

Standards Review Sub-Committee: Issues and Questions

The Committee on Standards has had lay members since January 2013.¹ Before that a single Committee of Standards and Privileges considered both disciplinary matters and questions of privilege referred to it by the House of Commons. The lay members' [reflections on their first year on the Committee](#), together with the concerns about self-regulation expressed in the light of the Committee's report on Maria Miller, have prompted the Committee to set up a Standards Review Sub Committee to conduct an inquiry to examine the current system for consideration of complaints about Members of Parliament, and to consider improvements as required. MPs and lay members alike want to look at the current system with a fresh eye. The Sub-Committee is chaired by Peter Jinman, one of the lay members.

The aims of its inquiry are to:

- *to improve confidence, both among the public and MPs, in the systems for regulating Members' behaviour, including the Code of Conduct*
- *To ensure that the system supports and assists Members in abiding by the Rules, maintaining high ethical standards and embedding the Nolan principles in the culture of the House of Commons*
- *to ensure the regime is fit for purpose*
- *to ensure the system for dealing with alleged wrong doing is proportionate*
- *to ensure a fair process*
- *To provide clarity, certainty and coherence in the rules, guidance and processes (which should in turn improve awareness and compliance).*

The sub-committee is mindful of the elected status of MPs, and the need for them to be able to act independently in the interest of their electorate. This paper sets out some issues and questions and is written for the lay audience as well as those already involved with the Parliamentary process.

Inquiry process

The Sub Committee invites written submissions **by Friday 8 August 2014**. It would welcome general reflections, as well as answers to the specific questions posed.

The Committee will be taking oral evidence in June, July and September. It expects to report on general principles in Autumn and may publish a further report on the Committee's own processes thereafter.

The role of parties and the Electorate

The House's rules have to take into account the facts of political debate, and of parliamentary sovereignty, as well as the complexity of political life.

There are often calls for members to be "professional", and to be regulated like other professionals. To some extent, MPs are subject to such regulation, in that they operate under the Code of Conduct and the associated rules. But while the professions each have a consensus about the range of

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professional conduct which would be appropriate for a competent professional, there is often little such consensus in politics and some matters – such as acts of civil disobedience - may involve legitimate areas of political debate rather than being simple conduct issues.

Ultimately, it is for the electorate to decide who should represent them. The electorate has not always chosen those who represent “mainstream” positions. It seems inconceivable to us now that potential MPs could be disqualified on the grounds of their religion. Modern views have been formed in part because in the past, particular electorates stubbornly chose to elect and re-elect people who were not eligible to be MPs because they were atheists or Jews. The electorate has also been content to re-elect members who have been convicted of offences or breaches of the House of Commons disciplinary code. There are legal restrictions on who can stand for election, but those restrictions are relatively narrow. Any standards system has to respect the right of the electorate to choose its representatives within the restrictions imposed by law, but also has to have the expectation that those elected behave in a manner in keeping with the trust the electorate has placed in them.

Although independent candidates can stand for election, and may well be elected, in general United Kingdom democracy rests on party politics, in which different parties present their philosophies and programmes to the electorate. Anyone is free to set up their own party, if they do not feel the existing parties are satisfactory. Similarly, those within parties can campaign to change party policies on particular topics.

MPs are, generally speaking, in Parliament as representatives of both their constituencies and their political parties. Being a member of a political party does not mean signing up to every item on that party’s agenda: it is often a product of an individual’s philosophy and approach to life. MPs are not simply cheerleaders for party positions: like other party members, they will seek to influence and develop party policy. To echo Edmund Burke, they are not simply delegates; their task is to represent.

What MPs do

There is no job description in the ordinary sense for Members of the House of Commons. They perform a number of different roles, and the emphasis on each role will depend on whether or not an individual MP is a member of the government or the opposition party, their own priorities, the priorities of their constituents and their relationship with their constituency party.

As the Select Committee on Modernisation of the House of Commons said in 2007, MPs have a number of roles, and there is a complex interrelationship between those roles:

for all the different approaches to being a Member it is possible to discern a number of commonly recognised tasks, including:

- *supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition);*
- *representing and furthering the interests of their constituency;*
- *representing individual constituents and taking up their problems and grievances;*
- *scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;*

- *initiating, reviewing and amending legislation; and*

*contributing to the development of policy whether in the Chamber, Committees or party structures and promoting public understanding of party policies.*²

MPs will also engage with the media to publicise both their own work and that of their party.

It is very easy to lose sight of the complexity and variety of MPs' work. MPs shape and support their own party, speaking regularly to local party meetings, and taking part in wider party debates, and may develop special interests in a wide variety of relevant subjects.

Just as there is a dialogue between local parties and MPs, there is also a constant dialogue between the backbench members and frontbench members of the major parties. This is most notable in government, where government policies may be adapted or adjusted before they are promulgated if it appears that they are unlikely to command the support of the majority of the backbench party. Some of this dialogue takes place in private, some is conducted through general Parliamentary work.

Any party member, MP or not, will wish to get their own party elected. There are strict rules to prevent use of House of Commons resources for party campaigning, but MPs will use the House of Commons to explain and explore their party policy. Coverage of the Commons is in part a way to provide publicity and support for the parties' views.

MPs participate in making and scrutinising legislation. While most legislation comes from the government, MPs can bring forward their own proposals. Legislation will not be passed unless the majority of MPs support it. In Westminster, the government is, by definition, the party or parties which can command a majority in the House of Commons, and so most legislation introduced by the Government will be supported. Nonetheless, the need for House of Commons approval can be a real constraint. Even though, as noted above, governments do not usually introduce measures they believe will be opposed by the majority of their own party, they frequently amend legislation in response to concerns expressed in Parliament.

MPs respond to their constituents' concerns, both in taking up individual cases, (though the extent to which they do this will vary between Members) and in drawing on local knowledge to inform their work in Parliament.

Unless they are themselves frontbenchers, ie, Ministers or ministerial aides. MPs scrutinise government even when they are backbenchers of the governing party. They may work through official committees of the House, through Parliamentary Questions, simple letters to ministers, or more public means such as All Party Parliamentary Groups (APPGs).

While government policy may be worked out in and promulgated by Whitehall, Parliament is also a place where policy is developed. There is a lively policy debate in Westminster, which influences government policy. This debate is carried on in select committees, in All Party Parliamentary Groups, through private members' legislation and by individual MPs taking an interest in a particular topic.

External accountability

² <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/33706.htm>

Time and resources are limited, so in carrying out their work, MPs have to decide on priorities, and how best to represent their constituents. They are accountable at least once every five years to the electorate as a whole, and they are accountable to local parties between elections. They depend on that party for their selection and reselection and most MPs report back regularly to their constituency party. They may explain their work more widely, through newsletters, websites and social media.

As well as this accountability to the electorate and the local party, MPs are subject to a number of other controls on their behaviour.

There are rules about party campaigning and finance which are administered by the independent Electoral Commission, and which may ultimately be adjudicated in the courts.

Since 2010 expenses have been regulated and administered by the Independent Parliamentary Standards Authority (IPSA), an independent body, and complaints about expenses incurred under the new system are investigated by the IPSA Compliance Officer. If the Compliance Officer considered an MP or a member of an MPs' staff might have committed a criminal offence, the matter would be referred to the police for investigation.³ The Compliance Officer would also refer a noncriminal matter to the Parliamentary Commissioner for Standards, to consider whether there had been a breach of the Code of Conduct, if he thought it appropriate.⁴ This mechanism is needed as IPSA and the Compliance Officer are external to the House. It would be inappropriate for an external body, other than the courts, to impose sanctions in any self-regulatory system, even if questions of Parliamentary privilege did not arise (see below). To date there have been no referrals either to the police or to the Parliamentary Commissioner for Standards.

There are many jurisdictions in which sitting Members of the state Parliament have immunity from the criminal law; that is not the case in the United Kingdom. MPs are subject to the criminal law, just as are other citizens. There is a protocol with the police to ensure that the investigation of criminal allegations against MPs takes precedence over any disciplinary proceedings.⁵

There are two ways in which the House of Commons has broader protections than other institutions. First, the House of Commons as an institution has the right to control its own precincts and proceedings. Second, there is very strong protection for the freedom of speech in Parliament. Taken together these two protections are known as "Parliamentary privilege". The purpose of these immunities is to make sure that the House of Commons can govern itself, and that those participating in parliamentary proceedings can speak without fear or favour, even when saying things which the government, or others, would prefer not to hear. The protections are not limited to MPs: they cover everyone who participates in the formal work of Parliament, such as witnesses to parliamentary Committees.

³ IPSA compliance officer site, [Joint Statement with the MPS and DPP](#)

⁴IPSAs compliance officer site, [Joint Statement with regard to the Parliamentary Commissioner for Standards](#) and 20th Report from the Committee on Standards and privileges, 2010-12, *IPSA procedures for investigations and related matters*, HC1578

⁵ Seventh Report from the Committee on Standards of Session 2013-14, *The House of Commons Code of Conduct and the Criminal Law*, HC 903

Whatever the jurisdiction, it is normal for a democratic state to protect parliamentary independence, and it has been argued that “Parliamentary immunity has developed throughout the world not as constraint upon the rights of the citizen, but as a fundamental liberty.”⁶ While parliamentary privilege is extremely important, it should be noted that similar protections can apply in other walks of life. So, for example, communications with lawyers are covered by legal professional privilege, and cannot be disclosed without the client’s consent.

Once an MP is elected, it would be a contempt of the House for a third party to attempt to control his or her actions. This does not mean that the House of Commons has the only, or indeed the major, say on what MPs should or should not be permitted to do. Since the parties choose candidates, it is perfectly within their powers to set rules about the sort of candidates they will select. A local party can choose whether or not to support an MP with external interests. The more that rules restrict what MPs can do, the more local parties are restricted in their choice of candidate.

Self-Regulation in the House of Commons

House of Commons self-regulation has been criticised because of perceptions that Members “mark their own homework” or that it is out of step with public perception.

Independent input: Lay Members and the Parliamentary Commissioner for Standards

Many professions regulate themselves: there is nothing unusual about this. Self-regulation does not extend so far that it provides protection from the law; it is designed to deal with professional standards. Although the rules setting out the professional standards for a particular organisation may be ratified by Parliament, in the form of regulations or guides, the organisation responsible has usually drawn up those rules. As each House is a self-regulating body, it is for it to agree the detailed Code and the rules which are appropriate.

More detailed information about the self-regulatory system is given below, but we note here the Committee on Standards contains three lay members. The lay members are people who have never been MPs, selected on fair and open competition. Their tenure is limited to the Parliament in which they were first appointed plus a possible further term of up to 2 years. This regular turnover should have the effect of avoiding "organisational capture".

The Committee also contains ten MPs. Although the party balance on the Committee reflects the party balance in the House, no one party has a majority. Committee members are expected to set aside their party loyalties. The Committee is generally chaired by a member of an opposition party.

While the lay members do not have a vote, or the power to put things to the Committee formally, they play a full part in the discussions of the Committee, and can informally propose changes to committee documents as part of those discussions. The lay members do have the formal power to add an opinion to a report, setting out their views. If they wish to do this, the Committee report cannot be published until the opinion is ready. There are no restrictions on what the opinion may cover. However it may not always be appropriate to append a general comment to a specific case.

⁶ see Joint Committee on Parliamentary Privilege, Report of session 20 1314, HL paper 30, HC 100 paragraphs 1 and 2

The lay members have not been given a vote because of concerns about whether legislation would be necessary to do so without casting doubt on the status of the Committee as a parliamentary committee. It has been argued that the power to append an opinion, setting out views *in extenso*, is in fact more significant than a straightforward vote.

The Parliamentary Commissioner for Standards also brings an element of independence to the system. The Committee does not manage her or her work, nor what she chooses to say in her memoranda or annual report. The Commissioner's independence provides a check on the self-regulatory system, while the Committee's oversight of her work means that the Commissioner cannot make unilateral recommendations or findings which could be unreasonable. This applies both to the generality of the Commissioner's work, and her findings on individual cases.

- 1. Given that MPs do not enjoy parliamentary immunity, and are subject to the criminal law in the same way as are other citizens, is self-regulation (with external input from lay members and the Parliamentary Commissioner for Standards) appropriate?**
 - **If self-regulation is not appropriate, precisely what further matters should be externally regulated, and what should be the regulatory mechanism?**
- 2. Should there be changes to the position of lay members?**
- 3. Should there be changes to the balance between lay members and MPs on the Committee?**

The House of Commons has a number of self-regulatory mechanisms. The most prominent is the Code of Conduct and the related Guide to the Rules, which set out respectively the broad principles which should govern MPs' behaviour, and the detailed rules. Complaints about breaches of these rules are investigated by the independent Parliamentary Commissioner for Standards, who also has a role in advising on how they might be developed.

The Code and Guide apply to all MPs, including Ministers.⁷ As well as setting out high level standards of behaviour, they include detailed rules, most notably about what interests must be registered, and about declarations of interest and the rules preventing paid advocacy and lobbying.

The Code and Guide generally do not cover conduct in the Chamber or in parliamentary committees. These are governed by rules designed to reduce the heat in debate, such as the rule about making reference to another MP by constituency rather than name in the Chamber or in general committee, and rules about how particular matters can be raised. These rules are for the occupant of the Chair in the House or the Committee to enforce, since the Chair can balance the need for individual Members to be able to say what they consider necessary with the need to keep order. The one

⁷ In addition, Ministers have to abide by the Ministerial Code, a government document, which sets out the standards of conduct expected of ministers and how they discharge their duties. They are answerable *for their compliance with the Ministerial Code* to the Prime Minister.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf

exception is that the Parliamentary Commissioner for Standards will investigate whether MPs have declared their interests as they should before participating in debates to which these are relevant, if a complaint is made.

There are some administrative rules which are not proposed by the Committee on Standards. Rules about the use of stationery are set by the Members' Estimates Committee, while rules about the use of facilities fall to the Administration Committee, but the Commissioner will investigate breaches of these rules, and the Committee will adjudicate as appropriate.

There are questions about the interplay between the Code and Guide and other rules (including those of IPSA), how easy it is to find guidance, and what training is appropriate for MPs.

This inquiry will not look at the detailed provisions of the Code and the Guide, or of other rules, although questions such as what broad standards should be expected from elected representatives may be considered.

The Parliamentary Commissioner for Standards reviews the Code of Conduct and the related rules and makes recommendations to the Committee on Standards. The Committee considers those proposals, and reports its views, including recommendations for change, to the House of Commons. Both the Commissioner and the Committee have only the power of recommendation. It is for the House as a whole to determine what the rules should be. The normal process is to debate the Committee's report and agree the revisions, with amendments if necessary.

The previous Parliamentary Commissioner for Standards and the Committee on Standards and Privileges put forward proposals for changes to the current detailed rules which await consideration. The existing proposals have been ready for debate since December 2012. If they are not considered in the next few months, changes cannot be implemented before the election. The newly elected House of Commons will be forced to continue to operate a set of rules which have been interpreted by the decisions of successive Committees, and could usefully be clarified. Moreover the current rules do not address the recommendations of the Group of States against Corruption (GRECO), as described in the first report from the Committee on Standards or the previous Parliamentary Commissioner for Standards.

- 4. Should proposals endorsed by the Committee on Standards automatically come to the floor of the House for decision within a set period of time?**
- 5. How accessible are the existing rules governing Members' conduct to interested outsiders or to Members themselves?**

The Parliamentary Commissioner for Standards and the Committee on Standards

The Parliamentary Commissioner for Standards and the Committee on Standards work closely together. The Parliamentary Commissioner for Standards was appointed in response to a recommendation from the Committee on Standards in Public Life in 1995:

The House should appoint a person with a degree of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards;

the Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the controller and auditor general and Parliamentary Commissioner for Administration;

the Commissioner should have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation.

The Commissioner is appointed on a five-year non-renewable contract, to ensure that her decisions cannot be swayed by the prospect of further employment.

The relationship between the Committee and the Commissioner is set out in Standing Order Numbers 149 and 150.

The Committee's duties are

(a) to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; and

(b) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary.

The principal duties of the Commissioner are

(a) to maintain the Register of Members' Financial Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards or an appropriate subcommittee thereof;

(b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;

(c) to advise the Committee on Standards, its subcommittees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;

(d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards or an appropriate subcommittee thereof; and

(e) to investigate, if she thinks fit, specific matters which have come to her attention relating to the conduct of Members and to report to the Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply.

(Paragraph 4 of the Standing Order provides that if matters can be put right through the rectification procedure there is no need for the Commissioner to report to the Committee.)

Although the investigative functions of the Commissioner attract most attention, much of her work, and the work of her office, is in maintaining the register, offering advice to Members individually and collectively, and keeping the system under review. The Commissioner is supported by the Registrar of Members' Financial Interests, and the deputy Registrar, an inquiry officer and administrative staff. The Commissioner and Registrar give general advice to Members, but because of her role in investigating complaints, the Commissioner delegates giving advice on individual matters to members of her staff.

The Committee's role in this work is to approve or modify the arrangements proposed by the Commissioner or the Registrar, and to support the Commissioner and her office in their work. So, for example, the Chair of the Committee has written to Members advising them about how particular rules should be interpreted, or alerting them to the need to check their Register entries.

While the Committee has this oversight function, and the House as a whole is responsible for approving the Code of Conduct and the Guide to the Rules, the Commissioner's power to propose changes is not limited in any way, and past Commissioners have, for example, consulted publicly on potential revisions to the Code and Guide.

The Committee and the Commissioner and her office can and do work collaboratively. So, for example, the Commissioner and the Registrar worked closely with the Committee on the recent report on All Party Parliamentary Groups, which proposed a new regulatory regime for those groups and was approved by the House on 13 May 2014.

The Committee and the Commissioner have in the past consulted on changes to the rules in general, or on particular aspects of the rules. Such consultations have frequently had low responses.

The induction for new MPs is expected to contain material on standards, and the House is considering what might be included in any continuing professional development made available to Members.

6. In a self-regulatory system, what can be done to ensure that MPs engage with the rules?

7. Is there a way of ensuring that MPs display more leadership in ethical standards and rules of behaviour?

Investigation of complaints

The Commissioner is solely responsible for investigating complaints. The Standing Order makes provision for an Investigatory Panel, chaired by the Commissioner, containing a legal assessor, chosen by the Commissioner, and an MP who is not from the Standards Committee, chosen by the Speaker, to assist the Commissioner in findings of fact. This provision has never been used.

The Commissioner does not have power herself to compel evidence, but the Committee has such power, and would use it to ensure information was provided for the Commissioner, if she requested it.

The Commissioner's procedure for investigations is published on the Internet.⁸

The Commissioner establishes the facts of the case through correspondence and interviews with the MP concerned, and any relevant witnesses. Those facts are agreed with the MP concerned.

At the conclusion of the investigation, the Commissioner submits a memorandum to the Committee, setting out both the facts, and her advice on the rules and a conclusion as to whether there has been a breach of the rules. This memorandum is published with the Committee's report. Sometimes it is straightforward: sometimes cases can be complex, and the Commissioner will explore a number of ways in which the rules might be interpreted in connection with the case under review.

When the Commission has submitted a memorandum, a copy is sent to the MP under investigation as well as to the Committee, and the MP is invited to make any comments they desire, and may, if they wish ask to appear before the Committee. The Committee normally takes evidence of this sort in private, although it has the power to take evidence in public. If it takes evidence in public, it has power to exclude TV cameras. The Committee can seek additional information after the Commissioner has reported to it, and has done so on two recent occasions.

The Committee's role is to adjudicate on the basis of the memorandum and any further evidence, and to determine any penalty. It is not bound to agree with the Commissioner's advice, but since the Commissioner's memorandum becomes public with the Committee's report it must explain the reasons for any disagreement.

It is open to those under investigation to seek legal advice, and the Committee has power to hear Counsel, but in practice this is extremely rare. Members who wish to take legal advice do so at their own expense.

The table below sets out the range of complaints considered by the Commissioner and the Committee in the current Parliament. It will be seen that most complaints made are not within the Commissioner's remit, such as complaints about the handling of constituency cases, things said in the House of Commons or ministerial actions. Many of those which are within remit are minor enough to be rectified without reference to the Committee.

Complaints considered by the Commissioner

Year ⁹	Complaints received by the Commissioner	Of which were not in the Commissioner's remit	Number of complaints not upheld	Number of complaints rectified	Number of complaints referred to the Committee on Standards
2012-13	117	109	2	5	2
2011-12	109	101	1	4	4
2010-11	115	105	7	14	10

Complaints considered by the Committee on Standards¹⁰

⁸ http://www.parliament.uk/documents/documents/Procedural_Note-April_2012.pdf

⁹ Year refers to the reporting year and not to the Parliamentary Session

	No sanction	Apology prior to Committee Report	Apology by letter to the Committee	Apology on floor of House	Repayment	Suspension	Pass suspended
Failure to declare/register interests			1	3			
Lobbying/paid advocacy						1	
Expense/allowance claims (pre-2010 system)		1	3 (2 including repayment)	1		2 (one of which included personal statement)	
Misuse of stationery/facilities		1					
Not upheld by Commissioner	1						
Former Member			3 (1 including repayment)		1		3

8. Are the arrangements for considering complaints proportionate?

9. Are the arrangements fair?

10. Should there be some mechanism for providing legal or other support for Members investigated by the Commissioner?

Penalties

The penalties which can be imposed arise from the House of Commons' power to control its own procedures and precincts. They do not rest on statute and could not effectively do so without fundamental change to the United Kingdom constitution.

The Committee may recommend the following penalties:

- Apology to the House by way of written apology to the Committee;
- Rectification of failure to Declare an interest by way of point of order
- Apology by way of a personal statement on the floor of the House
- Withholding of a member's salary for a set period
- Suspension from the service of the House (which entails loss of salary and pension rights)
- Expulsion.

The Committee can also instruct a Member to repay public money if it considers it appropriate. In principle, refusal to do this could lead to further disciplinary action, but this has not arisen.

¹⁰ Numbers differ from those in table above, as the table covers the entire Parliament

Withholding of salary, suspension and expulsion can only be imposed by the House itself. The Committee has never recommended withholding a Member's salary without suspension, and the Committee on Standards and Privileges stated it would be unlikely to do so since this would reduce the political parties' collective responsibility for standards. Committees have traditionally been reluctant to recommend expulsion, both because of the danger that the power of expulsion could be used to remove people because their opinions were unpopular, rather than because of misconduct, and because Members are elected, and the decision of the electorate should be respected.

In the Queen's Speech, the Government announced a Bill "to establish a recall mechanism giving constituents the opportunity to sign a petition to trigger a by-election where:

- An MP is convicted in the UK of an offence and receives a custodial sentence of 12 months or less (for more than 12 months an MP is automatically expelled); or
- The House of Commons resolves that an MP should face a recall petition."¹¹

(The Representation of the People Act 1981 already provides that if a Member is imprisoned for more than a year, their seat is automatically vacated.) The text of that Bill has not yet been published.

11. Are the existing penalties appropriate?

12. Have existing penalties been effective?

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317477/the-queens-speech-2014.pdf