

Procedural note: Parliamentary Commissioner for Standards

Procedure for Inquiries

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This procedural note is to assist those involved in an inquiry conducted by the Parliamentary Commissioner for Standards. It has been approved by the Committee on Standards and Privileges.

Introduction

1. The Parliamentary Commissioner for Standards:

— considers complaints alleging that a Member of Parliament has breached the [Code of Conduct](#) and its associated rules;

5 — inquires into a self-referral from a Member, with the agreement of the Committee on Standards and Privileges and on an exceptional basis; and

— if the Commissioner thinks fit, investigates specific matters which have come to his or her attention relating to the conduct of a Member.

2. Before initiating an inquiry the Commissioner will, if the matter comes within his or her
10 remit, consider if there is sufficient evidence to justify an inquiry into whether a particular named Member may have breached the Code of Conduct.

3. Once initiated, an inquiry is most likely to be concluded in one of three ways:

i. the Commissioner may conclude that the allegation has not been substantiated: the
15 Commissioner will **not uphold** it and will report that conclusion briefly to the Committee;

ii. the Commissioner may decide that a breach of the rules at the less serious end of the spectrum can be resolved under Standing Order No 150 through the [rectification](#) procedure.¹ If so, and the Member agrees and apologises, the
20 Commissioner will determine the matter on that basis and report the fact briefly to the Committee;

iii. if the Commissioner finds that there has been a breach which is not suitable for the rectification procedure, or that the inquiry raises issues of wider importance, the Commissioner will normally report the facts and his or her conclusions to the Committee in the form of a [memorandum](#). The Committee will then publish the

¹ Standing Order No. 150, subparagraph 3

Commissioner's memorandum on the case, alongside a report setting out their conclusions in the matter, including their recommendations on any sanctions.

Remit of the Parliamentary Commissioner for Standards

4. The Commissioner may inquire into allegations of possible breaches of the Rules of Conduct set out in Part V of the Code. Under paragraph 16 of this part of this Code, the Commissioner may investigate any matter that has caused significant damage to the reputation and integrity of the House as a whole or its Members generally, unless the matter related only to the conduct of a Member in their private and personal lives. This is a very high hurdle which the Committee expects could be met only in extreme and extremely limited circumstances.

5. Subject to paragraphs 16 and 17 of the Code, the House of Commons has agreed that the Commissioner may not investigate allegations about the following matters;

- policy matters;
- a Member's views or opinions;
- 15 • a Member's handling of or decision about a case (whether or not anyone involved is a constituent of the Member); and
- a matter which relates only to the conduct of a Member in their private and personal lives.

6. The Committee has also made it clear that it would expect the Commissioner to consult it before initiating an inquiry into a former Member or in respect of a matter which goes back more than seven years. The Committee would expect to authorise such an inquiry only in exceptional circumstances.

7. The following matters, which fall outside of the Commissioner's remit, may be referred by the complainant to the relevant body or individual as follows:

- 25 • conduct in the Chamber which is a matter for the Speaker;

- complaints about the misuse of the scheme for parliamentary expenses since May 2010 which are a matter for the Independent Parliamentary Standards Authority;
- allegations of criminal misconduct which are normally a matter for the police;
- the funding of political parties and the permissibility of donations which are matters for the Electoral Commission; and
- alleged breaches of the Ministerial Code, which governs the conduct of government Ministers in their capacity as Ministers and which are matters for the Prime Minister.

Self-referral by a Member

8. The Commissioner may, in exceptional circumstances, initiate an inquiry where the Member has asked the Commissioner to investigate an allegation against him or her which is not the subject of a specific complaint. In such cases the Commissioner would consult the Committee if the Commissioner was of the view that exceptionally, such an inquiry should be initiated. The Committee would expect to authorise such an inquiry only in exceptional circumstances.

Referral from IPSA or its Compliance Officer

9. The Independent Parliamentary Standards Authority (IPSA) and its Compliance Officer have agreed that (in accordance with section 9B of the Parliamentary Standards Act 2009) where either of them considers that an MP's conduct justifies it, they shall refer that MP, with the relevant evidence, to the Commissioner to decide whether to inquire into a potential breach of the Code of Conduct or related Rules.

10. The purpose of a reference to the Commissioner is for the Commissioner to decide whether the information submitted is such as to justify an inquiry into whether the Member's conduct has so breached the Code of Conduct for Members of Parliament that the Commissioner should institute an inquiry into the circumstances of that breach and, if necessary, submit a report to the Committee on Standards and Privileges. It would then be for the Committee to decide what action, if any, to recommend to the House. The

Commissioner would not consider any reference until after any avenue of appeal available to the Member under IPSA's statutory procedures had been exhausted.

11. The Commissioner would expect to accept the outcome of any investigation undertaken by the Compliance Officer relating to his or her remit. The Commissioner
5 would not therefore expect to reopen the Compliance Officer's investigation, or its final outcome. The Commissioner may, however, investigate matters falling outside IPSA's remit or drawn to his or her attention in the reference from IPSA or the Compliance Officer.

12. In such an inquiry the Commissioner will show the Member all the material submitted
10 by IPSA/the Compliance Officer. The Commissioner will not invite the Member to reopen matters already properly determined through the Compliance Officer's investigatory process. Otherwise, the Commissioner will conduct and conclude this inquiry in the normal way.

Guidance for complainants

15 13. Anyone who wishes to complain about the conduct of a Member should first consider whether they have made their dissatisfaction known to the Member concerned, and given him or her an opportunity to respond to it. They should also consider whether their complaint is properly one for the Commissioner to consider (see further details on remit above in paragraphs 4-7). Any complaint to the Commissioner must:

20 — be submitted by an individual, whether a member of the public or Member of Parliament. Complaints from organisations, or made on behalf of someone else, cannot be accepted;

— be made in writing, signed and provide the complainant's name and full postal address;²

25 — make clear in what respect the Member may have breached the Code of Conduct and its associated rules. Allegations should be supported by sufficient evidence to justify the

² See also paragraph 19

initiation of an inquiry. It is not sufficient to make an unsubstantiated allegation and expect the Commissioner to look for any supporting evidence.³

14. It is a basic courtesy that a Member making a complaint to the Commissioner should at the same time send a copy of the letter of complaint to the Member concerned.

5 15. All complaints received by the Commissioner are considered on their merits, no matter what their nature or source. The Commissioner will consider two questions when deciding whether to initiate an inquiry:

i. does the matter come within the Commissioner's remit?

10 ii. and, if so, is there sufficient evidence to justify the Commissioner initiating an inquiry?

16. Evidence given to the Commissioner during an investigation, and any related correspondence, is confidential unless and until it is published by the Commissioner or the Committee. Evidence should be given in the knowledge that it may be published but it should not be made available to anyone other than the Commissioner.

15 17. The Commissioner will not provide updates to complainants during inquiries. The Commissioner or, if a memorandum is submitted to the Committee, the Committee Clerk will inform the complainant of the outcome once the inquiry has concluded.

18. When making a complaint, the complainant is not protected from legal action (for example, for defamation of character) unless and until the Commissioner decides that the
20 complaint is appropriate for inquiry. Even then, parliamentary privilege will protect only the material submitted to the Commissioner. It will not protect anything said to others. Moreover, the Committee on Standards and Privileges deprecates the making of statements to the press by complainants while an inquiry is in progress.

³ Select Committee on Member's Interests, First Report, Session 1992-93, HC 383, paragraph 4

19. If complainants are not able to submit their complaint in writing, for example due to disability or language difficulties, the Commissioner will seek to make suitable arrangements to help them make their complaint.

Guidance for Members who are the subject of an inquiry

- 5 NB Members may also wish to consult paragraphs 41-43 below on the publication of information about complaints and inquiries.

Procedure for inquiries

20. Members will be informed about allegations against them when the Commissioner has decided there is sufficient evidence to justify initiating an inquiry. The Commissioner will
10 write to the Member concerned. In this letter the Commissioner will: tell the Member the nature of the allegation; set out the relevant rules of the House; provide the Member with the evidence supporting that allegation; and ask the Member for their response. What is asked of the Member is to give a full and truthful account of the matters which have given rise to the allegation.

15 21. In the course of the inquiry the Commissioner may ask the Member follow-up questions, seek evidence from any witnesses, including any identified by the Member, and consult authorities such as the relevant Department of the House of Commons, or the Registrar of Members' Financial Interests. The Commissioner may interview the Member in the course of the inquiry, and will always see or speak to the Member if the Member so
20 requests. When interviewing the Member, the Commissioner will normally make a record of the interview and subsequently clear that record with the Member to ensure its accuracy. In some circumstances, the Commissioner will instead record the interview and clear the transcript with the Member.

Evidence to inquiries

22. Under paragraph 19 of the Code of Conduct Members are required to cooperate, at all stages, with any inquiry. The Committee may also exercise its power to summon persons, papers and records, either independently or at the Commissioner's request.

- 5 23. A Member has the right at any time to provide any evidence he or she wishes to the Commissioner, including drawing attention to the names of any witnesses which he or she believes to be material to the consideration of the allegation. Except where an Investigatory Panel has been appointed (see paragraph 40 below), the Member does not have the right to cross-examine directly witnesses who may have given evidence in support of the allegation.
- 10 However the Commissioner will put to the Member all material evidence in support of the allegation so that the Member may have an opportunity to challenge it if he or she so wishes.

24. Any evidence which a Member supplies can be expected to become public, although the Commissioner and the Committee are ready to consider requests for the deletion of
- 15 confidential and personal information which is not relevant to the resolution of the inquiry.

Concluding an inquiry

25. The role of the Commissioner as an investigator is to report the facts as found and offer the Commissioner's own conclusion on whether the Code has been breached. Paragraph 3
- 20 above sets out the normal outcomes of an inquiry. Before reaching his or her conclusions, the Commissioner will share the draft factual sections of any report to the Committee with the Member so that the Member has an opportunity to comment on them. The Commissioner will include in this report the Member's evidence, both in the body of the report and as annexes.

Legal advice

26. Members may, at their own expense, take legal advice on an allegation if they so wish and be assisted by such advice in responding to the Commissioner. However, the

Commissioner will expect Members to respond to enquiries (whether orally or in writing) for themselves. Members may, if they so wish, be accompanied by a lawyer or an adviser at any interview with the Commissioner.

The role of the Committee on Standards and Privileges

5 27. The Commissioner will inform the Member (and the complainant) when a report has been submitted to the Committee on Standards and Privileges. The Clerk of the Committee will let the Member concerned have a copy of the Commissioner's report shortly before the Committee first meets to consider the report. The Member thus has the opportunity, if he or she so wishes, to let the Committee have any written comments on the
10 full report. The Committee expects that any such comments will focus on the Commissioner's conclusions, as any dispute about facts should have been addressed earlier. In serious cases the Committee will always give the Member an opportunity to be heard before recommending the imposition of a penalty, but it is able to deal with most of the cases which come before it without taking oral evidence from the Member. In the last
15 resort the Committee may require a Member to attend and to produce any documents it requires.⁴

28. A Member appearing before the Committee may be accompanied by an adviser such as a solicitor. The role of the adviser is to give advice to the Member about how to answer the questions put to him or her and to help him or her with any papers to which he or she may
20 wish to refer. The adviser may not answer questions on behalf of the Member and may not address the Committee unless he or she is asked a question by a member of the Committee. The Committee does not hear counsel.

29. If the Member wishes the Committee to hear specified witnesses, or wishes the Committee to put specified questions to witnesses, he or she should make representations
25 to the Committee which it will consider.

30. The Committee will decide whether evidence is to be taken in public or in private. Its normal practice is to take evidence in private. The Committee is empowered to refuse leave

⁴ Standing Order No 149 (6)

for the broadcasting of any public session. The Committee's internal discussions are always held in private. Under paragraph 19 of the Code of Conduct Members are prohibited from lobbying a Member of the Committee in a manner calculated or intended to influence its consideration of an alleged breach of the Code.

- 5 31. The Clerk of the Committee will inform the Member and the complainant as soon as the Committee has decided to publish a report, and will make available to each of them an embargoed copy of the report an hour before publication. The report will include, as appendices, the Commissioner's memorandum and supporting evidence and any additional evidence assembled by the Committee. Any material submitted to the
10 Committee by the Member is normally published.

Sanctions

32. If the Committee finds the Member is in breach of the rules, it may recommend a sanction. This could be that the Member make an apology to the House, either in writing or in person, or repay the costs of any misused facilities. In more serious cases it may
15 recommend to the House that a penalty be imposed. In the most exceptional cases the Committee could recommend the expulsion of the Member. A recommendation that the Member should have his or her salary withheld, be suspended or expelled must be debated and approved by the House. The Member will normally be informed privately by his or her Whips of the timing of the debate before the formal announcement is made.

Guidance for witnesses to inquiries

33. The Commissioner has no power to compel witnesses to give evidence. Nevertheless, the Committee itself has power to send for persons, papers and records where these may be relevant to reaching a determination on a complaint. The Committee has indicated that it would use its power in support of the Commissioner if that proved to be necessary. The
25 Committee has indicated its expectation that those asked to give evidence will cooperate fully and frankly with the Commissioner, in the public interest and in the interests of justice.

34. When approaching witnesses, the Commissioner's usual practice is to write informing them of the nature of the investigation and setting out the particular questions or matters where assistance is sought. If interviewing a witness, the Commissioner will normally make a record of the interview, subsequently clearing the record with the witness to ensure
5 accuracy. The Commissioner's office will arrange for witnesses to be repaid the reasonable costs of their travel to London to give evidence to an inquiry. Loss of earnings expenses are not paid.

35. If witnesses so wish, they may give evidence on oath, but are not required to do so. Witnesses may, if they so wish and at their own expense, take legal advice on any matter
10 and be accompanied by a legal adviser (or other 'friend') at any meeting with the Commissioner. They will, however, be expected to answer for themselves (and not through their adviser) any questions put to them.

36. Any relevant evidence which a witness supplies would become public once the inquiry had concluded, either on the Commissioner's webpages or as an appendix to the
15 Committee's report.

37. In certain circumstances, it is possible that the Committee on Standards and Privileges will itself want to hear evidence from a witness. In these circumstances, the Clerk to the Committee will be in touch with the witness about arrangements for the appearance before the Committee. The Committee will decide whether such sessions shall be held in public or
20 in private. Such sessions are usually held in private. Wherever possible, the Committee will inform a witness of the impending publication of the Committee's report.

Parliamentary Privilege

38. Communications between a member of the public and the Commissioner are not covered by parliamentary privilege unless and until the Commissioner has accepted the
25 matter for inquiry. Once the Commissioner has accepted a matter for inquiry, the evidence supplied to that inquiry, and any related correspondence, is covered by parliamentary privilege. Such material also remains confidential unless and until it is published by the Standards and Privileges Committee. If such evidence or correspondence were published

or disclosed to anyone else without the Committee’s agreement, that would be a contempt of the House. Any other material which is made public is not covered by parliamentary privilege. Any attempt to obstruct an inquiry may also be treated as a contempt of the House of Commons.

5 **Standard of Proof**

39. When considering allegations against Members, the Commissioner and the Committee normally require allegations to be proved on the balance of probabilities, namely, that they are more likely than not to be true. Where the Commissioner and the Committee deem the allegations to be sufficiently serious, a higher standard of proof will be applied, namely, that
10 the allegations are significantly more likely than not to be true.

Investigatory Panels

40. At any time in the course of an investigation under Standing Order No 150 the Commissioner *may*, and if so requested by the Committee on Standards and Privileges *shall*, appoint an Investigatory Panel to assist him or her in establishing the facts relevant to
15 the investigation. The provision for an Investigatory Panel was recommended by the Committee on Standards in Public Life in 2002, which suggested:

20 “The Panel would be involved only in cases where the facts are disputed by the MP, and which carry the potential, if proved, of a serious penalty.....The criteria would be that proof of the complaint would be likely to lead to the imposition of a serious penalty on the Member and that there appeared to be significant contested issues of fact which could not properly be decided unless the Member was given the opportunity to call witnesses and/or to cross-examine witnesses supporting the complaint.”⁵

Standing Order No 150 provides further detail on the procedures for such a panel.

25 **Publication of information about complaints and inquiries**

41. The Commissioner publishes monthly updates on his or her caseload including the names of any Members under inquiry and the general category in which the inquiry comes. Outside of these updates the Commissioner will confirm, in response to enquiries,

⁵ Committee on Standards in Public Life, Eight Report, November 2002, Cm 5663, paragraph 6.28

that a complaint has been received against a Member, that a Member is subject to an inquiry, or, at a later stage, whether that inquiry has concluded. However, the Commissioner will not at any time discuss details of a complaint or inquiry with third parties.

5 42. Where a memorandum has been submitted to the Committee the Commissioner's report is published as an appendix to the report of the Committee. Where the Commissioner has resolved a matter him- or herself—whether by the rectification procedure or not upholding the complaint—the determination letter and the relevant evidence on which that decision is based will be published on the Commissioner's
10 webpages shortly after the inquiry has concluded.

43. The Commissioner's office will provide general, factual information to the press and others on request about the system for regulating Members' conduct and investigating complaints. However, neither the Commissioner nor his or her staff will talk to the press or
15 others about any individual complaint other than within the framework agreed by the House and summarised in this note. The Chair of the Committee will normally take the lead in dealing with inquiries from the press about the published reports of the Committee.

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Parliamentary Commissioner for Standards

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