12,000 a month role. He claimed to have not lobbied Parliament but admitted freely that he was lobbying Ministers and Government. This distinction was surprisingly accepted as permissible at the time. It was also decided that despite being hired for his access to legislators, he had not lobbied in his capacity as a peer but as a private citizen. As such no action was taken.

In 2014 The Bureau of Investigative Journalism published an employment contract between The Cayman Islands and Lord Blencathra, exposing clauses expressly setting out how he would work for the tax haven. This contract was not made known to the Privileges and Standards Committee for its 2012 investigation. The contract's unexplained existence prompted a new investigation at my request.

Blencathra agreed to "Promote the Cayman Islands' interests in the UK and Europe by liaising with and making representations to UK ministers, the FCO, members of Parliament and members of the House of Lords."

Conveniently the peer's defence has evolved periodically to suit the accusations laid against him. Initially he denied having a lobbying aspect to his role, before omitting any awareness of

an employment contract when under investigation. Eventually he settled on having not had any intention of fulfilling the lobbying clauses within the contract he later remembered signing.

The investigators would not take a hard line against one of their fellow peers. The perception of Parliamentarians for hire was legitimised by the Lord's Standards Commissioner who refused to take a tough stance on the matter. It was accepted that although he received £12,000 a month for services that he was contractually obliged to perform, Lord Blencathra did not intend to carry out those services that would have breached the Lords Code of Conduct. A brief apology from Lord Blencathra sufficed to bring an end to the affair. This judgement I believe was excessively generous and did not match the seriousness of the offence.

Lord Sewel had the leading role in overseeing the conduct of peers. He held the position of Chairman of the Privileges and Conduct Committee that considered Lord Blencathra's case. Following his own fall from grace Lord Sewell contrived his own exoneration. Absolution by his resignation. Allowing Parliamentarians to escape judgement on their conduct by resignation is not a privilege available to non-parliamentarians. This case demonstrated an unacceptable level of permissiveness by peers for one of their own. There have been no public signs of penitence from the Upper House for these events.

### **Parliament was later brought into disrepute again by Jack Straw and Malcolm Rifkind.**

The pair were recorded discussing possible lobbying work with reporters posing as staff of a fake Chinese firm. Sir Malcolm was said to have claimed that he could arrange "useful access" to every British ambassador in the world because of his status, while Mr Straw boasted of operating "under the radar" to use his influence to change European Union rules on behalf of a commodity firm which paid him £60,000 a year. The admission made by Jack Straw and Malcolm Rifkind appear to be clear breaches of the code which states:

*12. The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.[3]*

*13. Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.[4]*

*14. Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. Such information must never be used for the purpose of financial gain.*

Incredibly Parliament's standards commissioner said neither had broken Commons rules. Many of us who watched the programmes were surprised at this view. The two former MPs seemed to have to have made statements in flagrant breaches of the above codes in their pasts and indicated willingness to disregard the rules in future.

The commissioner in question Kathryn Hudson conceded there had been "errors of judgement" from Sir Malcolm while Mr Straw had breached the code of conduct "by a minor misuse of parliamentary resources".

Not for the first time the messenger was attacked. The undercover sting, carried out by Channel 4's Dispatches and the Daily Telegraph was criticised. The report complained that if they "had accurately reported what was said by the two members in their interviews, and measured their words against the rules of the House, it would have been possible to avoid the damage that has been done to the lives of two individuals and those around them, and to the reputation of the House." Both were referred to the Parliamentary Standards Committee. Its chairman stated: "By selection and omission the coverage distorted the truth and misled the public as to what had actually taken place." The two were treated leniently. A subsequent detailed investigation by the independent Ofcom exonerated Channel Four from accusations that they had unfairly edited and presented the recorded interviews.

We see similar leniency in the case of former Conservative MP Tim Yeo. Mr Yeo lost his libel case against The Sunday Times over a "cash for advocacy" claim. In 2013 the newspaper alleged he breached parliamentary codes of conduct by telling undercover reporters he could promote business concerns in return for cash. It suggested Mr Yeo would approach ministers for a daily fee of £7,000 on behalf of a solar energy company with interests in the Far East.

Incredibly MPs on the Standards Committee absolved Mr Yeo of any guilt arising from allegations that he abused his position as chairman of the Commons energy committee to further the interests of his business contacts. The Committee stated that following a lengthy investigation Mr Yeo had not breached any rules, and that the only misrepresentation had been committed by reporters of the Sunday Times who had posed as potential clients in the sting operation.

They reserved their strongest criticism for the newspaper, saying: "We note the severe damage which is done to public trust by journalism which rests on a basis of subterfuge, misrepresentation and selective quotation." Again, MPs closed ranks and fired a fusillade at the messengers. Again Parliament looked after its own. A committee of MPs found the actions of a journalistic sting against a colleague deplorable even though facts of great public interest had been unearthed.

Another conclusion could be that the media was performing a vital function in exposing potentially corrupt parliamentarians. If these three MPs had not breached the rules, the rules appear to be deficient and in need of being rewritten. However it appears that their conduct did breach the existing code. The problem may be one of both interpretation and implementation.

It is clear that both Houses have failed in their duty to self-scrutinise to the satisfaction of public opinion. The committees installed for disciplinary actions appear to act incestuously, influenced by ministers, whips and the pressures of the closed community of Westminster to guard its sorry reputation for probity. Malcolm Rifkind was a member of the board that appointed Kathryn Hudson the commissioner who was later to find in his favour. This may have had no effect of any decisions made, but it does invite suspicions of possible bias.

**Judgements by independent bodies carry weight and credibility. Internal Commons Committees have sullied their credibility by apparently whitewashing serious charges. They now lack legitimacy. They do not deserve the trust to investigate fairly and reach just conclusions.**

**This is sadly not a reflection of the high moral standards and integrity of the Members of the House who are tainted by perceptions of corruption. The task of judgement and condemnation passes to public opinion, spurred on by publications such as the Telegraph and the Mail. This is not a fair method of scrutiny. The death of a former MP David Taylor was in my opinion hastened by his brutal treatment from the Telegraph. Many others have been culpable of minor infractions, or worse innocent mistakes. They have suffered the rough justice of journalists and been spuriously hung out to dry by tabloids in the pursuit of circulation delivering scandals.**

**To restore confidence in judgements on parliamentarians conduct, I believe we should move to bodies made up of trusted individuals who are not parliamentarians. Ideally an individual of the calibre of High Court Judge should lead it. That could be a valuable step in restoring trust.**

### **Standards in Parliament**

Outwith the role of the Commissioner for Standards, a web of procedure and committees exists with similar purpose. The system does not work. Procedures are ritualistic at best. Committees wield no power and appointments are rife with conflicts of interest.

Lord Bew's Committee on Standards in Public Life exists to advise the Prime Minister on the ethical standards of public life and make recommendations for improving the present system. Decisions on membership appointment are taken at a Ministerial level.

In 2015 a former MP, who was better qualified to adjudicate on standards than any other former MP, applied for membership of the Committee. There was a shortlist of 3. He was rejected by a Ministerial decision. This reinforces the perception of a self-serving incestuous system of patronage and rough justice.

Ministers must uphold the standards contained within the Ministerial Code of Conduct. An Independent Adviser on Ministers' Interests conducts investigations on perceived breaches. But only at the request of the Prime Minister.

Jeremy Hunt caused a controversy during the BSKYB takeover with allegations that he failed to act impartially as a Minister. Cameron refused to allow an investigation by the Independent Advisor.

In 2014 Theresa May was reported to have leaked Ministerial correspondence regarding Islamic extremism in Birmingham schools. Despite the clear breach of the Code of Conduct, no referral was made or investigation sought.

Liam Fox resigned from his post as Defence Secretary. Again absolution by resignation. The public have no knowledge of what breach of the rules he committed, He is re-building his parliamentary career without public knowledge of why he resigned. This is a clear example where the Independent Adviser should have investigated and reported. Transparency of the nature of ministers' conduct is vital in assessing his suitability for future posts.

Calls for review of the Independent Advisor's role have been ignored. Now we have lurched into the next Ministerial breach. The recent Kids Company fiasco revealed shortcomings from Oliver Letwin and Matthew Hancock who should certainly be referred for investigation for ignoring Civil Service advice and wasting £3 million of taxpayers' money. Yet the case involves the charity that epitomised the Big Society. The Prime Minister is politically committed to the Big Society concept that has been discredited by the Kids Company scandal. We haven't restored public confidence in MPs. We cannot hope to until extensive rules are in place with an independent overseer who can refer alleged Ministerial Mis-conduct to the Adviser.

### **The oath**

The Rules of Duties of Members states V 4.

**By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.**

This is a problem for MPs with republican views. Recent attempts to introduce non-royal alternatives have been lost by small majorities 137 to 151 in 1998 and 129 and 148 in 2000. These results suggest that at least a fifth of MPs wish to have an alternative. Many new forms of words have been suggested. Kevin McNamara's bill of 1998 proposed a choice including:

“I do solemnly Declare and Affirm that I will, to the best of my ability, discharge the responsibilities required of me by virtue of my membership of the House of Commons and faithfully serve those whom I represent here”.

Opinion polls claim that support of Republicanism in the population varies from 25% to 35% of the population. The present rules force MPs into making statements that they do not believe in order to take their seats. There are now precedents for MPs to attaching their own conditions to the official wording. Dennis Skinner in 1992 declared his loyalty to an 'income tax-paying monarch'. Tony Benn and others prefixed their oaths with the words 'As a convinced

republican ... '. Other new members have innovated their own conditions. **This is not satisfactory in that the first act of new MPs is to tell an untruth or use a form of words that seeks to undermine part of the code of conduct. That does not encourage obedience to other rules. A Republican alternative should be allowed.**

## **Acoba**

The revolving door from high public office to private company sinecure is spinning as freely as ever. At least 25 former ministers from David Cameron's coalition are raking in over £1m between them.

Five former members of the prime minister's cabinet are among dozens of ex-coalition ministers earning up to £600 an hour in the sectors they used to regulate. Most have plum part-time roles as directors, advisers or board chairmen.

The job of the Commons watchdog, the Advisory Committee on Business Appointments (Acoba), is to restrict the abuse of former ministers, civil servants and generals by selling their insider knowledge and contacts to the highest bidder. But it is not a watchdog; it's a fawning pussycat without teeth or claws.

Informed born-again lobbyists are placed into influential commercial positions where they are motivated by private greed—not the public's good. The tentacles of this permissive system penetrate deeply and threaten the integrity of public life.

The roles of top civil servants, generals or government ministers were traditionally the pinnacles of careers. Now they are often judged as stepping-stones on the climb to retirement riches. When in office, decisions involving billions may be subtly influenced by a nod or a wink in favour of the prospect of a lucrative job in retirement and a hacienda in Spain.

All former ministers are obliged to seek the committee's advice if they take on any job within two years of leaving office. And cabinet ministers are expected to wait a minimum of three months before taking private work.

The work of Acoba is justly mocked. Its previous chair, Lord Lang, was interviewed by the Dispatches sting team that forced transport secretary Stephen Byers, former health secretary Patricia Hewitt and former defence secretary Geoff Hoon into suspension from the Parliamentary Labour Party in 2010 for allegedly "bringing it into disrepute". Lang did not commit himself to working for the bogus job offered but he sent his CV to the Dispatches team for further consideration.

New chair, Tory peer Angela Browning was cross-examined by the Public Administration Committee at a ludicrous "retrospective pre-appointment" hearing confirmation of her role. She was a minister in the Home Office until 2011 and is now paid between £300 and £800 a day for occasional work for a political consultancy firm that trains people in the health industry on topics such as "how to influence the political agenda".

Nearly all other members of her committee are drawn from the great and the good that regard £60,000 for a part-time retirement job as normal entitlement for themselves and for their chums. Acoba has never banned a minister from taking a job and its recommendations on restricting lobbying are not binding. They have no powers to enforce them. Under the present regime of permissiveness Acoba performs no useful function. **It is a useless ornament on the body politic. Former holders of high office are free to prostitute their contacts and knowledge to the highest bidder. It should be replaced with an independent body with powers to enforce its decisions.**

## **IPSA**

IPSA was the wrong solution to the expenses scandal. The previous lax rules of the Fees Office invited abuse and were rightly abolished. The most efficient best value alternative would have been to replace expenses at reduced total cost with an automatic allowance.

The pendulum swung from permissiveness to minute control of claims large and minute. IPSA is a bureaucratic ornament designed as a bulwark against likely new fraud. There is a better solution.

The previous simple five part expenses system was atomised into a hundred headings and sub-headings. A monthly 30 minute chore was complicated by IPSA into hours of tedious frustrating trawling through a bureaucratic morass of rules that are rarely rational or reasonable. IPSA robs MPs and our staff of much of their most precious possession—time. There is continuing resentment against unnecessary chores that diminish MPs ability to do their numberless essential tasks.

MPs would embrace a new system without claims or the expensive IPSA. It could be based on an allowance calculated on average expenses based on distance from Westminster and paid automatically. It would be acceptable even if it meant a reduction in the amounts that MPs receive because of the liberation from the tentacles of tedious bureaucracy. MPs would gain time, Parliament's reputation would be protected and IPSA's annual running costs in excess of £6m would disappear.

*14 March 2016*

### **Email from Mr Rod Hepplewhite**

I write following receipt of your response to the representation I made to my MP earlier this year regarding the Parliamentary Code of Conduct.

Members of Planning Committees are required to declare an interest in any application before them, either personal and non-pecuniary or pecuniary. With respect to the former it is for Members to decide if their interest is prejudicial, i.e. would a non-interested party consider that their interest had unduly affected the way they voted on an application. With respect to the latter the decision is already made for Members, they are prohibited from taking part in the

discussion on the application and must not vote. It is also normal practice that the Councillor removes himself/herself from the room while the application is being heard. That all seems perfectly right and proper and guards against calls of corruption. Moreover, if it is subsequently found that the Councillor failed to declare a pecuniary interest that he/she had in an application that they spoke and/or voted on, particularly but not exclusively when their vote went with the majority decision, they could be subject to censure or even criminal action.

Why, therefore, should there be different rules for MPs and Members of the House of Lords? Are they immune from corruption? Would they not allow their own vested financial interests sway the way they vote on a matter. Unfortunately and sadly I must reply no to my own question. Surely, it cannot be right for an MP or a Member of the House of Lords holding, for example, a directorship with BUPA to extend the role of private healthcare provisions within the NHS or an MP or a Member of the House of Lords holding, for example, shares in Sky TV to vote on major reforms to the BBC. Of course it can't, it smacks of corruption. The fact that interests have been declared means nothing if they MPs and Members of the House of Lords are still allowed to vote on a matter that could benefit them directly, financially or otherwise. Feathering nests only brings the day-to-day workings of the Houses of Parliament into dispute.

As I have already said, the code of conduct that applies to Members of Planning Committees in local government with regards to declarations of interest and the ability to speak and vote on a particular planning application seems perfectly right and proper to me. Similar rules should apply to MPs and Members of the House of Lords and any matters with which they do or could be seen to have a pecuniary interest in. The code as it currently stands fails to guard against corruption. Indeed, during the previous coalition government, some Members of the House of Lords voted with the government on healthcare freeform legislation despite holding senior positions with private healthcare providers. That cannot be right and in my opinion it isn't and the Code of Conduct should be changed.

I trust my comments and suggestions will be given full consideration.

*16 March 2016*

#### **Email from Mrs Joanne Hutchinson**

I am writing to request that changes be made to the current Code of Conduct for MPs so that there is a formal complaint procedure in place for all MPs for their constituents to follow. I am having an ongoing issue with my local MP whereby I have had to wait over five months for him to respond to questions I have asked about local matters. In that time he has only answered three of my questions, and two of those insufficiently. He has also written me two rude and arrogant letters simply asking me in which order I would like him to answer my concerns and not even attempting to answer a single question. As such, I feel frustrated and angered by his pompous response as these are issues I feel strongly about. Therefore I endeavoured to try and make a formal complaint about his behaviour and attitude to The Conservative Party, but despite phoning and emailing my local Conservative Association, The Houses of parliament, The Prime Minister, as his line manager, and every other person or establishment I could find

the official response was from everyone I contacted was that it would not be 'appropriate' for them to intervene in a MP's job or comment/make judgement on his conduct. I was simply told there was no formal complaints procedure and that if I did not want him as my MP than not to vote for him at the next election.

Overall I find the fact there is no formal complaints procedure that a constituent can follow in relation to the conduct, attitude or behaviour of an MP unacceptable, especially when an MP has been voted in by the general public. On 24th January of this year ITV news plus a number of newspapers reported that 82% of the 239 MPs they surveyed had been 'subject to attacks, attempted attacks or threats' and called for greater protection measures to be put in place. I am in no way condoning members of the public attacking MPs, however, if they feel half as frustrated and angered as I do and they too have had every door shut in their face and metaphorically two fingers stuck up at them by being told there is no formal procedure in place to make MPs accountable for the way they run their office than I am not surprised that some have taken the law into their own hands. The majority of people do not write to their MPs unless they have genuine concern or issue they wish to raise and feel passionately about it. Therefore to have your MP simply refuse to acknowledge your letter, or reply to it in a rude and arrogant way, not answering your questions is exasperating to the constituent and needs addressing. To simply tell a constituent to vote for someone else at the next election, which may be in five year's time and will probably make no difference, especially if like me, you live in a stronghold, is unacceptable.

I do not know of any other job, especially those in a public sector, where you are not required to have performance management reviews and where you cannot make a formal complaint against someone. As a teacher my work and conduct is constantly under scrutiny not only by my peers and line manager, but also by the Government through OFSTED. I am constantly having to prove that my students are making or exceeding in their progress and that I am complying to various measures and strategies often brought in or made up by those who know little or nothing about teaching. More importantly to my point I am also held accountable for my conduct and behaviour. No matter how busy I am, most schools have a turnaround procedure for letters, emails or phone calls of a few days. As such, if a colleague, student, parent/carer or other professional contacts me I have just a few days to give an initial response. If they were to ask questions that it was my duty to find answers too, it would be acceptable for me to ask for a week or two to find them. It would NOT be acceptable for me to wait five months and not give someone any answers. Neither would it be deemed acceptable for me to write a rude arrogant email belittling them by asking in which order they wanted the questions answered as I would be expected to use common sense or reasoning to figure this out myself. If I was to leave it so long, or was to write such an email, it would come as no surprise if I was summoned to the office of my line manager due to a formal complaint being made about me.

Although teaching is the only profession I have worked in, it is my understanding that most other professions, whether public or private sector have a similar structure in place to handle complaints against a member of staff. But not MPs. Unless the MP has conducted gross misconduct, or broken the law there is absolutely no way in which a member of their constituent can make a complaint against them. They are completely a law unto themselves

and this is wrong when they are voted in by members of the public. They need to know their voice has been heard and procedures need to be put in to place to ensure that they are listened to and valued, albeit that their views may differ from that of their MP. More importantly MPs need to be held accountable for the decisions they have made on behalf of their constituents. They should have facts and information at their fingertips in order to explain why they have made their decisions and be confident in explaining their opinions or reasons to constituents when asked.

For the above reasons I strongly believe that the revised Code of Conduct should include the necessary guidelines to allow a constituent to make a formal complaint about their MP's conduct and attitude to bring the profession of a politician more in line to that of any other profession.

Thank you for your time in reading my email. I await a personal response to my request and expect to be personally updated about the changes to the Code of Conduct process.

*28 February 2016*

#### **Email from Fiona Mactaggart MP**

Can I suggest that one issue you might properly oversee is procedures to ensure that members of the House of Commons who are not ministers are not involved in money laundering.

The present arrangements are inappropriate and burdensome, there was a debate about it in the House of Commons yesterday (you can find it at <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160120/debtext/160120-0003.htm#16012033000005>). I think that both members and the banks and the government would agree that you are in a better position to carry out this function than banks are, but obviously this should be in place of their present actions rather than in addition to them.

*21 January 2016*

#### **Email from Elizabeth M Marsh**

I write with reference to the Consultation on MPs' Code of Conduct, whereby the Parliamentary Commissioner for Standards is questioning whether the "very high bar" has been set at the right level.

<http://www.belfasttelegraph.co.uk/news/uk/code-of-conduct-review-may-target-sleaze-scandal-mps-34387136.html>

Of especial note is the comment that the rule (as it stands) "... is not intended to cover a member's private life ..."

Except that is the point, the whole point, and nothing but the point. It *should* cover a member's private life or it completely worthless.

It is a little known fact that a member's private life was exempted some time ago from that which might otherwise be considered as acceptable behaviour given the context of the code and its application to those whose members hold the highest office of all, bar few exceptions.

This exemption came at the same time as moral standards had begun to slip exponentially in all aspects of public life, despite those who should be example-setters deciding that there was no reason to set examples any more.

In many ways, it could be argued that in the past, such codes or standards were expected so did not need to be questioned let alone be reflected through policy—however, it is the very removal of those (tools with which to uphold) standards, and with it the ability to challenge any MP who would otherwise be covered by that policy, that has resulted in a dramatic fall in public confidence in MPs, and public standards in a much wider sense.

It is the ultimate own goal. Because MPs are the ones who govern, if they do not then lead by *personal* example because they have told each other moral codes no longer matter, MPs should not then be surprised when the public follows suit, if that public is being actively encouraged to participate in a moral degeneration that they themselves they did not instigate.

Poor behaviour is far more noticeable in those in public life because of the positions they hold, so any 'failures' of any kind, no matter how inconsequential are accentuated, not least because of the prolific rise and reach of social media, which is anything but 'social' in reality.

If the one aspect of policy that it is the most effective has been removed and was removed without drawing attention to it, when it is the most important standard to possess even before it can be upheld, then it should come as no surprise when those who are shysters behave badly if they understand that they can with impunity—given that for the most part they are not breaking any law.

It is this abject hypocrisy by some MPs, whose actions fly in the face of common decency, that causes people to become disillusioned when they understand that MPs can behave this way and that their actions are endorsed rather than challenged—as they would be challenged in ordinary people.

It is the lowering of standards—the deliberate rejection of morality—when that morality has been subjugated by the law itself, that is the greater issue.

The majority of MPs are unsung heroes—it is the actions of a few that bring into disrepute all MPs.

Any public anger expressed in relation to that poor behaviour is almost always (deliberately) misunderstood, when it is more apposite to believe that public antipathy of those in authority

is to be expected. Whilst this may be partially true, it is more true that MPs have created that breakdown in trust, not the other way around.

MPs have made this rod for their own backs, for permitting those who do not consider morality to be important to be removed altogether.

Little wonder that the public has so little faith or confidence in MPs, as those who make the rules but then act as they please, making not just themselves but the entire country a laughing stock in the eyes of the rest of the world.

Morality and ethics matter. Religion underpins both those things. Liberal ideas and attitudes reject and resist all such notions when at its core is amorality (rather than immorality per se)—seeking as it does to please everyone, when the only way this can be achieved is by lowering standards, not upholding them, thereby upsetting the far greater majority with standards and expectations.

If there is a genuine appetite and hope for public contribution and consultation—reintroduce the one aspect of the Code that would require MPs' actions in their private lives to be under scrutiny, and therefore able to be held to public account, rather than continue to pretend that their private lives are their business alone.

Otherwise any such consultation is just bollocks.

*22 January 2016*

#### **Email from Dr Gregory Page**

I have been deeply disappointed at the behaviour of British MPs ever since the "expenses" scandal in 2008. It was a great shock to discover so many were so venal.

I have been both amazed and deeply disappointed at the Standards Committee rulings on the behaviour of several MPs since then, especially at their decisions on Sir Malcolm Rifkind and Jack Straw.

I am sure your research into Public Opinion on MPs conduct is in broad agreement with my views. They have lost the trust of the country.

Unfortunately MPs appear to have forgotten that first and foremost they are public servants. They and their Standards Committee seem to believe that they are above ordinary decent conduct and have plainly demonstrated that they lack the integrity to govern their own behaviour.

So the ultimate question in your consultation must ensure that although MPs should be on the Committee to help explain the background to an MP's behaviour they should be non-voting

members and independent people should decide on these matters and if necessary the sanctions imposed.

Please bring integrity back into the House of Commons by making the necessary changes.

*2 March 2016*

## **Public Administration and Constitutional Affairs Committee**

### *Purpose of this paper*

The Parliamentary Commissioner for Standards (PCS) has called for submissions as part of a review of the Code of Conduct for Members of Parliament. The work of the Public Administration and Constitutional Affairs Committee (PACAC), and of our predecessor, the Public Administration Select Committee (PASC) includes oversight of the Committee on Standards in Public Life (CSPL). We also oversee the Ministerial Code, the Civil Service Code, and the Special Advisers' Code, and how they are applied. We are therefore interested in the relationship between the seven principles of public life (known as the Nolan Principles), the rules and regulations arising from those principles, and the behaviour of people in public life. Much of our work is also concerned with leadership and governance in Whitehall, the Civil Service and in public bodies. We have brought this experience to bear in other fields within our remit, such as charity governance and regulation. PACAC is therefore well placed to contribute to the review.

We are very grateful to Dame Janet Paraskeva for her work on this document.

### *Shortcomings in the present system*

We make no criticism of the present PCS or of any of her predecessors. These comments are intended as a critique of the system, not of those who are doing their utmost to make it operate effectively. However, there is no escaping that some recent events have exposed significant shortcomings, which suggest a failure of self-regulation to the public. Outside bodies such as Ofcom and a court have disagreed with decisions reached by the Standards Committee and judged certain individuals much more harshly. Some argue that, to restore public confidence, it is necessary to establish an alternative system outside of Parliament that would be free from accusations that parliamentarians have judged their own more kindly than they would have been outside. It is however difficult to see how to do this without falling foul of the Bill of Rights and Parliamentary Privilege. Our proposals seek to address this question.

### *The importance of governance*

The primary purpose of any system for overseeing MPs' conduct must be to allow the public to be assured that Members are acting in its best interests. In this submission we argue that the present code of conduct rests on a confusion between governance and regulation, which makes it very difficult to achieve that assurance.

PACAC takes a keen interest in the concept and application of governance. Governance is often considered to be synonymous with compliance, but this is a fallacy. Mere compliance with rules or regulations does not provide any assurance that people within the organisation will behave well, or reflect good values or principles. This was evident from the banking crisis, for example. Governance is the vital component of organisational leadership which seeks to ensure that actions and behaviour reflect the right attitudes, which in turn reflect the values the organisation chooses to embody. Governance cannot be morally neutral. Effective rules or regulation must be supported by leadership which itself lives by a set of values or principles which the rules or regulations are intended to reflect. Ultimately, it is effective governance that sustains the reputation of the organisation and of the people within it. So governance is intrinsic to values, leadership and reputation.

Governance plays the crucial role in what can be seen as the space between regulation and behaviour. Governance assures the reputation of an institution is sustained. Regulation alone, however detailed or stringent, is not sufficient to ensure that individuals will behave in an appropriate manner. Behaviour is governed by principles, while regulation is applied through rules. Where governance is reduced to rules and compliance, the effect is that the system becomes less sustainable. It cannot respond to changing circumstances, because rules and compliance on their own do not challenge bad attitudes or values in individuals. The most lame defence of poor behaviour is to insist that it was “within the rules.”

#### *The confusion between principles and rules*

In this submission, we seek to explain how two distinct concepts, the first being principles and values, and the second being rules and regulation, have become confused in the system of governance the House of Commons has evolved over the years. We propose to resolve this confusion by separating these two elements, so they are addressed in different ways. We then go on to give our comments on the questions set out in the consultation document.

In outlining the process, the consultation paper makes clear that the review aims to achieve coherence across all three tiers of the existing code and guide. The current Code of Conduct for Members and guide together consist of the three tiers expressed as:

1. The seven principles (of public life)
2. The rules (7) which members are expected to observe and by which their behaviour may be judged
3. A detailed guide to the rules.

The consultation asks questions about the fundamental purpose of the Code. Should it be a guide to Members’ behaviour, a means of addressing unacceptable behaviour, or a way of providing confidence to the public that members maintain high ethical standards?

PACAC takes the view the House must have the means of addressing all three of these purposes, but that they cannot be addressed in the same way, through a single mechanism. In its review, the PCS needs to consider how to make these purposes compatible.

The confusion in the present system arises from a fundamental ambiguity. It is unclear whether the Code is intended to function as a set of principles which govern the whole of Members' behaviour, which would naturally extend to a degree into the private sphere of MPs' conduct, or whether they are simply regulations relating to conduct in their public role as MPs only. The Code agreed by Members of Parliament in 2015 made clear that it did not seek to regulate what Members do in their purely private and personal lives. Yet the seven principles of public life, which are part of the present Code, focus on the whole of the behaviour of those in public office and are to be read together with the rules.

Setting and governing standards of behaviour in public life more generally, and applying them to Members of Parliament, is not the same as regulating what members can and cannot do when they are directly involved in their main role as MPs. This confusion cannot be resolved simply by adjusting the existing rules.

### *A possible solution*

In order to achieve greater clarity we suggest that a new set of principles and values for Members' behaviour should be drawn up. It is a reality that MPs are to an extent already accountable for their conduct in their private lives. Every person in public life, and MPs are no exception, is entitled to privacy. Such a set of principles or values must not become a pretext for unwarranted media intrusion into the all-too-normal difficulties that MPs may have in their personal and family relationships, or for unwarranted exposure by the media. However, the new set of principles and values to which MPs would be expected to subscribe cannot just apply to what they do in their capacity as MPs. By subscribing to them, it is implicit that they are expected to try to live by them.

This new set of principles or values is however not to be seen as part of "the rules". They should be set out in a separate (though related) document from the rules, and behaviour according to these values should be adjudicated differently from the way the rules are investigated, adjudicated and enforced. To oversee these two separate systems, we suggest there should in future be two separate persons to carry out these separate functions: one, the existing Parliamentary Commissioner for Standards would oversee the application of the new set of principles and values, reflecting Nolan Principles as they apply to MPs; and the other, an Adjudicator of the Code of Conduct, would be responsible for investigating breaches of, and adjudicating on, the rules contained in the Code of Conduct. Both these persons would report to the Commons Committee on Standards, as PCS does at present. The following paragraphs expand on the two systems we propose, and clarify the distinction between them.

- A set of principles and values

However difficult, the price paid by those of us who hold public office is that the public is and will be interested in our lives; and social media makes that easy. The Press sees it as its role to tell a story relating to anything it sees might be of general interest to the public. Behaviour which reaches the attention of local constituents and of which they might disapprove can of course affect the electability of a candidate. Being an MP is a public office that cannot be put

aside ‘on a Saturday night’. Some have criticised the way that conduct in public life is now more rigorously scrutinised than it was in the past, but in our view this is misplaced. In other walks of life, this has long been accepted. The army expects officers to be accountable for “conduct unbecoming of officer”. It is part of being a leader. It does not mean applying intolerant or outdated moral attitudes, but it has to be recognised that the public has a similar legitimate interest in MPs’ conduct. However, without a means by which the public can test behaviour and general conduct against a clear set of principles and values, it is difficult to see how the public can be reassured about the qualities of MPs.

The current Code states that “Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole or of its members generally”, but this could be seen as little more than good words. This injunction is not reflected in the rules of the Code of Conduct. We therefore suggest that a new role for Parliamentary Commissioner for Standards be to receive complaints from members of the public in relation to issues arising from the new set of principles of general behaviour. Such oversight need not include any material sanction other than public criticism and guidance, but it would give an opportunity for the public to see what behaviour and attitudes Parliament regards as acceptable or unacceptable.

Although this is not within the scope of the present review, a similar system might apply to all holders of public office as a last resort where immediate employers have not been able to deal with the complaint in a way that has satisfied the complainant.

- The rules in the Code of conduct

A code of conduct for a profession (or role) such as that of a Member of Parliament is a different sort of document from a set of general standards in public life. It must be clear about the conduct and behaviour of its members, when they are acting as members of that profession. Doctors and lawyers have rules, the serious contravention of which can lead to the debarring of the member from that profession. The code of conduct for Members of the House of Commons is already of this character. The rules need to be clear and concise, and to deal with any aspect of the role of the Member on duty including activity within the House itself (in debate, with staff, etc).

Such rules must be adjudicated in a quasi-judicial manner, according to strict rules of evidence and relying on a consistent history of adjudications. This is separate from any system which deals with the general behaviour that might apply to anyone in public office. The Code should be a document which is signed by all new Members and for which there is some degree of induction and ongoing training. The rules of the Code are the regulatory tool which, when breached or flouted, attract sanctions. The person holding the role of adjudicating on whether the rules of the Code have been breached should be separate from the Commissioner for Standards, and should have juridical experience in the assessment and weighing of evidence, and of the adjudication of rules. The present post of Parliamentary Commissioner for Standards is not conceived in these relatively narrow terms. This proposal remains within the

framework “proceedings in Parliament”, rather than by having to rely on an external body for such adjudications.

### **Our comments on the questions in the consultation document**

#### *1. What should the purpose of the code be?*

The purpose needs to be two-fold. First, to set the ethical standards of behaviour expected of Members of the House of Commons against a set of principles and values appropriate for Parliament. This would include how members relate to each other, and to others working with and for them. Second, to set out the Code of Conduct as a set of rules by which the actions of MPs in their public role should be adjudicated.

#### *2. Where and how should the code sit alongside the Ministerial code?*

There should be no contradiction between the set of principles and values that we propose and the House of Commons Code of Conduct, and the Ministerial Code. Their common root is the seven Nolan Principles of Public Life.

#### *3. Does the three tier structure of the standards system help or hinder?*

A three tier approach as presently conceived is not useful and is potentially confusing.

#### *4. Should the code be principles or rules based? If there was a new rule what should it be?*

It should be both. There should be a set of values and principles to which Members subscribe. They should inform MPs how they are expected to behave. There should also be clear rules for MPs which they are expected to observe, and which will be independently adjudicated.

#### *5. Is the code easy to understand?*

At present the three tiers are muddled, mixing general behaviour in public office with the specific rules of conduct as an MP. This requires clarification if the general public are to have confidence that their interests are being served by MPs who both understand a clear set of principles and values and will abide by a clear set of rules.

#### *6. What changes could be made to ensure the code is understood by all its readers?*

It must be written in plain English. The scope of each part must be clear and the set of principles and values must be separate from the rules of the Code of Conduct for MPs. Separate guidance to the rules will still be necessary, but must not create confusion with the general standards expected of all those in public life. The Code of Conduct for MPs embraces those standards but is different from it and additional to it.

*7. Should the commissioner be able to investigate alleged breaches of the general principles of conduct?*

As we say above under ‘code of conduct’, the person holding the role of adjudicating on whether the rules of the Code have been breached should be separate from the Commissioner for Standards, and should have experience in the assessment and weighing of evidence, and of the adjudication of rules. The present post of Parliamentary Commissioner for Standards is not conceived in these relatively narrow terms. This proposal remains within the framework “proceedings in Parliament”, rather than by having to rely on an external body for such adjudications.

*8. Should there be new rules*

*a) clarifying how Members treat others and/or*

*b) emphasising the responsibility Members have for the actions and behaviour of their staff?*

The way Members treat others and their staff will be implicit in the set of principles and values. In respect of their staff, any rules should be incorporated in the standard contracts of employment. There should not be rules in the Code concerning how Members deal with their constituents and their problems.

There must be a support system available for staff and a safe method for the reporting of concerns.

*9. Do the code and rules cover all they should and reflect the 7 principles? What amendments might be required?*

A determination to improve attitude and behaviour through discussion and understanding of a clear set of values and principles is as important to restore public confidence as the rules of the Code of Conduct.

What we believe is missing is a strong means of self-governance in the House of Commons, which concerns attitude and behaviour rather than just compliance with rules. We lack the opportunity to debate and share understanding of the values and behaviour expected of MPs. Apart from the political parties, there is no general support mechanism to encourage the House of Commons to be “mindful of itself”. The House needs to consider how to introduce our values and principles to new Members, separate from any party initiation, and how this learning can be sustained throughout a MPs membership of the House.

*10. Does the rule in para 16 convey the intention of the House in relation to members’ conduct of their public lives, and what could be done to explain this more clearly?*

Rule 16 states; “Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.”

We think this is sufficiently clear and provides a means of addressing behaviour which is a threat to the reputation of the House of Commons. A deeper shared understanding of our proposed set of values and principles would make it more self-evident to MPs where the boundaries lie.

*11. Are there any other issues which should be included in this review?*

- The outside interests and behaviour of an MP will have an impact on the perception of that person in their role as MP. What support mechanisms should be in place for MPs when under public scrutiny?
- How do the values of the House get discussed, agreed, established, and what can be done to help ensure they are upheld?
- Parliament is itself an institution which does not have a ready means to take stock of itself, to review collectively the rules that apply to it or to address the values to which it aspires, and to deal with any shortfall in its collective behaviour. This is intrinsic to reputation.
- Who could support The Speaker in his role of governing the general behaviour of the House of Commons, so that better behaviour is encouraged and bad behaviour becomes unacceptable?

*23 March 2016*

#### **Email from GS**

I have an idea regarding the review of the standards.

1. Rather than concentrating on wristbands that refugees are told to wear, akin worn in hospitals up and down the country. Ensure that MPs address the issues raised by their constituents first. Rather than those that are not entitled to vote.
2. Force all MPs to reply to constituents.
3. Failing (2) allow plebeians to approach other MPs.

*25 January 2016*

## Letter from Transparency International UK

Thank you for inviting us to submit our views to your review of the Code of Conduct and Guide to the Rules for MPs. Unfortunately, as a relatively small charity, we do not currently have the resources to respond in detail to your consultation. However, we have recently examined the House's rules and written about them in some detail two separate publications. I have attached these as our contribution to your review.<sup>11</sup>

Our main proposals are:

- The prohibition on lobbying by MPs should be extended to include agreements to advocate on behalf of clients, even if payment has not been made. The Scottish Parliament has recently done this under the Interests of Members of the Scottish Parliament (Amendment) Act 2016.
- The Commissioner and the Parliament's digital service should work together to ensure the Register of Members' Financial Interests is published online as machine-readable open data as soon as possible. This is already available for the House of Lords and should be a priority for the Commons.
- The Commissioner examine the adequacy of its existing sanctions and examine the case for introducing criminal offences for serious breaches of the rules.

Please let me know if you need any more information to help with your review.

*Steve Goodrich*  
*Senior Research Officer*  
*14 March 2016*

## Letter from Charles Walker OBE MP

I am responding to your recent consultation paper: "*Review of the Code of Conduct and the Guide to the Rules relating to the conduct of Members of Parliament.*"

My response to the above focuses on **Question 8**. Of course Members of Parliament and their staff make every effort to be patient and polite in their dealings with those they speak to and meet. However, enshrining in the code an "expectation" that "Members treat others, whom they meeting in the course of their work with courtesy and respect" will create a charter for obsessives and misogynists to further torment their representatives and their staff.

Both when I am on and off duty I am, on occasions, confronted by people who are aggressive, intimidating and manipulative. On these occasions, I reserve the right to be absolutely robust

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<sup>11</sup> Transparency International UK, *Accountable Influence – Bringing lobbying out of the shadows*, September 2015 and Transparency International UK, *Lifting the Lid on Lobbying – The hidden exercise of power and influence in the UK*, February 2015

and uncompromising in my response. I see no duty to be *courteous and respectful* towards such individuals. Sadly, my female staff are also subjected to aggression and abuse. Often by people who would not dare try it on with me, a man.

However well intentioned, a new requirement to show “courtesy and respect” will result in Members and their staff being subjected to vexatious complaints from bullies and obsessives and I suspect it will make the position of some colleagues intolerable. Be assured, if enshrined in the code this new “right” will be used by deeply unpleasant constituents to blackmail Members and will further distort the role of a MP to that of servicing the demands of the few, as opposed to representing the interest of the many.

In conclusion, I am alarmed at the naivety of the recommendations contained within Question 8 and the lack of awareness of the unintended consequences that such a requirement will have on Members of Parliament and their staff.

*3 February 2016*