

Independent Expert Panel for considering cases brought under the Independent Complaints and Grievance Scheme

Explanatory Paper

House of Commons Commission

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Background

The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report by Dame Laura Cox was published on 15 October 2018. The report made three fundamental recommendations for change. On 24 October 2018 the House of Commons Commission agreed to the three recommendations. Two of the recommendations have been implemented, and this note concerns the implementation of the third recommendation.

The third recommendation is:

Steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.

On 10 June 2019 the House of Commons Commission announced the appointment of a House staff team, assisted by an external expert advisory panel, to produce options for implementing the third recommendation. The team undertook an extensive consultation and engagement exercise and presented five options for implementation to the Commission on 10 February 2020.

The Commission unanimously agreed that its preferred option is to establish an Independent Expert Panel to replace the Committee on Standards in considering cases brought under the Independent Complaints and Grievance Scheme (ICGS). The Commission invited a public consultation on this option. The consultation closed on 8 March 2020 with 41 responses, of which the majority were strongly in agreement with the preferred option. On 27 April 2020 the Commission confirmed its support for the implementation of the Independent Expert Panel and asked that the matter be brought to the House.

The Independent Expert Panel

The Independent Expert Panel (the Panel) will be established to provide an effective and independent process for determining complaints of bullying, harassment or sexual harassment brought against Members of Parliament.

The Panel will consist of eight members who will be independent of Parliament, and who will be recruited for their judicial experience or proven ability to assess evidence and reach impartial conclusions. The Commission will oversee the recruitment exercise. Panel members will be appointed for up to six years, and these terms will be non-renewable. The first panel will have staggered appointment terms to avoid a complete change in membership every six years.

The core function of the Panel will be to determine the final assessment of ICGS cases referred to it by the Parliamentary Commissioner for Standards (PCS). The PCS will retain her role in investigating

and determining cases, and she will continue to rectify cases and impose sanctions up to a certain level of severity. The Panel will determine sanctions in cases referred by the PCS where she is not able to rectify the case using the sanctions available to her.

The sanctions determined by the Panel could include the suspension or expulsion of a Member of Parliament. In these cases, the sanction requires action by the House and the House will consider a motion to impose the determined sanction. In cases where a less severe sanction is determined, the sanction will be imposed by the panel directly.

In addition to considering cases referred by the PCS, the Panel will also be required to hear appeals from either party against the PCS's conclusions in ICGS cases involving Members of this House.

These functions will give the Panel a central role in the operation of the ICGS as it applies to Members, and the Panel will be expected to monitor the operation of the scheme and report to the House periodically on its work.

In creating the Independent Expert Panel and charging it with these functions, the House will create an effective means for complaints against Members made under the ICGS to be determined independently, meeting the third recommendation of the Dame Laura Cox report.

The Panel will be created by Standing Orders of the House, and will operate in accordance with those orders. It will report regularly to the House on its activities. It is strongly arguable that its decisions will be subject to Parliamentary privilege, in the same manner as decisions made by the Parliamentary Commissioner for Standards, and that it should therefore not be subject to the jurisdiction of the courts. The proposed Standing Orders have been drafted with this objective in view.

The House may wish to note that there is a court decision which confirms the privileged status of the Commissioner's decisions¹, but that the judge in that case regarded it as a highly relevant factor that the Commissioner was overseen by a Committee of the House. There is no such oversight for the Independent Panel, by deliberate design, and it would be possible for a court to distinguish that case. The ICGS is compliant with the principles of natural justice and it is therefore unlikely that a legal challenge would be successful.

The Process

Complaints will be made under the ICGS and investigated independently. The PCS will review the outcome of the investigation and may find that there has been no breach of the rules, or that there has been a breach that she can rectify. In these cases, the complaint will not be considered by the Independent Expert Panel except on appeal.

Cases referred to the Panel will be considered by a sub-panel of three of the independent experts. A further three would form an appeal panel if necessary. The sub-panel will have access to specialist advice if needed and will determine the outcome of the case. The proceedings of the sub-panels will be strictly confidential.

There will be an overall Chair of the Independent Expert Panel who will coordinate with the PCS and convene sub-panels as required to consider individual cases. Sub-panels will report their findings to the Chair who will inform the parties concerned of the outcome, and refer any report requiring action by the House to the Clerk of the House for laying.

¹ *R (Al-Fayed) v Parliamentary Commissioner for Standards* [1997] EWCA Civ 2448

A member of the House of Commons Commission will move a motion to allow the House to implement the sanction as determined by the IEP. The Commission agreed that the House would be asked to consider whether or not there should be a time-limited debate in these circumstances.

An indicative flowchart of this process is contained in Annex A. The Panel will make its own administrative processes subject to the ICGS and provided they are fair, transparent and consistent with natural justice.

Resource

The establishment of the Independent Expert Panel will have resource implications. The panel members will be remunerated for the days they are required to work and there will be associated expenses. The Panel will also have a secretariat function provided by the House service.

The Independent Expert Panel, including their daily rates, expenses and the support function will require funding from the House of Commons Administration estimate. The cost of the Independent Expert Panel will be dictated by the number of cases considered across a year. The panel members will be paid only for time spent on cases, although a minimum of one full meeting of the panel will be held each year for the Panel to agree the annual report and receive updates on the overall ICGS landscape.

Annex A – Illustrative Process

Complaints of bullying, harassment and sexual misconduct

