



HOUSE OF LORDS

House of Lords Commissioner for Standards
Annual Report 2018–19



Foreword

This report covers the period 1 June 2018 to 31 May 2019. During this third year of my appointment, I received 24 complaints, of which I investigated five.

This year marked a significant step with the House agreeing to the incorporation of the Parliamentary Independence Complaints and Grievance Scheme into the Code of Conduct for Lords Members and Members' Staff on 30 April 2019. This important development addresses accounts and allegations of a culture of bullying and sexual harassment at Westminster as well as other inappropriate behaviour that surfaced in November 2017. Although the new Code came in at the end of this reporting year, I take this opportunity to provide some information about the changes and how they have affected my work.

The revised Code now contains explicit references to bullying, harassment and sexual misconduct. Paragraph 10 says:

“Members of the House should observe the principles set out in the Parliamentary Code of respect, professionalism, understand others' perspectives, courtesy, and acceptance of responsibility. These principles will be taken into consideration when any allegation of bullying, harassment or sexual misconduct is under investigation.”

Paragraph 17 says “Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy” and makes clear that “behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code.”

Previously the scope of the Code only covered a Member's parliamentary duties, and this remains the case for most requirements of the Code. However, where complaints of behaviour amounting to bullying, harassment or sexual misconduct are concerned, the scope has now been extended to cover “the standards of conduct expected of members in performing their parliamentary duties and activities whether on the parliamentary estate or elsewhere.”

The specific bullying, harassment and sexual misconduct provisions have been made retrospective to 21 June 2017. However, the Code also provides that conduct “that took place before this date may still constitute a breach of personal honour”. This provision, like the rest of the Code, applies to complaints of conduct that took place up to four years ago, with the possibility of earlier conduct being covered in carefully defined circumstances.

The procedure for dealing with such complaints has also been amended to protect the interests of both complainants and respondents.

As a result of these changes, some complaints which had previously been outside the scope of the Code were resubmitted and accepted by me for investigation. These will be discussed more fully in my next annual report.

Lucy Scott-Moncrieff CBE
Commissioner for Standards

Review of the year

Investigations

Lord Lester of Herne Hill

Alongside the five complaints received in this reporting period that I investigated, this year also saw the conclusion of my investigation into the conduct of Lord Lester of Herne Hill started the previous year. The complaint against Lord Lester alleged he had sexually harassed the complainant, offered corrupt inducements to have sexual relations with her and threatened her with unspecified consequences if she refused, all tied to his parliamentary duties. In my report to the Sub-Committee on Lords' Conduct I concluded that Lord Lester had breached the Code of Conduct by failing to act on his personal honour. The Sub-Committee considered my report and recommended expulsion from the House, reporting to the Committee for Privileges and Conduct. Lord Lester then appealed against my finding and the proposed sanction. The Committee for Privileges and Conduct heard his appeal. Though they upheld my finding, they amended the Sub-Committee's proposed sanction from expulsion to a period of suspension from the House until 3 June 2022. Accordingly, the Committee reported its findings to the House.

The House debated the Committee's report but agreed an amendment to the approval motion to refer the issue back to the Committee. The Committee reconsidered its conclusions but maintained its original decision and reported to the House again.

Before this second report was debated, Lord Lester resigned from the House. The debate on the second report went ahead regardless and the committee's report was agreed.

Lord Barker of Battle and Lord Fairfax of Cameron

I investigated complaints against Lord Barker of Battle and Lord Fairfax of Cameron. The complaints concerned alleged financial links between the two peers and businesses with interests in Russia. The complainants also alleged that they were using their status as members of the House to lobby on behalf of these businesses and, indirectly, for the Russian state. I investigated the complaints but found that neither provided sufficient evidence to demonstrate that the Code had been breached and that the responses from both members refuted the allegations effectively. Accordingly, the complaints against both members were dismissed.

Lord Hain

I investigated several complaints against Lord Hain that concerned his decision to name Sir Philip Green on the floor of the House as the senior executive who was the subject of allegations of inappropriate conduct in the case of *ABC & Others vs The Telegraph Media Group Limited*. An interim injunction had been granted to prevent the

disclosure of Sir Philip's identity pending further court proceedings. Lord Hain's actions broke that injunction. The complainants alleged that as Lord Hain had a role as a Global and Governmental Adviser to Ince Gordon Dadds LLP, the law firm acting on behalf the Telegraph Media Group Limited, he had breached the Code by:

- failing to declare his role with Ince Gordon Dadds LLP when he spoke in the Chamber; and
- acting as a paid advocate for Ince Gordon Dadds LLP.

It was also alleged that he broke the House's *sub judice* resolution and abused parliamentary privilege.

I investigated the aspects of the complaints relating to Lord Hain's connection with Ince Gordon Dadds LLP. Matters relating to the House's *sub judice* resolution and the use of privilege are outside my remit.

Lord Hain's account of his decision-making process leading to his statement in the Chamber demonstrated that he had not read the judgment which made Ince Gordon Dadd's involvement clear and had therefore been unaware of their involvement. I concluded he could not be held in breach of the Code for failing to declare an interest he did not know was relevant. However, I emphasised the importance of members considering their actions in the House very carefully and to take advice where necessary to avoid potential breaches.

Lord Singh of Wimbledon

I investigated a complaint against Lord Singh of Wimbledon by Mr Bhai Amrik Singh, Chair of the Sikh Federation (UK). He alleged Lord Singh had failed to register his interest as Director of the Network of Sikh Organisations (NSO) in the Register of Lords' Interests and had also failed to declare this interest when intervening in the second day of the Grand Committee on the Offensive Weapons Bill on 30 January 2019.

While I believe there was no attempt on the part of Lord Singh to conceal an influence or mislead the public, I did conclude that the Code had been breached in relation to both non-registration and non-declaration of a relevant interest. This case was resolved by remedial action. Lord Singh took advice from the Registrar of Lords' Interests and updated his entry to include his Directorship of the NSO. He also wrote an apology to the chairman of the Sub-Committee on Lords' Conduct, Lord Brown of Eaton-under-Heywood.

Lord Deben

I received several complaints against Lord Deben that stemmed from a Mail on Sunday article alleging that Lord Deben's company, Sancroft, had financially benefitted from "green" businesses. Although Lord Deben often declared his interest as Chairman of the Climate Change Committee, the complaints argued that his involvement to Sancroft was also relevant to debates concerning environmental matters and, on several occasions, should have been declared.

Following my investigation, I decided to dismiss the complaints against Lord Deben. While Sancroft advised clients on sustainability, the evidence provided and gathered did not show that there was a sufficiently close link between Sancroft's work and the debates in the House in which Lord Deben took part to make declaration necessary. For the Code to have been breached the connection between the interest and the matter under discussion needed to be clearer than simply being related to the broad policy topic.

Complaints in general

19 complaints were received which did not pass preliminary assessment and therefore were not investigated. As with previous years, these complaints were not investigated for a variety of reasons, often falling outside the scope of the Code of Conduct and therefore my remit of investigation.

Complaints dismissed which did not pass preliminary assessment often concerned a member's views or opinions expressed on Twitter, and other activities within roles outside their parliamentary duties.

The House of Lords Code of Conduct, as it was during almost all of this reporting period, covered members' parliamentary duties only. It did not extend to their performance of duties unrelated to parliamentary proceedings. Furthermore, a member's views and opinions are outside my remit. Therefore, their views and opinions, which I interpret as including the way they express such views and opinions, are not within the scope of the Code, unless they relates to their parliamentary duties or activities **and** are alleged to constitute bullying, harassment, sexual misconduct. Accordingly, comments on Twitter and other social media platforms, regardless of how offensive they are perceived to be were outside my remit.

Using the revised Code to investigate complaints of bullying, harassment and sexual misconduct

Concerning all complaints alleging bullying behaviour constituting, harassment, sexual misconduct, I will continue to apply the principles that are implicit in the Code in reaching decisions as to the appropriate ways to proceed and sanctions to recommend.

These include:

1) Proportionality

The first principle is that of proportionality. This is implicit in the Code and the Guide to the Code, which envisage a range of appropriate outcomes in the event of a breach. Some of these can be recommended by me but must be agreed by the Conduct Committee and imposed by the House. Others can be decided by me with the agreement of respondent and, in cases of bullying, harassment and sexual misconduct, the complainant.

Remedial Action

An outcome agreed to by the complainant and respondent is referred to as “remedial action”. The Guide to the Code sets out where such an outcome might be proportionate and what it might involve:

“Remedial action may be agreed if the complaint, through justified, is minor and is acknowledged by the member concerned.” (paragraph 140 of the Guide to the Code)

“In cases involving bullying, harassment or sexual misconduct any remedial action recommended at the end of an investigation will need to be agreed by both the member and the complainant and possibly negotiated through mediation. Remedial action in such cases may include the respondent apologising to the complainant or agreeing to attend appropriate training.” (paragraph 141 of the Guide to the Code)

““Minor”, in this context, does not mean trivial, and does not imply that the effect on the complainant has been minor. Rather, it acknowledges that in the full range of behaviours covered by the provisions, the behaviour complained of is at the lower end of the range.

Allegations of bullying, harassment or sexual misconduct may only be dealt with by remedial action with the consent of both the complainant and the respondent. Although their consent is necessary, it is not sufficient; I also have to decide that is a proportionate response.

If the respondent is the subject of complaints relating to conduct similar to that previously dealt with by remedial action, I would take into account this apparent lack of modification in his or her conduct when considering whether further remedial action would be appropriate.

Sanctions imposed by the House

Some sanctions can only be imposed by the House: suspension, denial of access to the system of financial support for members or the facilities of the House, and expulsion. These are the more severe sanctions available and would be used where the behaviour complained of was at the higher end of the range.

It may also be necessary to resort to a sanction imposed by the House for less serious breaches if remedial action, even if considered proportionate by me, cannot be agreed by the parties or is not proportionate as it has proven to be ineffective in the past.

Agreed resolution

The Guide to the Code of Conduct also provides for an outcome prior to any finding by “agreed resolution”:

“At any time during an investigation involving bullying, harassment or sexual misconduct the Commissioner may reach an agreed resolution with both the complainant and the member under investigation. At the Commissioner’s discretion, such an agreed resolution can bring the investigation to an end. In this case, it is at the discretion of the Commissioner, having consulted the complainant and the member, whether a report is published on her webpages on the parliamentary website.” (paragraph 143)

This outcome differs from remedial action in that:

- no finding is reached;
- no sanction is imposed (though the parties may agree to some action as part of the agreement); and
- a report is not necessarily published. If no report is published, the existence of the complaint and investigation will remain confidential indefinitely.

The Guide to the Code does not stipulate when this course of action might be suitable but I would expect it to be the exception rather than the norm, and would expect it only to apply as a result of the particular circumstances of the case.

Two factors to which I would anticipate paying particular attention when considering a request for an agreed resolution would be the motivation behind any such request and the need for the enforcement of the Code of Conduct to be as open and transparent as possible.

In particular, I would want to be sure that a complainant was choosing an agreed resolution in his or her own interests, rather than those of the respondent, and that a respondent who disputed the accuracy of the complainant’s account was not agreeing to this outcome simply to avoid publicity.

2) Openness and Transparency

The principles of openness and transparency may be relevant when considering proportionality. If I or the Conduct Committee uphold a complaint, the Code requires that a report is published naming the respondent. Publication is not a sanction, but the effect of publication is in my view a matter that I can take into account when considering the proportionality of any sanction I may impose, as publicity may itself be a very effective catalyst for change in the respondent’s behaviour.

The educative benefits of openness and transparency require me in most, if not all, cases to publish in my report significant details of the respondent’s agreed and alleged behaviour, and its effects on the complainant. This is the case even though the respondent may be deeply embarrassed at the descriptions of the behaviour, and the effects of the behaviour on the complainant, being made public. Publishing the details allows readers to assess whether their own behaviour requires modification to avoid the possibility of a complaint being made and upheld and allows readers who may have been affected by similar or equivalent behaviour to recognise that they have a remedy.

Publishing the details also shows members of the House the behaviour of their colleagues that they should be challenging in accordance with paragraph 9(g) of the

Code which requires them to show leadership by challenging poor behaviour wherever it occurs, and the requirement in the Behaviour Code to speak up about any unacceptable behaviour they see. All these effects, over time, should improve the working environment of the House of Lords.

However, against these benefits has to be set the risk of causing upset or offence to some readers by setting out this material. I am convinced that my reports must reflect fairly and fully the evidence I gather in the course of an investigation, without censoring, concealing or minimising events and reactions described, or views expressed, as I believe this transparency is essential in helping the House of Lords to be a workplace where everyone is valued and respected, and where it is clear that bullying, harassment and sexual misconduct are not tolerated. To protect readers from unexpectedly coming across material which may distress or anger them, introductions to reports will contain a warning which will specify the nature of the material under discussion.

3) Fairness and natural justice

The Guide to the Code of Conduct states that:

“In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner and the Conduct Committee shall act in accordance with the principles of natural justice and fairness.” (paragraph 129)

The question of how the rules of natural justice apply to the respondent was extensively discussed in a previous investigation . The requirement of fairness applies to both complainant and respondent, and here I set out how I interpret this principle.

I do not give any advantage to one or the other in the investigatory process; for both I offer the same options and conduct interviews in the same way. I seek documentary or third-party corroboration of any disputed evidence and assess the reliability of evidence using the same criteria for both parties, which does not include any assumption that status, power or reputation makes one person's evidence inherently more reliable than that of someone of lesser status, power or reputation.

Where there are points in an investigation where the parties must agree to a proposal, I will take particular care to ensure that agreement is freely given, and for the right reasons.

Paragraph 133 of the Guide to the Code says that “Members, and in cases involving bullying, harassment or sexual misconduct the complainant, are given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied.”

Paragraph 147 of the Guide to the Code sets out the process for this, requiring me to “share with the member a draft of those parts of my report dealing with issues of fact.” The respondent then has the “opportunity to comment on it.” Through paragraph 147

does not make it explicit, it is consistent with paragraph 133, and fairness requires, that the complainant should also have an opportunity to comment on the factual accuracy of my report in every case of bullying, harassment or sexual misconduct, and where agreed resolution or remedial action are under consideration should be asked to do so before reaching their views on what is under consideration.

Fairness also requires that where mediation is under consideration at an early stage in the investigation, any response to the complaint by the respondent will be made available to the complainant before mediation takes place, even if no report of the facts has been prepared.

The Complaint Process

If an individual is considering making a complaint it is important to note that by seeking support from sources including the independent helplines, they are not committing themselves to making a formal complaint but can also simply raise concerns.

I hope those who have experienced bullying, harassment or sexual misconduct will now feel confident that they have a user-friendly way to raise concerns and make complaints that will be dealt with fairly and robustly.

Any complaint alleging that a member of the House of Lords, or a member of their staff, has breached the Code of Conduct, other than in respect of bullying, harassment and sexual misconduct provisions, whether made by another member of the House of Lords or by someone outside the House, should be sent by email or in writing.

Anyone making a complaint about bullying, harassment or sexual misconduct by a member, or a member of their staff, may either complain directly to my office via email to lordsstandards@parliament.uk or in writing to:

The House of Lords Commissioner for Standards
House of Lords
London SW1A 0PW

They may also choose to submit their complaint by calling the independent helplines established by both Houses to receive such complaints and provide support to complainants:

- Independent Bullying & Harassment Reporting Helpline: 0800 028 2439 or disclosure@healthassured.co.uk
- Independent Sexual Misconduct Advisory Service: 0800 1124 318 or isma@solacehub.org

Lucy Scott-Moncrieff, 11 February 2020