

Written submissions from the Equality and Human Rights Commission to the Independent Inquiry into the Bullying and Harassment of House of Commons Staff

Introduction

The Equality and Human Rights Commission (the Commission) welcomes the opportunity to provide submissions to Dame Laura Cox QC's Independent Inquiry into the Bullying and Harassment of House of Commons Staff.

The Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an 'A status' National Human Rights Institution in recognition of its independence, powers and performance.

Recent high-profile testimonies, including those relating to the House of Commons, have shown how pervasive harassment is in all contexts and highlight the real barriers that many people experience in reporting it. Employers are responsible for ensuring that employees do not face harassment in their workplace. They should take reasonable steps to protect their employees and will be legally liable for harassment by their staff if they fail to do so.

As the recent testimonies have shown, many employers have not been properly addressing harassment in the workplace and immense damage has been done to people's lives and careers as a consequence. The Commission is keen to ensure that the current outpouring of experience leads to positive change in workplace culture. As a very high-profile and influential employer, it is particularly important that Parliament sets the highest standards for responding to complaints of harassment. We hope that our comments and recommendations on the Parliamentary processes will assist the inquiry to bring about the change that is needed.

The Commission's work on harassment

When the "Me Too" movement began, the Commission responded quickly to increase its focus on the issue of harassment (with a particular focus on sexual harassment) and to use the full range of the Commission's power to tackle the problem. The Commission has an ongoing programme of work in relation to harassment and draws on its findings from this work in these submissions to the inquiry.

In March 2018, we published our report [*'Turning the tables: ending sexual harassment at work'*](#). Our survey of individuals who had experienced sexual harassment revealed the damage that is done to individuals' mental and physical health by corrosive cultures which silence individuals and normalise harassment. Our survey of employers found a very worrying lack of consistent, effective action

and a paper-based approach to compliance that does not lead to positive outcomes for victims of harassment.

Based on this evidence, we developed recommendations aimed at eliminating sexual harassment and other forms of harassment in every British workplace, by:

- transforming workplace cultures
- promoting transparency and
- strengthening legal protections.

The Commission believes that action is required in all three areas to relieve the burden on individuals who report harassment and instead put the onus on employers to effectively prevent and resolve harassment. The full findings of the Commission's survey and our recommendations for reform can be found in the report [‘Turning the tables: ending sexual harassment at work’](#).

In addition to the report and recommendations, the Commission has produced [guidance for employers](#). We are also undertaking intensive engagement with regulators and inspectorates in order to encourage and support action on harassment across all sectors and industries. We have adopted a proactive enforcement strategy to identify legal cases we can fund and organisations where enforcement action may be appropriate. Further details of the Commission's work in this area can be found in its [submissions to the Women and Equalities Committee's inquiry into sexual harassment at work](#).

Scope of the Commission's Submissions

The Commission has not been party to the conduct of the inquiry or reviewed any of the evidence or submission's collated by Dame Laura Cox QC during the conduct of her inquiry. The Commission's submissions are based on information within the public domain.

These submissions will focus upon the third and fourth of Dame Laura Cox's terms of reference:

- *“to assess previous, existing and any proposed policies and procedures relating to bullying or harassment and to complaints about such behaviour, comparing them to current best practice, with a view to making any recommendations for improvement in the way in which such complaints are handled or will be handled in the future, including the availability of appropriate internal or external support”*
- *“to consider and comment upon the House of Commons as a place of work with regard to ensuring the treatment of staff with dignity and respect and maintaining an open and supportive culture.”*

The House of Commons Staff Handbook

We have reviewed [chapter 6 of the House of Commons Staff Handbook](#) and comment as follows:

Comment number	Paragraph	Content	Comment
1.	Title	<i>"Equality and Diversity"</i>	The majority of this chapter concerns handling complaints of bullying and harassment, which is not apparent from the title. A separate anti-harassment and bullying policy dealing with these issues in more detail and which is easily identifiable from its title as the point of reference for staff facing this issues, would be more effective.
2.	2.9 and 2.10	<i>"The House of Commons and House of Lords have established a number of Workplace Equality Networks (WENs) to provide an opportunity for groups of people to discuss and consider issues relevant to their situation or of interest to them."</i>	It is unclear from the list at 2.10, which WEN would deal with sexual harassment issues. It is assumed that if any of them does, it is 'Parliagender', which deals with gender issues. This requires clarification, including whether Parliagender would deal with harassment against male staff as well as female staff (unless this is clear from the linked information on the intranet to which we do not have access).
3.	3	<i>"Valuing Others Policy"</i>	As per comments above in relation to the policy title, the title should convey more explicitly what it is about.
4.	4.1	<i>"It may be directed against someone because of their sex, gender identity, race, age, religion or belief, disability or because of their sexual orientation."</i>	It would be helpful to give a clear and accurate definition of harassment based on the statutory definition in s26 Equality Act 2010.

			<p>Under s26, the individual does not have to possess the protected characteristic in order for the definition of harassment to be satisfied, as suggested by 4.1. Unwanted conduct may be directed at an individual because they are perceived to possess an associated characteristic, or because they are associated with someone who possesses it, for example.</p>
5.	4.2	<p><i>“The key factors of harassment are that it is unwanted, unjustified and/or unreciprocated. It fails to respect the rights of others or the impact that such behaviours may have. Such behaviours may be persistent or one isolated, serious incident.”</i></p>	<p>The wording of this paragraph is not an accurate reflection of the legal definition of harassment and causes confusion.</p> <p>‘Unjustified’, suggests that there may be a justification defence. Unwanted conduct related to a protected characteristic which has the purpose or effect of violating a person’s dignity etc, cannot be justified. If, what is meant is that managers who for example, undertake justified performance management without subjecting a person to unwanted conduct of that nature will not be committing harassment, then that should be made clearer. The focus should be on the legal definition of harassment as, for example, harassment could take place in the context of a justified performance management process. E.g. Where several people in a department are performing equally badly, but the manager singles one</p>

			person out for performance management because of their protected characteristic.
6.	4.2	<i>“The key factors of harassment are that it is unwanted, unjustified and/or unreciprocated. It fails to respect the rights of others or the impact that such behaviours may have. Such behaviours may be persistent or one isolated, serious incident.”</i>	<p>As regards the word ‘unreciprocated’, this again is not in accordance with the legal test. Reciprocation may be evidence that conduct was not unwanted, but is not in itself the key test. For example, there is evidence that A makes derogatory comments to B, but also that B makes equally derogatory comments to A and that both of them take the comments in good humour. This is evidence that A’s conduct towards B was not unwanted.</p> <p>On the other hand, if for example, B reacts to A’s unwanted conduct by joining in, as an attempt to placate A, A’s conduct would be unwanted and may still amount to harassment.</p>
7.	4.2	<i>“The key factors of harassment are that it is unwanted, unjustified and/or unreciprocated. It fails to respect the rights of others or the impact that such behaviours may have. Such behaviours may be persistent or one isolated, serious incident.”</i>	The seriousness of an isolated incident may be an indicator, but not the sole measure, of whether that incident amounts to unwanted conduct or not. Provided that A has subjected B to unwanted conduct, such conduct had the purpose or effect of violating B’s dignity (etc), and B’s perception of the conduct was reasonable, it will be harassment, regardless of seriousness.
8.	4.5	<i>“Examples of harassing/bullying behaviour include:</i> <ul style="list-style-type: none"> • 	Victimisation is a separate category of unlawful act under s27 Equality Act 2010, where A subjects B

		<ul style="list-style-type: none"> • <i>victimisation</i>” 	<p>to a detriment because they have done or A believes they have done a ‘protected act’ (for example, made a complaint about harassment). Fear of victimisation for speaking out is one of the main barriers to reporting of harassment. Victimisation should therefore be dealt with in a separate section of the same policy, both to ensure that the policy deals with the different categories of unlawful act accurately and to tackle victimisation in the workplace more effectively.</p>
9.	4.1 – 4.6	N/A	<p>In general, further to the comments above, the policy should define harassment and victimisation in more detail and follow more closely the legal definitions in section 26 and 27 Equality Act 2010. In particular, the three different forms of harassment in subsections (1), (2) and (3) of section 26 (harassment related to a protected to a characteristic, sexual harassment, and less favourable treatment for rejecting or submitting to sexual harassment) should each be defined separately in order to ensure clarity as to the range of conduct that is prohibited.</p>
10.	4.7	<p><i>“While employees will be fully supported when they are involved in raising concerns of harassment or bullying, complaints that are found to have been made without sufficient foundation, maliciously or vexatiously</i></p>	<p>Disciplinary proceedings against an individual because they make a complaint that they have been harassed or discriminated against contrary to the Equality Act 2010 without ‘sufficient</p>

		<i>may be dealt with under disciplinary proceedings as in chapter 20.”</i>	<p>foundation’, will amount to victimisation contrary to s27 Equality Act 2010, unless the employer can demonstrate that the complaint was made in bad faith.</p> <p>Further, acts of harassment will often be committed verbally in the absence of any witnesses. The words ‘sufficient foundation’ could discourage complaints from individuals who have no evidence beyond their own statement to support an allegation.</p> <p>The same comments apply to the examples at 4.8. The key is not whether there is ‘foundation’ or ‘reasonable grounds’ for, or substance to the allegations. It is whether they have been made in bad faith or not.</p>
11.	4.8	<p><i>“Examples of unfounded, vexatious or malicious complaints could be:</i></p> <ul style="list-style-type: none"> • ... • <i>continuing to raise an issue that has previously been dealt with and resolved”</i> 	<p>A complaint will not be made in bad faith merely because it has previously been resolved. It would have to be demonstrated to have been made in bad faith, in the course of resolving it.</p> <p>Disciplinary proceedings against, for example, an individual who raises a historical complaint in good faith because they believe that it was previously dealt with badly by management, would amount to victimisation contrary to s27 Equality Act 2010.</p>
12.	4.9	<i>“There may be occasions when you believe you are not being treated</i>	This places too much emphasis on resolving an issue quickly. Whilst

		<i>appropriately at work. In these situations, you need a resolution as quickly as possible to ensure the issue is dealt with and you can continue to work in a positive environment.”</i>	complaints should be resolved without delay, the timeframe will vary from case to a case and a ‘quick’ resolution may not be possible. An interim solution which allows the complainant to continue to work, such as suspension or transfer of the alleged perpetrator may be more appropriate in these circumstances.
13.	4.10 and 4.11	<p><i>“4.10 You should consider why you believe you have been treated unfairly: what was said or done, by whom and under what circumstances? What did you do or say beforehand? Is it a case of a normal and acceptable workplace disagreement or harassment/bullying? Is there truth in what was said even though you feel uncomfortable with it? For example, criticism is acceptable when it is constructive, delivered in private, and accompanied by reasonable suggestions for improvement.</i></p> <p><i>4.11 Please read the definitions of harassment and bullying carefully. Your complaint may be resolved more appropriately using another procedure such as the grievance procedure (see chapter 21).”</i></p>	<p>It is not an easy task for individuals to work out for themselves whether something which has made them feel uncomfortable is ‘just part of the job’ or unacceptable behaviour. These paragraphs place too much responsibility on the individual to work out for themselves whether any unwanted conduct meets the definition of harassment, rather than raising issues with the appropriate person and then discussing what the best route to a resolution would be in the circumstances.</p> <p>Even in cases which may not amount to harassment, discouraging individuals from raising something which has made them feel uncomfortable could be counter-productive. It may cause them to dwell on the issue, whereas an informal discussion about it could resolve the situation to their satisfaction and allow them to move on.</p>
14.	4.16	<i>“External advice can be sought through: - ACAS</i>	The EHRC does not operate a helpline advice service. This service is

		- Citizens' Advice - Equality and Human Rights Commission"	provided by the Equality Advisory Support Service (EASS) who refer cases to the EHRC for action where appropriate.
15.	5.1	<i>"It is important that you consider trying to resolve the issue informally in the first instance. The internal people listed in paragraph 4.14 above can help you with this and you may contact them for advice and support."</i>	This suggests that informal resolution should be considered in all cases. Whilst informal resolution should be encouraged and supported where appropriate, there will be cases (including any case where disciplinary action is warranted) where informal resolution will not be appropriate and could be very damaging to the victim of harassment.
16.	5.4 to 5.7	N/A	These paragraphs outline the various options available to resolve the matter informally, but there is no option to move straight to formal action where the individual does not feel that it is possible to resolve the matter through informal action.
17.	5.9	<i>"It may be suggested that mediation would be helpful in resolving your complaint. Mediation is a confidential process where a neutral person – the mediator – works with both parties to help them find a solution and reach an agreement that will improve the situation. The mediator will not take sides, apportion blame or judge what is right or wrong. Mediation can be used at any stage in a dispute but is often most effective if used early on and can only be used if both parties are willing to take part in the process and both recognise that they need to</i>	It is likely to be very difficult to use mediation appropriately as a means of informally resolving an issue in harassment cases, particularly sexual harassment cases. Mediation is more likely to be appropriate in minor cases and would depend on the perpetrator having accepted what they said/did was unacceptable. It may also be appropriate in resolving issues between the employee and employer rather than the employee and the perpetrator. For example, where the employee is

		<i>make changes to their own behaviour.”</i>	<p>dissatisfied with her manager’s response to a complaint.</p> <p>The statement that mediation can only be used if both parties are willing to make changes to their own behaviour is not appropriate in cases of harassment. It suggests that a person subjected to harassment may have done something wrong and needs to change their own behaviour.</p>
18.		<p><i>“5.10 The mediator will usually</i></p> <ul style="list-style-type: none"> <i>• ...</i> <i>• try to keep the parties focused on the future, not the past”</i> 	<p>Mediation is unlikely to be successful in harassment cases without acknowledgment by the perpetrator of their own wrongdoing.</p>
19.	5.12	<p><i>“The above procedures should normally be explored and exhausted before formal external procedures are initiated. The formal procedures may be invoked:</i></p> <ul style="list-style-type: none"> <i>• when internal attempts to resolve the problem have been unsuccessful</i> <i>• when the harassment or bullying persists or begins again</i> <i>• for a single, serious incident of harassment or bullying which could be described as gross misconduct and which could result, for example, in suspension while the matter is being investigated</i> <i>• at the discretion of the Head of the HR Advisory Service”</i> 	<p>This again places too great an emphasis on informal resolution. Informal resolution should be encouraged, but ultimately if an individual feels that it would not be appropriate to attempt informal resolution, they should not be prevented from raising a formal complaint.</p> <p>For example, an incident may be serious enough to make an individual feel that formal disciplinary action against the perpetrator is warranted and that it is therefore not possible to resolve the matter through informal action, but it may not be serious enough to amount to gross misconduct. Such an individual should be allowed to make a formal</p>

			<p>complaint, but under 5.12, this situation does not fit into one of the categories where formal procedures may be invoked.</p> <p>Rejection of formal complaints in such circumstances may amount to a breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures.</p>
20.	5.14	<p><i>“The External Harassment Investigator (EHI) will:</i></p> <ul style="list-style-type: none"> • <i>investigate allegations fairly, thoroughly and within agreed time limits</i> • <i>preserve confidentiality as far as possible</i> • <i>advise the House if they suspect a complaint is unfounded or has been made, vexatiously or maliciously”</i> 	<p>This paragraph places emphasis, where it is not warranted, on finding whether complaints are unfounded or have been made vexatiously or maliciously, thereby potentially discouraging complaints.</p>
21.	5.16	<p><i>“Under this procedure the Line Manager of the person being complained about will normally deal with the complaints and act as the Deciding Officer unless:</i></p> <ul style="list-style-type: none"> • <i>the complaint is also against them</i> • <i>they are also your Line Manager</i> • <i>there is another appropriate reason(s) why they should not deal with the complaint”</i> 	<p>A person who line manages the alleged perpetrator but not the complainant is unlikely to be impartial. It would be more appropriate for a person who line manages neither party to be appointed as deciding officer where possible.</p>
22.	5.34	<p><i>“Possible solutions may include:</i></p> <ul style="list-style-type: none"> • <i>...</i> • <i>providing coaching for either or both parties</i> • <i>providing training for either or both parties”</i> 	<p>Coaching or training for the complainant is unlikely to be an appropriate outcome and again suggests that their behaviour is in question.</p>

23.	5.38	<i>“A Manager who has not been involved with the investigation and appointed by the Head of the HR Advisory Service will consider whether there are grounds for appeal and notify all the relevant parties within ten calendar days of the appeal being received.”</i>	The ACAS Code of Practice on disciplinary and grievance procedures provides that an appeal hearing should be arranged where an appeal is lodged. The ACAS Code does not provide for an intermediate, permission to appeal stage.
24.	5.39	<i>“The decision on whether there has been a breach in procedure will be taken by the Head of the HR Advisory Service.”</i>	The Head of the HR Advisory Service is responsible for deciding whether formal procedures should be invoked (5.12), appointing the EHI to carry out an assessment (5.13/5.19), reviewing the EHI’s initial assessment (5.20), appointing the EHI to carry out a full investigation following the assessment (5.21), meeting with the EHI and Deciding Officer to make arrangements and agree a timetable for the investigation (5.22), receiving a copy of the EHI’s report to ensure that a fair and consistent approach is taken by managers (5.27) and appointing a manager to decide whether there are grounds for appeal (5.38). They appear to be fully involved in implementing the procedure and therefore not to be an impartial person who can decide whether or not there has been a breach in procedure.

NB. The Commission only reviewed sections 1 to 7 of Chapter 6, which deal with harassment. We have not considered other aspects of the Chapter as part of this review.

The Respect Policy

We have reviewed the revised [Respect Policy](#) and comment as follows:

Comment number	Paragraph	Content	Comment
25.	1.3	<i>“The policy was agreed by the House of Commons in July 2014. A guide to this policy for Members is available.”</i>	The policy does not tell staff where the guidance is available from.
26.	3.2	<i>“If any problems arise with Members or their staff, the expectation under this policy is that the majority of cases will be resolved informally.”</i>	<p>As highlighted in relation to the Staff Handbook (see comments 15,16 and 19), this places too great an emphasis on informal resolution. The focus should be upon determining the most appropriate method of resolving a complaint in each individual’s circumstances.</p> <p>As the Respect Policy deals with harassment of staff by MPs rather than other staff, the power imbalance between complainant and perpetrator is likely to be even greater, such that the individual is even less likely to be able to resolve the matter themselves.</p>
27.	3.4	<i>“Any complaints from staff of bullying or harassment on the part of Members or their staff will be taken seriously. Complaints may not be raised anonymously.”</i>	The Commission has recommended the development of anonymous complaints mechanisms for harassment. We regard them as a very valuable tool in addressing harassment in larger employers/regulated professions. They enable employers to facilitate safe reporting and build a picture of a person’s behaviour. Anonymous complainants can be informed when there have been multiple complaints and asked

			<p>whether they wish to make a formal complaint alongside others. See page 11 of EHRG report 'Turning the Tables': "A small number of employers described examples of more proactive approaches. Most commonly, this was the use of anonymous tools for reporting harassment, such as telephone lines run by a third party or anonymous online reporting tools. However, only two responses included reference to supporting agency workers to report sexual harassment. We were particularly encouraged to learn that the Ministry of Justice Digital and Technology team, informed by the results of internal staff surveys, is currently working with an outside organisation, Safely Spoken, to develop an innovative approach to supporting employees to report bullying and harassment. The online tool is based on the Callisto Project, a sexual assault reporting tool used in universities in the USA. This gives victims the options, information and support they need, by 'allowing them to disclose in their own time and in their own way, and by safely connecting victims of the same perpetrator together to validate each other's experience and take action'. Evaluation of this system has revealed that victims of sexual assault</p>
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			<i>who used Callisto were five times more likely to report their assault than those who did not.</i>
28.	3.5	<i>“It will normally be in everyone’s interest to make every possible effort to resolve the issue at an informal stage.”</i>	See comment 26 above. The repeated emphasis on informal resolution being the most appropriate means of resolution could place the reader under pressure to attempt to resolve the matter themselves where it is not appropriate. The focus should be on the complainant’s views as to how the matter should be resolved rather than what is in “everyone’s interest”.
29.	4.2	<i>“Definitions of both bullying and harassment as well as some examples of what such unacceptable behaviour might involve are set out below.”</i>	Comments 8 and 9 also apply here. The section on definition of harassment in the Respect policy is even briefer than the definition in the Staff Handbook.
30.	5.3	<i>“As a first step you will need to reflect on whether what you have experienced falls under the types of behaviour described in section 4. It is worth bearing in mind that the House of Commons, like many workplaces, is a pressurised environment and not every brusque response in a highly charged political situation constitutes bullying or harassment.”</i>	See comment 13.
31.	6.1	<i>“The most effective way to deal with bullying and harassment is often by raising the issue with the person concerned and asking them to amend their behaviour towards you □ If you feel able to, approach the person</i>	Further to comment 26, given the public responses of a number of MPs to allegations of harassment, and in particular the tendency to engage lawyers, it seems very unlikely that many staff members would feel able to

		<p><i>concerned and make it clear that his or her behaviour towards you is unwelcome and you want it to stop. You can ask a colleague to accompany you</i></p> <p><input type="checkbox"/> <i>Alternatively, write to the person concerned. Keep a copy of what you have written and any reply.”</i></p>	<p>approach an MP in this manner as they would potentially feel at risk of victimisation if they do so.</p>
32.	7	“Mediation”	See comment 17
33.	9.3	<p><i>“In practice, the Commissioner could only be expected to investigate either complaints that there had been a single very serious incident, or complaints involving repeated incidents or a sustained and damaging pattern of behaviour. She would not be concerned by a complaint of a brusque response in a highly charged political situation.”</i></p>	<p>This does not cater for a range of incidents between these two ends of the spectrum. See comment 7.</p>
34.	9.4	<p><i>“The Commissioner may also consult with other House staff as she sees fit (e.g. the Diversity and Inclusion team). She may decide to interview you and you may, at her discretion, be accompanied. The Commissioner will then decide whether or not to accept the complaint for investigation.”</i></p>	<p>The same standards should be applied as would be applied in the context of an employment relationship.</p> <p>The complainant should receive a hearing as a matter of routine in order to ensure that the full details of their complaint and the resolution they are seeking are understood.</p> <p>The complainant should also be permitted to bring an accompanying person as standard.</p>

Independent Complaints and Grievance Scheme Delivery Report

We have reviewed the [Independent Complaints and Grievance Scheme Delivery Report](#) released on 17 July 2018 and comment as follows:

35. The Commission welcomes the greatly improved approach to dealing with harassment and sexual harassment outlined in the report and the Behaviour Code, Bullying and Harassment Policy and Sexual Misconduct Policy annexed to it. In particular, the standardised approach across the Parliamentary community; the reduced emphasis on the use of informal means and mediation to resolve complaints; greater support for complainants to raise their complaints; the introduction of anonymous reporting to the helpline for monitoring purposes; dealing with sexual harassment as a separate issue to other forms of harassment; and the recognition that unfounded complaints should not be conflated with malicious complaints.
36. However, the Commission has concerns regarding the rationale for the proposed approach to dealing with ‘historic’ complaints, set out at section 7 of the report.
37. Paragraph 88 states that *“The unfortunate reality is that the further back in time you go the further the availability of evidence, the quality of recollection and the possibility of achieving natural justice for either party recedes. The advice we have taken from Tom Linden QC is clear that an investigation of a complaint will be more difficult the further into the past you go. That is why we have selected the start of this Parliament for the retrospective application of investigations under the Scheme.”*
38. However, the report goes on to state that different routes for raising a complaint will be available to complainants, depending on when the events to which their complaint relates arose. Anyone with a complaint arising from events occurring after the start of this Parliament in June 2017 will be entitled to use the new scheme. Anyone who complains of a course of conduct which started prior to June 2017 but continues beyond June 2017, will be entitled to use the new Scheme and include all pre-June 2017 conduct within their complaint. Anyone with a complaint concerning events entirely pre-dating June 2017, will be able to raise a complaint using the process that was in place at the time the events giving rise to their complaint occurred. It would appear that a complaint raised in July 2018 regarding events 14 months earlier in May 2017 will be barred, whereas a complaint raised in July 2019 concerning events two years earlier in June 2017, will not.
39. This would appear to be a misapplication of Tom Linden QC’s advice, contained at Annex D to the report. Tom Linden was asked to provide an opinion as to whether the presumption against retrospective effect would prevent the new Scheme being used to investigate complaints which relate to events pre-dating the new Scheme coming into force.
40. Tom Linden’s conclusion is that it is “debatable” whether the presumption against retrospective effect has any relevance in these circumstances and goes on to provide reasons as to why the presumption will not have any

relevance in the majority of circumstances. In essence, he states that the new Scheme does not set new rules which were not in force at the time when older complaints arose. The new Scheme will be used to investigate issues of bullying and harassment which have always been unacceptable in Parliament. The new Scheme will ensure better quality of decision making in relation to complaints of bullying and harassment. Therefore, using the new Scheme to investigate older complaints would be more rather than less fair to both the complainant and the alleged perpetrator.

41. Tom Linden then goes on to state, *“to my mind the key issue in relation to the so called historic cases is the fairness, in terms of the ability [of the] responder to respond effectively, of any investigation where the allegation relates to events which took place a long time ago.”* This is a general comment regarding the fairness of investigating older complaints under any procedure, rather than the fairness of investigating them under the new Scheme.
42. It is apparent from Tom Linden’s comments at paragraphs 10 to 13 of his Opinion, that if older complaints are to be investigated, then it would be fairer to use the new Scheme in relation to all complaints, regardless of when the events to which they relate arose, than to use the new Scheme for post- June 2017 complaints and older schemes for pre-June 2017 complaints. This is also evident from the number of deficiencies in past policies highlighted in our submissions above.
43. Further, the June 2017 cut-off date for dealing with complaints under the new Scheme could potentially amount to indirect age discrimination.
44. The cut-off date is a provision, criterion or practice (PCP) which will be applied to all employees who have a potential complaint.
45. The cut-off date disadvantages all those to whom it is applied as they will be required to pursue their complaint under an older procedure which is less likely to be effective in determining their complaint fairly.
46. Within the pool of employees who have a potential complaint, it is likely that proportionally more older people will have a complaint which pre-dates June 2017 and therefore that older people will be disproportionately disadvantaged by the PCP.
47. Any such PCP would therefore have to be objectively justified as a proportionate means of achieving a legitimate aim. The stated aim of the cut-off date is to ensure that natural justice is achieved. However, as per the comments above, if it is accepted that it would be fairer to investigate all complaints which are capable of investigation under the new Scheme, then the means adopted will run contrary to, rather than achieve that aim.

48. Further, the cut-off date is not proportionate. It is an arbitrary measure which pays no regard to the disadvantage that the affected individual may suffer. It is possible to ensure that natural justice is achieved by less arbitrary means, namely assessing whether a fair investigation is possible on a case by case basis (which is explored further below).
49. If it is accepted that all complaints should be investigated under the new Scheme, rather than applying different schemes according to the timing of events to which the complaint relates, the question then still arises as to whether there should be any cut-off date to replace the June 2017 date, prior to which events will not be investigated, or a limitation period outside of which complaints may not be brought. The Commission's opinion is that there should not. The key to whether natural justice can be achieved is not the age of the complaint, which is an arbitrary measure. It is whether it is possible to reach a fair outcome in all the circumstances of the case. A preliminary assessment could instead be carried out on a case by case basis in older complaints.
50. For example, an employee may have raised a complaint in writing a number of years ago but alleges that it was dealt with badly at the time and that it was not therefore satisfactorily resolved. Such an employee should be entitled to have their complaint determined properly in accordance with the new, fairer procedure and the fact that they have written evidence of their complaint should make it more likely that a fair investigation can be conducted.
51. Even in very old cases, the complaint should as a minimum be accepted under the procedure and the allegation put to the alleged perpetrator, before a decision is made as to whether it is possible to investigate the matter fairly. The recent case of Michael Fallon resigning in relation to his behaviour, which he accepted fell short of acceptable standards, dating back at least as far as 2002, demonstrates that it may be possible for a fair investigation to take place and to achieve a resolution for the complainant.
52. Further, it is evident from our submissions above that previous policies have placed significant responsibility on individuals to resolve issues themselves and undue emphasis on disciplinary action as a response to 'unfounded complaints', which may have discouraged many complainants coming forward. Such complainants should have their complaints heard as a matter of fairness in recognition of the deficiencies in previous policies.
53. As regards more specific aspects of the policies annexed to the report:

Comment number	Paragraph	Content	Comment
54.	Annex B	N/A	The Bullying and Harassment Procedure should contain a separate section on victimisation (bringing it into line with the Sexual Misconduct Policy at Annex C which does have such a section).
55.	Annex C, 4.1	<i>“Harassment of a sexual nature is defined in the Equality Act 2010 section 26 (2) (3). A non-exhaustive summary that covers the majority of what is meant by the term is: unwanted behaviour that is sexual in nature or draws attention to sex in an unwanted way. The law around sexual harassment is grounded in a rights framework; sexual harassment offends the universal right to work in a dignified, safe environment and not be subject to discrimination.”</i>	This could be improved by setting out more precisely the definitions of sexual harassment in s26(2) and less favourable treatment because of rejection of or submission to sexual harassment in s26(3). This would set the context for the following lists of examples.
56.	Annex C, sections 4 and 5	N/A	This section of the Sexual Misconduct Policy would benefit from a paragraph emphasising that unwanted conduct does not have to have the purpose of violating a person’s dignity, and that it is the perception of the individual which is key (as contained within the Bullying and Harassment Procedure).
57.	Annex C, section 11	N/A	This section on victimisation is a welcome addition as previous policies did not cover this important issue separately. Section 11, would benefit from outlining the definition of victimisation under s27 Equality Act 2010 first, to

			set the prohibition on victimisation in context.
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Further aspects of the delivery report are commented on in response to comments by the Committee on Standards, below.

Committee on Standards' Report on Implementation of the Independent Complaints and Grievance Policy.

We have reviewed the [Committee on Standards' report on implementation of the Independent Complaints and Grievance Policy](#) and comment as follows:

Comment number	Paragraph	Content	Comment
58.	26 to 36 (which relate to paragraph 55 of the delivery report referred to above)	<p><i>"27. A possible objection to the Committee having an appeal function is that it might be perceived as "MPs marking their own homework". We understand the force of this objection but consider that it is rebutted by the crucial involvement of independent lay members in the work and decision-making of the Committee. We do not think that the lay members' role is sufficiently understood. It has developed significantly in recent years and is continuing to develop."</i></p> <p><i>"36. We are conscious that this is only an interim measure. A majority of members of the Committee wish to see full voting rights given to lay members. That would put beyond question that the Committee is independent of what might be called the 'parliamentary establishment'. We therefore recommend that the Government bring forward primary</i></p>	<p>It would be preferable for the body which hears an appeal against the Commissioner's decisions relating to complaints against MPs to be entirely independent, although the Commission appreciates that the Committee has a balanced membership.</p> <p>Nevertheless, if the Committee is to perform this role, then the Commission agrees with the recommendation in paragraph 36 to ensure that the Committee is, and is seen by complainants to be, as independent as possible. If lay members are only given an indicative vote, this leaves open the possibility that they will be overruled by the MPs on the Committee members which would undermine trust in the process amongst staff and the wider public.</p>

		<i>legislation to guarantee that free speech in the Committee is protected by parliamentary privilege in order to allow the extension of full voting rights to lay members.”</i>	
59.	44 (which relates to paragraphs 53 and 54 of the delivery report referred to above).	<i>We do not regard the proposal that the Committee should put before the House motions calling for the expulsion or suspension of a Member, without any supporting detail and without opportunity for debate, as being compatible with natural justice, or likely to command the support of the House. For similar reasons we reject the proposal that the power to impose severe sanctions, such as suspension or expulsion of a Member, should be delegated to the Committee, with no further reference to the House, and with the Committee’s decision and the reasons for it remaining confidential. It is the strong and unanimous view of the Committee that these proposals are unacceptable because they would undermine public confidence in the new system by giving the impression that decisions were being taken by Members in secret, “dodgy deals” were being struck or a Member being judged by a “kangaroo court”. We understand the laudable motives behind these proposals – to protect complainants and ensure the independence of the</i>	Unlike the Committee, membership of the House is not politically balanced, nor will the votes of MPs be counterbalanced by lay members. Paragraph 40 and the delivery report do not contain much detail as to the process that would be followed prior to the House in making its decision. The Commission would like to see further detail on how objectivity can be ensured in making decisions on sanctions against MPs. In the absence of such details, it is difficult to understand how the House will overcome allegations of “MP’s marking their own homework” to instil trust in the procedures among staff and the wider public.

		<i>system – but do not believe they are workable or fair. They would indeed raise a significant prospect of a successful challenge to the House’s procedures at the European Court of Human Rights in Strasbourg.</i>	
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Conclusion

The Commission welcomes the work that has been undertaken to improve the handling of complaints of harassment and sexual harassment for those working in the House of Commons and agrees that the proposed policies are a significant improvement in this regard. However, the Commission would encourage the Steering Group to reconsider its decision to prevent complainants raising issues which pre-date June 2017 under the new Scheme in recognition of the deficiencies in previous policies, in order to ensure that all complaints are dealt with as effectively as possible under one scheme rather than taking a multi-tiered approach, and in order to ensure that the new scheme complies with the Equality Act 2010. The Commission would also welcome further measures to ensure independence and objectivity in the hearing of appeals and imposition of sanctions in relation to complaints against MPs.