

Parliamentary Commissioner for Standards (PCS)

Oversight of Independent Complaints and Grievance Scheme (ICGS) investigations into Members of Parliament (MPs)

1. The role of the PCS in ICGS cases differs from that of some of the other Scheme decision-makers insofar as she has been given an oversight role as well as a decision-making role.
2. This follows from House of Commons Standing Order 150(2)(f) which says that it is the duty of the PCS to:

“oversee investigations and make findings in cases against Members under the Independent Complaints and Grievance Scheme; to refer such cases to the Independent Panel of Experts where a sanction beyond her powers is contemplated; and to assist the Panel and its sub-panels in its work.”
3. This paper explains how the PCS will oversee ICGS investigations of MPs, and the respective roles of the PCS and the ICGS team in the investigation process.
4. All ICGS investigations are undertaken by independent, external investigators (IIs) drawn from a panel selected for their knowledge, skills, and experience in fields relevant to bullying, harassment and sexual misconduct allegations. Each investigation is governed by a contract between the II and the Corporate Officer of the House of Commons, which is managed by the ICGS team. ICGS investigations where an MP is the respondent will be conducted by IIs recruited by the ICGS but only IIs on a list previously approved by the PCS and provided with a general PCS induction and guidance will be used for cases will be overseen by the PCS. If there is no II available from the list, the ICGS team will contact the PCS to discuss possible alternatives.
5. The same standards apply to the investigation of a complaint against an MP under the bullying & harassment or sexual misconduct policy as in any other case, and the same processes will be followed except so far as necessary to reflect the PCS’s independent oversight role specified in the Standing Order. The PCS and the ICGS team will liaise regularly to ensure that, so far as possible, consistent processes and standards are followed.

The PCS’s role: general

6. The PCS’s oversight begins after the Initial Assessment (IA) is signed off or after a failed informal resolution. Her role is broadly to exercise oversight during the investigation, to ensure the investigation is being conducted fairly and thoroughly and without undue delay. She will receive evidence as it is collected and ensure

that relevant evidence is being collected and irrelevant evidence is not collected. At the end of the investigation the PCS will receive and review the report of that investigation with all the evidence and, considering the II's recommendations, to decide whether a breach of the policy has occurred. In certain circumstances, she may decide what remedial action is necessary to resolve any breach of the rules.

7. The Delivery Report identified three key principles for ICGS investigations: "*fairness, due process and proportionality*". This applies regardless of whether the respondent is an MP, a member of the House of Lords, an employee of either House or anyone else. Although expressed differently, these principles are consistent with those to which the PCS has long been committed: independent, fair, thorough, and impartial investigations.
8. The PCS's oversight of investigations involves, but is not limited to, satisfying herself that these principles have been followed. She does not direct the investigations but will meet the II at the start of the full investigation and have sight of the investigation plan. She may ask the II to pursue additional lines of enquiry or query why lines of enquiry are justified and check how lines of enquiry are reasonable, proportionate and necessary and how they will assist in proving or disproving the allegations on the balance of probabilities (see paragraphs 22 to 26 below). The PCS does not manage the independent external IIs – that is done by the ICGS team.
9. The PCS does not constrain or direct judgements made by an II. She does, however, require updates while investigations are in progress, so that she may be satisfied that due process is being followed. These updates may include the investigation plan, details of witnesses to be interviewed, and lines of inquiry being pursued. The PCS must be kept informed of the impact of the investigation on the health and wellbeing of the parties so that they may be signposted to appropriate support if necessary.
10. The investigation is an inquisitorial, not an adversarial, process. The process must be thorough, fair, and proportionate to the seriousness of the allegations.
11. On receipt of an II's report, the actions the PCS takes include examining very carefully the evidence the II has gathered. The PCS considers whether the II has made all necessary enquiries and, if they have not, she may ask them to make more. The PCS checks that their recommendations are evidence-based, that they are founded on all the relevant evidence and that they have discounted any irrelevant information.
12. The PCS also checks that the correct standard of proof has been applied by the II. The standard of proof for investigations conducted under the Scheme is the balance of probabilities, i.e. that on the evidence the event is more likely than not to have occurred.

The role of the ICGS team in MP cases: general

13. The ICGS Director is accountable for: the quality and cost effectiveness of investigations carried out by IIs and the overall service they provide; monitoring IIs' suitability and expertise; and ensuring that they apply consistent processes and standards so far as possible, including receiving evidence as it is collected, and quality assuring investigators' reports with all the evidence. Furthermore, as indicated above, the Director and her team manage contracts with IIs, including those relating to the investigation of an MP.
14. So that the ICGS Director and her team can effectively perform these functions, there will be regular communications between the PCS and the ICGS team. The PCS will ensure in particular that they copy to the ICGS team substantive emails and other exchanges between her office and the II. Where the PCS directly commissions the II to carry out further work, this will be discussed first with the ICGS team.

Initial Assessment

15. When a Formal Complaint about a Member is received by the ICGS team, it is allocated by them to an II for an initial assessment (IA). The II makes this assessment, which determines whether the complaint is eligible under the scheme. The ICGS team will inform the PCS (a) that a complaint has been made against an MP and (b) the name of the Member. This will help the PCS prepare to carry out her oversight role, which begins when she receives the final initial assessment report from the ICGS team.
16. The II sends the IA report to the ICGS team for quality assurance. The ICGS team quality assures the report in line with the team's QA tool.
17. Once the initial QA is completed by the ICGS team, the II considers any amendments or comments. The ICGS team then refers the IA report and any supporting evidence to the PCS. The PCS reviews the report, ensuring that the IA clearly defines each allegation, summarises notes of their interview with the complainant explains how each allegation meets the relevant definitions and their impact on the complainant, lists any allegations the II recommends should not be taken forward to a full assessment, sets out what steps have been taken to explore informal resolution, and sets out whether the II considers informal resolution appropriate and why. If she has concerns, she will relay these to the ICGS who will contact the II if necessary.
18. When the ICGS team and PCS are satisfied with the quality of the IA, the II sends it back to the complainant to sign it off. If the II decides that the IA does not progress to full assessment, the ICGS team informs the complainant of their right to a review. The ICGS team will consider any request for a review and if appropriate appoint a new II to carry out the review. When any review has been completed by the Director of the ICGS, the IA will be passed to the PCS for

information. This process enables the PCS to monitor all complaints about Members and have an overview of the situation that she would not have if complaints resolved at the first stage did not come to her.

19. The PCS will then contact the Complainant to inform them of the outcome of the initial assessment if it is going to a full assessment. (The II will inform the Complainant if it is not). She will also inform the Respondent if the case goes to a full assessment. The PCS will notify the ICGS team in advance of the date on which the Complainant and (if applicable) the Respondent are to be informed so that the team member responsible for well-being issues can be prepared.

Informal resolution

20. Should the II conduct an informal resolution process the II will, once this process is complete, provide to the PCS and the ICGS team a document setting out:
- a. the chronology of the informal resolution process;
 - b. whether the approach has been successful;
 - c. confirmation that both parties have agreed to informal resolution, and the details of any agreement;
 - d. an explanation of why informal resolution has failed (if it has); and
 - e. any next steps.

Full Assessment

21. Should the IA find that there is a complaint that requires investigation, the PCS will ask the ICGS team to commission the same or another II to undertake the full assessment. The ICGS team will appoint an II from a list previously approved by the PCS and provided with a general induction and guidance for investigating PCS cases. If there is no II available from the list, the ICGS team will contact the PCS to discuss possible alternatives. The PCS will use her discretion, and again consult the ICGS team, when considering whether to commission a different II.
22. The II commissioned to undertake a full assessment will meet the PCS and ICGS team at the start of the investigation. The II will be asked by the PCS to draft an investigation plan outlining:
- a. lines of enquiry to be conducted, and any that have been considered, including the rationale for conducting (or not) these lines of enquiry.
 - b. witnesses to be interviewed, with an explanation for why their evidence is considered relevant to the allegations.
 - c. any identified risks to the investigation; and
 - d. a draft timeline for the investigation.
23. The plan will be provided by the II to the PCS and the ICGS team.

24. PCS then makes any comments necessary for the II's consideration, in line with her oversight responsibility. Once this process is complete, PCS will sign off the investigation plan (copying in the ICGS team).
25. During the investigation, the PCS will review the progress of the investigation. This can take the form of:
- a. receiving evidence as it is collected;
 - b. meeting with the II and ICGS team to receive a weekly progress report on the full assessment. Any meeting will be documented, with any comments made by the PCS recorded;
 - c. the II providing a written update for review by the PCS;
 - d. PCS reviewing the investigation log and record any oversight comments on the log.
26. The review is a key means by which the PCS discharges her oversight function. It may include:
- a. reviewing the evidence as it is collected;
 - b. ensuring the II is making relevant enquiries;
 - c. ensuring the II is not pursuing any irrelevant lines of enquiry;
 - d. ensuring all enquiries are reasonable, proportionate and necessary to assist in proving or disproving the allegation(s)
 - e. ensuring that witness statements and evidence collection meets the standards expected in investigations;
 - f. ensuring that the correct definitions as set out in the policies are applied;
 - g. reviewing any risks identified by the II;
 - h. reviewing any considerations made around welfare of the Respondent, Complainant or any witness.
27. When the II concludes the full assessment, they send the full assessment report and evidence bundles to the ICGS team who will then quality assure the report and evidence in line with the team's QA tool.
28. The ICGS team returns the assessment, with their QA comments, to the II who will then be required to send the amended report within two working days back to the ICGS team. The ICGS team will forward this assessment together with supporting evidence to the PCS with any comments made on the report by the team but not accepted by the II.
29. The PCS scrutinises the report in line with her oversight function. This includes ensuring that:
- a. the evidence is accurately reflected in the report;
 - b. the correct definitions are applied;
 - c. the report includes the evidence relevant to the allegation(s);

- d. the recommendations are supported by objective, evidence-based analysis.
30. Should it be necessary, PCS will return the report to the II with her comments, copying in the ICGS team. The PCS may request the II to carry out further investigation. She may also consult with the ICGS team about the appointment of a new investigator; and the ICGS team will then, in consultation with the PCS, engage a second investigator (who will be from the list approved by the PCS) if one is needed.
 31. The II considers any comments and re-submits the assessment to the PCS. If necessary, the PCS will scrutinise the assessment again.
 32. Once the assessment is signed off by the PCS, the II will provide a copy of the report to the Complainant and Respondent. The Complainant and Respondent are given the opportunity to:
 - a. check the assessment for factual accuracy;
 - b. raise any concerns they have about the investigation process;
 - c. raise concerns about evidence not considered or witnesses not interviewed.
 33. The II will address any comments by the Complainant and Respondent, and submit the full assessment report to the PCS.
 34. The PCS contacts the Complainant and Respondent to inform them that she has received the final version of the report and will scrutinise both the report and accompanying evidence. At this stage, the PCS takes responsibility for updating the Complainant and Respondent about the investigation. PCS then, as decision-maker, determines the complaint from the following options:
 - a. complaint not upheld: no further action will be taken;
 - b. complaint upheld but resolvable by the PCS using her powers of sanction;
 - c. complaint upheld but cannot be resolved by the PCS using her powers of sanction, in which case PCS will refer the case to the Independent Expert Panel (IEP).
 35. The PCS will inform the complainant or (as the case may be) the respondent of their right of appeal to the IEP.

Review

36. The PCS and the Director of the ICGS will review the policy and agree any amendments within four weeks of the agreed review date as follows:
 - a. December 31st 2022 (end of trial period)
 - b. annually on 1st January;

- c. within 6 months of the appointment of a new PCS;
- d. by agreement to discuss issues arising in the light of experience.

20th June 2022