

Parliamentary Commissioner for Standards
 Review of the Code of Conduct for Members of
 Parliament
 Consultation Paper

7 March 2011

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Introduction

1. This consultation paper invites views on the scope and content of the House of Commons Code of Conduct for Members of Parliament.
2. This is the first review of the Code of Conduct since my predecessor reviewed it in 2004. That review took place just two years after the Committee on Standards in Public Life had reported on standards of conduct in the House in November 2002.¹ The Committee recommended that the Parliamentary Commissioner for Standards should initiate a review of the Code (and of the Guide to the Rules) once in each Parliament. No such review was held in the last Parliament. It seemed right to give Members of the new Parliament, and others, an opportunity to review the Code afresh in the light, among other things, of the lessons of the last Parliament and today's expectations and standards.
3. This consultation, therefore, provides an opportunity for a fundamental review of the Code in the light of experience over the past six years. The paper identifies a series of possible changes. It has done so to enable consultees to consider and test the provisions of the current Code rather than necessarily to make the case for any change. It is open to consultees to suggest that the Code has stood the test of time and that there is advantage in continuity in the high level principles of the Code over a number of Parliaments. The ideas discussed in this consultation paper should not be taken as suggesting an alternative view. The test of any proposed revision is that it is likely to provide a Code which properly reflects today's general understanding of the obligations on Members and the reasonable expectations of the public.
4. The consultation paper sets out a number of questions for consideration. Consultees are invited to respond to all or any of these questions. Any other points they would wish to have considered would be equally welcome. I propose that all consultees' responses should be published. If respondents wish to have their names or evidence withheld from publication, they should state that clearly in their response with their reasons.
5. Consultees are invited to send responses to this consultation to:

The Parliamentary Commissioner for Standards
House of Commons
London

¹ Eighth Report of the Committee on Standards in Public Life, *Standards of Conduct in the House of Commons*, Cm 5663

SW1A 0AA

or by email to: codereview@parliament.uk

6. Please send responses by 31 May 2011.

7. Having considered responses to this consultation paper, I will prepare a report to the House of Commons Committee on Standards and Privileges with my recommendations about any possible revisions to the Code of Conduct. I would hope to have submitted my report in the autumn.

8. I look forward to receiving responses to this consultation paper.

John Lyon CB
Parliamentary Commissioner for Standards

7 March 2011

Consultation Paper

Background

1. The Code of Conduct for Members of Parliament sets out the standards of conduct expected of Members of Parliament in discharging their parliamentary and public duties. The Code was last revised in 2005, at the beginning of the last Parliament. The current version of the Code is available on the Commissioner's webpages.²

2. The Code takes up little more than three pages and 19 paragraphs. It comprises of sections encompassing the purpose of the Code (section I); the scope (section II); a statement of the public duties of Members (section III); general principles of conduct as recommended by the Nolan Committee on Standards in Public Life (section IV); rules of conduct (section V); the registration and declaration of interests (section VI); and duties in respect of the Parliamentary Commissioner and the House of Commons Committee on Standards and Privileges (section VII).

3. Under Standing Order No. 150³ one of the principal duties of the Parliamentary Commissioner for Standards is to monitor the operation of any Code of Conduct to which the House has agreed and to make recommendations on it to the Committee on Standards and Privileges.

4. The Committee on Standards in Public Life in its Eighth Report in November 2002 said:

“In each Parliament, the Parliamentary Commissioner for Standards should initiate a review of the Code of Conduct and Guide to the Rules.”⁴

5. This consultation paper is in accordance with that recommendation. I had intended to conduct this review towards the end of the last Parliament. But I decided that there would be an advantage in my instead initiating this review early in the new Parliament. This gives the many new Members of the House first elected in May 2010 an early opportunity to contribute to the review of the Code which will govern this Parliament. And it has provided some opportunity to assess the new regulatory landscape following the establishment of the Independent Parliamentary Standards Authority.

² <http://www.publications.parliament.uk/pa/cm/cmcode.htm>

³ SO No. 150(2)(d)

⁴ Recommendation R1 (a) of the Eighth Report of the Committee on Standards in Public Life, Standards of Conduct in the House of Commons, Cm 5663, November 2002

6. The Code of Conduct for Members of Parliament was first agreed by the House on 24 July 1996. This followed a recommendation in the first report of the Committee on Standards in Public Life in May 1995.⁵ An addition was made to the Code in 2002 to make clear that its provisions were not intended to apply to Members in their purely private and personal lives.

7. The last review of the Code of Conduct was carried out by my predecessor in 2004. He reported to the Committee on Standards and Privileges in February 2005. His review was published with the Committee's report on the review.⁶

8. The Committee's report was considered by the House on 13 July 2005, in the early days of the last Parliament. While the House agreed to retain much of the Code as it then was, it approved some restructuring of the Code and some changes to the content and drafting. The amendments clarified the purpose and scope of the Code; extended provisions regarding the misuse of parliamentary allowances to the misuse of facilities and services provided by the House; introduced a statement of Members' duties in respect of the Commissioner and the Committee; introduced a specific non-discrimination provision; revised the structure of the Code and made drafting clarifications to some of its provisions.

9. The Guide to the Rules accompanies the Code of Conduct and provides detailed provisions, principally on the duties of Members in respect of the registration and declaration of their financial interests. A review of the Guide was initiated by the Committee in 2006. It published a consultation document in July 2006.⁷

10. The follow up to that consultation was delayed while consideration was given to the implementation of Section 59 of the Electoral Administration Act 2006. That section allowed Members of Parliament to meet their statutory obligations to provide information to the Electoral Commission by means of information they provided to the Register of Members' Financial Interests. Once the House had agreed in principle to the implementation of Section 59, the Committee on Standards and Privileges published its proposals for a revised Guide to the Rules in January 2009.⁸ The revised Guide was considered and approved by the House of Commons on 9 February 2009. Following further decisions of the House on 30 April 2009 in respect of the registration of the details

⁵ First Report of the Committee on Standards in Public Life, Standards in Public Life, Cm 2850, May 1995

⁶ Committee on Standards and Privileges, Fourth Report of Session 2004-05, Review of the Code of Conduct, HC 472

⁷ Committee on Standards and Privileges, Sixteenth Report of Session 2005-06, Review of the Guide to the Rules relating to the Conduct of Members: Consultation Document, HC 1580

⁸ Committee on Standards and Privileges, Fourth Report of Session 2008-09, Dual Reporting and Revised Guide to the Rules, HC 208

of all Members' outside employment, a revised Guide to the Rules was published in June 2009, and further updated in May 2010. It will require further revision following the decision of the House on 7 February 2011 to reintroduce a threshold for the registration of Members' remuneration from employment outside the House.

11. The Committee on Standards and Privileges has identified a number of other matters covered by the Guide to the Rules which need to be reviewed and revised. The Committee has agreed with my view that there is a strong case for a review of the rules relating to lobbying.⁹ It has also noted that some aspects of the rules in relation to the registration of Members' financial interests, in particular the thresholds for the registration of the remuneration for employment and of gifts,¹⁰ might be further reviewed.¹¹

12. This consultation paper is confined to the Code of Conduct. It does not deal with the Guide to the Rules. Once the House has determined any revision to the Code following this consultation, I would propose to review the Guide to the Rules, including the matters identified by the Committee on Standards and Privileges, and report my conclusions.

Structure of the Code

13. The Code of Conduct for Members of Parliament is short (just over three pages) and is set at a relatively high level of principle. The Code establishes briefly the public duties of Members; it iterates the general principles of conduct established by the Committee on Standards in Public Life; and gives some eight high-level rules of conduct, including the obligation to register and declare interests. Some parts of the Code make Members answerable for their conduct in response to a complaint to the Commissioner. Other parts are at an aspirational level. It is left to Members, and any more detailed rules and guidance, to interpret these principles in any particular situation.

14. Other jurisdictions have adopted different approaches to their Codes. Some, including the National Assembly for Wales and the Northern Ireland Assembly, follow largely the United Kingdom precedent and keep their Code relatively short.¹² Others, in particular the Scottish Parliament, have produced a single Code which covers both principles and more detailed provisions, which together run to some 100 pages.¹³

⁹ Committee on Standards and Privileges, Ninth Report of Session 2010-11, HC 654

¹⁰ Committee on Standards and Privileges, Tenth Report of Session 2010-11, Registration of income from employment, HC 749

¹¹ HC Deb, 7 February 2011, cols 99 and 121

¹² <http://www.assemblywales.org/codeofconduct.pdf>
http://www.niassembly.gov.uk/reports/code_of_conduct.htm

¹³ <http://www.scottish.parliament.uk/msp/conduct/index.htm>

15. The main issue arising from this is whether the Code should seek to establish broad high level principles in relation to the main areas of a Member's conduct, or whether it should seek to be a series of more detailed provisions regulating all the main aspects of a Member's conduct and responsibilities. In other words, should the Code be a principle-based document or a rules-based document? A principle-based document can set a clear and simple framework, but allows scope for differences in interpretation and judgement which can create uncertainty and controversy. A rules-based approach can be complex and hard to follow, encouraging an overly legalistic approach to standards and running the risk of failing to cover every eventuality.

Question 1: Should the Code of Conduct continue to set out only the high-level principles for Members' conduct, or should it provide a detailed rules-based Code?

I. Purpose of the Code

16. The current purpose of the Code is set out as follows:

"1. The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by:

a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing

b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties."

17. This formulation of the purpose of the Code establishes the following principles:

- i. It is there to "assist Members". It seems right that the Code should be focussed solely on Members of Parliament (and not on anyone else). But is it right that it should be there just to "assist" Members? Should it be given a more directive function reflecting more accurately the disciplinary consequences of any failure by a Member to abide by the Code? For example, the purpose of the Code could be "to provide the regulatory framework within which Members discharge their obligations." On the other hand, some might be uncomfortable with the notion that Members of a sovereign Parliament should be under the direction of a Code, albeit one to which Parliament has agreed.
- ii. The Code assists Members in discharging their obligations in three directions: to the House, to constituents and to the general public. Is it right that the Code

- should introduce the notion of Members' obligations at this point? And does it correctly identify the three areas of responsibility—the House, constituents and the public at large?
- iii. The Code provides “guidance”. Yet, in fact, it goes beyond guidance. It sets out rules which Members are required to follow and for which sanctions may be imposed by the House if they do not do so. The rules are, however, relatively broadly drafted, and the Code itself goes wider than just the rules. A greater sense of obligation to abiding by the Code could be introduced by recasting paragraph 1(a) to read something like: “Providing guidance on the standards of conduct to which Members must adhere in discharging their parliamentary and public duties.” Would this be desirable?
 - iv. The Code covers a Member's public duties as well as their parliamentary duties. That suggests that Members must abide by the Code and its specific rules not just when acting in their parliamentary capacity, but also when they undertake public duties which are not strictly parliamentary. It seems right that the Code should not narrowly be confined to a Member's parliamentary work (if by that is meant work in connection with the business of the House), but there may be a question about how far the Code should reach into other aspects of a Member's public life, which is considered in the next section.
 - v. The Code is to reinforce public confidence in the way in which Members perform their duties. It could be argued that that public confidence comes from seeing set out in the Code the expectations in relation to their conduct which must be followed by all Members; and from seeing in the Code how Members can be held to account for their conduct. In these two ways, the Code suggests, the necessary degree of “openness and accountability” is achieved and public confidence is strengthened. It is for consideration whether the Code should be expected to reinforce public confidence. If so, should the current Code (or any successor) be judged on whether it provides sufficient openness (in terms, perhaps, of its clarity and accessibility), and on whether it provides sufficient accountability, to satisfy public confidence in the way Members perform their duties? In other words, is section 1(b) on reinforcing public confidence a necessary part of the statement of the purpose of the Code?

Question 2: Should there be revisions to the expression of the purpose of the Code so as better to reflect its intentions, taking account of the issues discussed in this section?

II. Scope of the Code

18. The scope of the current Code is defined as follows:

“2. The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.”

The second sentence of paragraph 2 relating to what Members do in their purely private and personal lives was added in 2002.

19. The Code therefore seeks to establish a clear distinction between a Member’s public and private life. But is this realistic or desirable?

20. The first matter to be considered is what is meant by the reference to a Member’s “public life”. This matter arose during my inquiry into certain Members who had been duped into meeting an undercover reporter ostensibly to discuss possible employment opportunities once they had left the House after the last Election.¹⁴ Clearly the Code is not intended to apply to anyone who is not a Member: it cannot apply to what former Members do once they leave the House. But should it apply to Members who are undertaking activities which could be said to be part of their public life, but are not in any way linked to their position as a Member of Parliament? For example, should it apply to a Member who continued to participate in the profession they held before becoming a Member, when he or she may anyway be expected to be bound by the code relevant to that profession? Should it apply to a Member who sits on a board of a company, or who acts as a consultant? Is the test whether or not such an appointment or employment is related in any way to their membership of the House? Should a Member only be held accountable for actions which are directly related to their parliamentary duties? Or is it unrealistic and undesirable to try to compartmentalise a Member’s public life in this way? The point is important because, if a Member of Parliament were to conduct themselves reprehensibly in some public role which was not strictly related to their membership of the House and this were not covered by the Code, then, however unacceptable the behaviour, it could not be held to have brought the House into disrepute, and the House would have no way of sanctioning the Member.

¹⁴ Committee on Standards and Privileges, Ninth Report of Session 2010–11, HC 654

21. The Code as presently drafted appears to apply to “all aspects” of a Member’s public life, including their activities in the public sphere, such as outside employment, even where it is not specifically related to their work or position as a Member of Parliament. If it were to be more narrowly defined, reference to “all aspects of a Member’s public life” might need some revision.

Question 3: Should the Code apply to all aspects of a Member’s public life, or only those aspects related in some specific way to their position as a Member of Parliament?

22. Paragraph 2 raises a second question: which is whether it remains right to exclude all aspects of a Member’s “purely” private and personal life. Members of Parliament, as anyone else, are entitled to a private life: and are entitled to keep it private. That is a fundamental human right. But it is for consideration whether there could come a point where the conduct of the Member’s private and personal life might be held to be so outrageous as to bring the House of Commons as an institution into disrepute. By excluding such conduct from the ambit of the Code, the House has no means of disciplining the Member for having brought the House into disrepute. Is that acceptable? Or is there a point where such conduct might affect the reputation and standing of Parliament and parliamentarians as a whole? If so, how could such a requirement be articulated without drawing into the Code too great a range of a Member’s personal conduct? Would it be sufficient to add something on the lines of: “except when the conduct of their private and personal life seriously damages the standing of Parliament or the reputation of its Members as a whole”? Or would this encourage others unreasonably to intrude in and publish private details of a Member’s personal life under the cover of the Code?

Question 4: Should the scope of the Code extend to some aspects of a Member’s private and personal life? If so, how should that be expressed in the Code?

III. Public Duties of Members

23. The public duties of Members are set out as follows:

“4. By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

5. Members have a duty to uphold the law, including the general law against discrimination, and to act on all occasions in accordance with the public trust placed in them.

6. Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.”

24. These paragraphs remind Members of the oath they take on election, their legal duties, and their wider public duties. It is for consideration whether the second half of paragraph 5, which otherwise relates to legal duties, should be moved to paragraph 6, since the requirement to “act on all occasions in accordance with the public trust placed in them” is a general duty and not a legal requirement.

25. The reference to a Member’s “special duty to their constituents” could be interpreted as an obligation to provide advice and support to each individual constituent. Or it could be interpreted as a general duty to take account of the interests of all their constituents (but without an obligation of service to each one). Or it could be taken as a duty to reflect the views and interests of their constituency as a whole to set alongside their general duty to the whole nation. These are not mutually exclusive. But if the duty were to cover the first option (an obligation of service to individual constituents), there is an argument that this should be made explicit in the Code. And it would be necessary to consider if that obligation should be enforceable through the disciplinary complaints process.

26. The Code of Conduct for Members of the Scottish Parliament addresses this matter. It introduces an obligation on Members to be accessible to those they represent and to represent their interests conscientiously.¹⁵ The Scottish principle leads on to much fuller guidance about the way a Member is expected to conduct relationships with their constituents. It is for consideration whether any general statement about a Member’s duty to their constituents could stand by itself or whether it would require more detailed codification (perhaps as a new part of the Guide to the Rules), and whether such codification is desirable or necessary for the House of Commons.

27. It is also for consideration whether any general duty on a Member in respect of their constituents should be seen as aspirational, or whether it should form part of the disciplinary section of the Code. At present, the Commissioner cannot consider

¹⁵ <http://www.scottish.parliament.uk/msp/conduct/coc-v1.htm>. This is at paragraph 3.1.5 of the key principles.

complaints about a Member's handling of, or decision about, an individual case.¹⁶ The inclusion in the Code of a specific obligation for Members (for example, to be accessible to constituents and to represent their interests conscientiously) could reduce public confidence if there was no way for a constituent to complain that this obligation had not been met. But once a Member is subject to review by the Commissioner and a decision of the House about how he or she carries out his or her constituency duties, there must be a real risk that the Member becomes answerable to the House and not to their constituents for the way they conduct their relationships with those constituents. It has been thought an important principle that the House should not intervene between the Member and their constituents, and that in conducting their constituency business, neither the Commissioner nor the House should be able to substitute their judgement for that of the constituency Member. Should that principle now be changed?

Question 5: Should there be a general duty or duties in respect of a Member to their constituents? If so, how should these be phrased?

Question 6: Should there be a fuller codification of any such duties?

Question 7: Should a Member who failed in these obligations to their constituents be subject to disciplinary sanction in the House?

IV. General Principles of Conduct

28. The Code sets out the general principles of conduct which were established in the first report of the Committee on Standards in Public Life (the Nolan principles). These principles have general and wider application for all public bodies. The Code provides that "These principles will be taken into consideration when any complaint is received of breaches of the provisions in other sections of the Code." They are not therefore subject to separate adjudication on a complaint. In that sense, they are aspirational.

29. It is for consideration whether the general principles should continue to be aspirational. It is also for consideration whether the general principles should be added to.

¹⁶ Guide to the Rules, paragraph 105

The Northern Ireland Code, for example, added the following principles to the Nolan principles: equality, promoting good relations, respect, and good working relationships.¹⁷

30. The strength of the Nolan principles is that they set a common set of standards for all public bodies. It could be argued that this sends a powerful signal, consistent with the principle of leadership, that the House of Commons should itself adopt these general principles. Adding to them could risk dilution. Against that, there may be other principles which, like those adopted for Northern Ireland, have particular resonance for the House of Commons. The House has always put emphasis on the basic levels of respect it expects Members to show to each other in debate, however fiercely the point is argued. It is for consideration whether respect for those with whom they deal should be an additional general principle.

31. It is for consideration also whether the present rule of conduct in paragraph 15 of the Code that:

“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.”

is more appropriately seen as a general principle of conduct. If so, and if it were moved to this section, it would be aspirational and would not of itself be sufficient to found a complaint. This matter is considered more fully in the following section.

Question 8: Should the general principles of conduct established by Lord Nolan continue to be included in the Code?

Question 9: Should there be any additions to the general principles and, if so, what?

Question 10: Should paragraph 15 of the Code be repositioned as a general principle?

Question 11: Should the general principles continue not by themselves to found a complaint against a Member?

¹⁷ The Code of Conduct for Members of the Northern Ireland Assembly, 23 June 2009
http://www.niassembly.gov.uk/reports/code_of_conduct.htm

V. Rules of Conduct

32. The rules of conduct for Members of Parliament are set out in seven substantive paragraphs (from paragraphs 9 to 15), having been introduced by paragraph 8. Each of these rules covers a particular area or areas of conduct. Some are more specific than others. Breaches of these rules, and of the more detailed rules associated with some of these paragraphs, may be investigated on complaint by the Parliamentary Commissioner for Standards. Issues which might be considered in this section are set out in the following paragraphs.

Conflicts of Interest (paragraph 9)

33. Paragraph 9 provides:

“9. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.”

This provision harks back to the original intentions of the Code, as expressed in the First Report of the Committee on Standards in Public Life in May 1995.¹⁸ The Committee suggested that the Code, among other provisions, was a necessary response to “problems of principle and practice over the separation of public and private interests, which damage the standing of Parliament.”¹⁹ This paragraph is therefore a founding provision of the Code. It is enforceable through the complaints mechanism. While it may require difficult and subjective judgements to be made as to whether a personal interest has been preferred over a public interest, its inclusion in this part of the Code does allow the House to decide in any particular case whether this important distinction has been followed. It was a matter which was at the heart of one of the Commissioner’s inquiries in 2010.²⁰

Question 12: Should paragraph 9 remain as drafted and remain subject to adjudication?

Financial Rules (paragraphs 10 – 12)

34. These paragraphs deal with rules in relation to the financial interests of Members.

35. Paragraph 10 provides:

¹⁸ First Report of the Committee on Standards in Public Life, Standards in Public Life, Cm 2850, May 1995

¹⁹ Ibid, para 58

²⁰ Committee on Standards and Privileges, Eleventh Report of Session 2009–10, HC 491

“No Member shall act as a paid advocate in any proceeding of the House.”²¹

This is an important provision which appears clear both in its purpose and presentation. There are questions about how this provision is operated in practice which arise in the more detailed paragraphs included in the Guide to the Rules. Some of these were discussed in the Committee’s Ninth Report of 2010–11.²² I would propose to consider these matters at a later stage.

Question 13: Should paragraph 10 remain as drafted?

36. Paragraph 11 deals with bribery as follows:

“The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.”²³

The prohibition on bribery was first introduced in the House in 1695. It remains an important provision.

Question 14: Should paragraph 11 remain as drafted?

37. Paragraph 12 provides:

“In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.”

It is for consideration whether this paragraph continues to be necessary for inclusion in the Code. It has some similarities with the more general provision on registration and declaration at paragraph 16 of the Code. There is also a broadly similar, albeit fuller, paragraph in the Guide to the Rules. This paragraph of the Guide (paragraph 86) reads as follows:

²¹ Resolution of 6 November 1995

²² Committee on Standards and Privileges, Ninth Report of Session 2010–11, HC 654

²³ Resolutions of 2 May 1695, 22 June 1858, and 15 July 1947 as amended on 6 November 1995 and 14 May 2002

“86. The requirement to declare a relevant interest **at the appropriate time** covers almost every aspect of a Member’s parliamentary duties extending to correspondence and meetings with Ministers and public officials. Frankness with colleagues is also important. In 1975 the House agreed to the report of the Select Committee on Members’ Interests (Declaration) which contained these words: “it should be a matter of honour that a financial interest is declared not only, as at present, in debate in the House and its Committees but also whenever a Member is attempting to influence his fellow Members, whether in unofficial committees and gatherings or at any kind of sponsored occasion, with or without entertainment, or simply in correspondence or conversation. Above all it should be disclosed when a Member is dealing with Ministers of the Crown and civil servants, and this obligation becomes of paramount importance when a foreign government is involved either directly or indirectly.”²⁴

38. The rule in paragraph 12 applies to Ministers, other Members and officials. But it does not seek to define “officials”. I have taken the view that it should be broadly defined and should not be confined to civil servants or crown servants or executive agencies.²⁵ If that is accepted, there would be advantage in harmonising the various references to “officials” in the Guide to the Rules (and in the analogous reference in paragraph 16 of the Code). It could also be argued that paragraph 12 of the rules as drafted are insufficiently specific about their intention. Members are enjoined only to “bear in mind” the need to be open and frank. This could imply that there could often be circumstances when this injunction could be offset by other considerations. And it is silent on what Members need to be “open and frank” about.

39. If a change to this paragraph is thought to be needed, the choice may be between removing it from the Code and relying on paragraph 16 of the Code and the provision in the Guide to the Rules; or seeking to clarify its intention. As drafted, it appears more as a general injunction, aspirational in its purpose and not easily adjudicable. Indeed, many may think that a Member’s judgement about what he or she says to Ministers, Members and public officials should not be subject to adjudication by the Commissioner acting on a complaint. Should the Commissioner be able to investigate whether a Member has been sufficiently open in their dealings with another Member or Minister, and submit his conclusion to the Committee? If the position were confined to an aspiration, however, it may not add much to the expression of the Nolan principles already in that part of the Code. If it were to be removed, there might need to be a change to the rules on the declaration of interests in paragraph 16 of the Code (see below).

²⁴ Select Committee on Members’ Interests (Declaration), First Report of Session 1974–5, paragraph 40, quoting the Report of the Select Committee on Members’ Interests (Declaration) Session 1969–70, HC 57. This is reproduced in paragraph 86 of the Guide to the Rules.

²⁵ Committee on Standards and Privileges, Ninth Report of Session 2010–11, HC 654. See paragraph 711.

Question 15: Should paragraph 12 remain in the Code? If so, should it be aspirational or adjudicable? Does it require amendment?

Information Received in Confidence (paragraph 13)

40. Paragraph 13 provides as follows:

“Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.”

This paragraph addresses again the distinction between a Member’s public duties and their private interests. Members who receive material in confidence in the course of their parliamentary duties should not use it for private purposes or for financial gain.

41. Some have sought to interpret this provision as an obligation on a Member not to disclose confidential material. That is not the purpose of the paragraph. It is intended to prevent Members benefiting themselves financially from information received in confidence in the course of their duties: a form of “insider dealing”.

42. It is, however, for consideration whether the paragraph should also deal with disclosure of confidential information. The Code of Conduct for Members of the National Assembly for Wales provides that Members may not disclose confidential information.²⁶ That is broadly consistent with similar provisions in the model Local Authority Code.²⁷ But many would consider that such an injunction could prevent Members adequately performing their function to hold the government to account. This argument holds that Members should be able to disclose confidential information which they receive from others if they judge it right to do so, subject to the operation of parliamentary privilege and their legal obligations. It would be possible to modify any new provision by adding a public interest test for any disclosure. That would open up a new avenue of complaints to the Commissioner and involve the Commissioner in determining public interest in any particular disclosure. It could also raise difficult questions about its effect on the operation of parliamentary privilege.

²⁶ <http://www.assemblywales.org/codeofconduct.pdf>. See paragraph 4 (e).

²⁷ The Local Authorities (Model Code of Conduct) Order 2007 <http://www.legislation.gov.uk/ukxi/2007/1159/schedule/made> Paragraph 4 of the schedule refers.

Question 16: Should paragraph 13 remain as drafted?

Question 17: Should paragraph 13 be extended to prevent Members from disclosing confidential information which they receive; and, if so, should there be a public interest test for any such disclosure?

Expenses, Allowances, Facilities and Services (paragraph 14)

43. Paragraph 14 provides:

“Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.”

44. This paragraph has in recent years founded the majority of complaints to the Commissioner since they relate to Members’ use of expenses, allowances and facilities. It has now been overtaken by the establishment of a statutory body, the Independent Parliamentary Standards Authority, with a Compliance Officer to investigate complaints about the misuse of expenses. The Commissioner remains ready to consider expenses matters referred to him by the Compliance Officer, and to investigate them where the Commissioner considers that the Code of Conduct or the registration and declaration rules may have been breached. But, as currently drafted, any breach of the expenses provisions—however caused and however modest—could be seen to be a breach of the Code. This review gives an opportunity to bring this paragraph of the Code into line with the new expenses regime set out in the Parliamentary Standards Act.

45. The Independent Parliamentary Standards Authority, in its first consultation on MPs’ expenses published in January 2010,²⁸ makes the following suggestion:

“In order for the new expenses regime to operate effectively, we suggest that the House of Commons should incorporate into its Code of Conduct two principles from the CSPL report.²⁹ These are:

- Members of Parliament should always behave with probity and integrity when making claims on public resources. MPs should be held, and regard themselves, as

²⁸ See paragraph 2.8 of MPs’ Expenses: A consultation from the Independent Parliamentary Standards Authority, 7 January 2010: <http://www.ipsa-home.org.uk/docs/ipsa-consultation-mps-expenses.pdf>

²⁹ These principles are set out in paragraph 3.3 of the Twelfth Report of the Committee on Standards in Public Life, Members’ Expenses and Allowances, Cm 7724, November 2009

personally responsible and accountable for expenses incurred, and claims made, and for adherence to these principles as well as to the rules.

- Members of Parliament should not exploit the system for personal financial advantage, nor to confer an undue advantage on a political organisation.”

46. It is for consideration whether the principles set out by IPSA should be incorporated in—and largely replace—paragraph 14 of the Code. If so, it would still require some revision, since this paragraph must also cover the Member’s use of facilities and services provided by the House (and not through IPSA)—for example, House of Commons stationery and parliamentary dining facilities.

Question 18: Should paragraph 14, relating to Members’ expenses, allowances, facilities, and services be recast on the lines of the principles identified by the Committee on Standards in Public Life?

Bringing the House into Disrepute (paragraph 15)

47. Paragraph 15 provides:

“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.”

48. I have discussed above whether this paragraph should be kept in the Rules of Conduct or whether it should be moved to the section setting out the public duties on Members. (See paragraph 31 above.) If paragraph 15 of the Code is to be amenable to a complaint against a Member as now, then it may be helpful to clarify its scope. Much of the conduct which could be held to bring the House into disrepute would amount to a breach of another rule of conduct already in the Code. But this paragraph can—and at times has—been used to bring within the Code, Members’ conduct which is not covered by other provisions, but which is of such a nature that it requires censure by the House.

49. But it is not clear whether any unacceptable behaviour by an individual Member is intended to come within this provision. Such behaviour could be lying to an official, a constituent or a member of the public. It could cover bullying and intimidating behaviour against members of the public, House staff or other officials. It could cover offensive language or comments. Some could seek to extend it to a Member championing deeply unpopular causes. There is a question whether any such behaviour by a single Member—however reprehensible—could be interpreted as bringing Members generally, or the

House itself, into disrepute. The provision as drafted has been taken by successive Commissioners as suggesting that it would be necessary to establish a level of behaviour which is such as to bring the whole institution of the House of Commons into disrepute, or to reflect badly on all Members of Parliament. The fact that the behaviour may reflect badly on the particular Member is not of itself sufficient to bring the House and all Members generally into disrepute.

50. It is for consideration whether this interpretation meets the objective of this paragraph. If this paragraph is intended to catch conduct which is such as to bring Members generally into disrepute (for example, because it suggests this is the sort of behaviour accepted by all Members) or because it impacts on the integrity and reputation of the House, then it is for consideration whether the text should be refined.

51. The text could, for example, suggest that Members should take no action which reflects adversely on their personal standing and reputation and which would cause people to believe that this was a standard of behaviour acceptable for all Members of the House.

52. Another option would be to provide that Members must not conduct themselves either in their public (or in their private) lives in a way which is so scandalous or outrageous as to undermine public confidence in the integrity of all Members of Parliament and the standing of the House. The reference to a Member's private life would depend on any changes to the Code following consideration of Question 4 above.

Question 19: Should there continue to be a distinction between Members' behaviour which reflects adversely on themselves, and behaviour which reflects on all Members and the institution of the House? Should only the latter be subject to the Code and, if so, should the reference be aspirational or adjudicable?

Question 20: If this provision is to extend to aspects of a Member's private life (see question 4 above), should it be aspirational or adjudicable (in other words, should it be possible to complain to the Commissioner about a Member's conduct of their private life)?

VI. Registration and Declaration of Interests

53. This section introduces Members' obligations to register and declare their interests.

The single paragraph (paragraph 16) provides as follows:

“Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.”³⁰

54. The requirements on Members are established more fully in the Guide to the Rules.

As discussed above,³¹ it is for consideration whether the list in paragraph 16 of those subject to declarable communications should be broadened. At present, it appears to be confined to Ministers, government departments, and executive agencies. The 1974 resolution refers to other Members, Ministers and servants of the Crown.³² Strictly interpreted, that could exclude many public officials, including those in public bodies and local authorities. It may be difficult to see why Members should not be expected to declare relevant financial interests when communicating with such people in their capacity as a Member of Parliament (rather than, for example, as a recipient themselves of their services).

Question 21: Should the requirement to declare an interest in paragraph 16 be extended to public officials (as provided in paragraph 12 and the Guide to the Rules)?

VII. Duties in respect of the Parliamentary Commissioner and the Committee on Standards and Privileges

55. Paragraphs 17 to 19 in section VII provide as follows:

“17. The application of this Code shall be a matter for the House of Commons, and for the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards acting in accordance with Standing Orders Nos 149 and 150 respectively.

³⁰ Resolutions of the House of 22 May 1974, 12 June 1975 as amended on 19 July 1995, 12 June 1975, 17 December 1985, 6 November 1995 as amended on 14 May 2002, and 13 July 1992

³¹ See paragraph 38 above

³² Resolution of 22 May 1974. Paragraph 72 of the Guide to the Rules, dealing with the declaration of Members' interests, states: “The term ‘servants of the Crown’ should be interpreted as applying to the staff of executive agencies as well as to all staff employed in government departments.”

18. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the House.

19. No Member shall lobby a member of the Committee on Standards and Privileges in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.”

56. These paragraphs establish the responsibilities of Members in respect of the Commissioner and of the Committee on Standards and Privileges. Codes for other jurisdictions, including, for example, the Code for the National Assembly for Wales,³³ specifically provide a separate section on enforcement. A section on enforcement, as well as addressing Members’ obligations in respect of an inquiry into their conduct, could clearly establish which paragraphs of the Code are subject to complaint (the only other references to complaints in the current Code occur tangentially in paragraphs 7 and 18). If so, the sections of the Code which appear relevant to complaints would seem to be sections V (Rules of Conduct) and VI (Registration and Declaration of Interests). It might also be helpful to include in the enforcement section the respective responsibilities of the Commissioner and of the Committee (including the Committee’s responsibilities for proposing any sanctions to the House), and for that section also to require the necessary confidentiality for the conduct of the Commissioner’s inquiries.

57. Those matters which are outside the complaints remit of the Commissioner are currently listed in the Guide to the Rules.³⁴ It would be possible for any such list of exclusions to be moved to an enforcement section of the Code. But this would mean that clarification about what is excluded from the Commissioner’s remit could not be made more frequently than once a Parliament without amending the Code. It may be sufficient for the Code to record that complaints can be made about breaches of the rules of conduct, and continue to leave the Guide to provide any necessary clarification to the interpretation of the Commissioner’s remit in the light of experience.

Question 22: Should part VII be revised to become a section on enforcement? If so, what provisions should it include?

³³ <http://www.assemblywales.org/codeofconduct.pdf>. See paragraphs 17 and 18

³⁴ Paragraph 105 of the Guide to the Rules says: “A number of areas are outside the Commissioner’s remit. As a result, he is unable to consider complaints about policy matters or a Member’s views or opinions, a Member’s handling of or decision about an individual case (whether or not the individual is a constituent of the Member), the funding of political parties, alleged breaches of the separate Code governing the conduct of government ministers in their capacity as Ministers (the ‘Ministerial Code’), or about what Members do in their purely private and personal lives. The Commissioner will not entertain anonymous complaints. Conduct in the Chamber is a matter for the Speaker. If the allegation is of criminal misconduct which may more appropriately be investigated by another agency, the Commissioner will advise the complainant to approach that agency.”

58. Finally, it is for consideration whether all Members should be asked to sign the Code.³⁵ This is the practice followed in the House of Lords. Members of the House of Commons receive a copy of the Code at the start of each new Parliament, or when they are elected following a by-election. They could all be asked to sign that they have read and accept the Code when they come to take their seats in the House. This would be consistent with the recommendation of the Committee on Standards in Public Life that Members should commit themselves to embedding the Nolan principles (as set out in paragraph 7 of the Code) in the activities of the House.³⁶

Question 23: Should all Members be asked to sign their commitment to the Code when they first take their seats in each Parliament?

Conclusion

59. This consultation paper has identified some possible changes to the scope of the Code, including some extension into a Member's personal and private life, and into their conduct of constituency business. It is for consideration whether there are other matters which should be considered for widening (or indeed narrowing) the scope of the current Code. If so, should they be added to the aspirational part of the Code, or should they be enforceable following an investigation by the Commissioner?

Question 24: Should there be any further additions to the Code and, if so, what should they be, and should they be aspirational or adjudicable?

Question 25: Are there any parts of the Code which should be removed and, if so, why?

60. Some of the possible changes discussed in this paper would have resource implications for the Commissioner's office if they were to be implemented. This is because some proposals could lead to a substantial increase in the number of complaints made to the Commissioner which would be subject to an investigation. I will consider the resource

³⁵ I am indebted to students of Hull University who made this suggestion at a seminar chaired by Professor Philip, Lord Norton of Louth, in December 2010.

³⁶ Paragraph 31 of the Twelfth Report of the Committee on Standards in Public Life, MPs Expenses and Allowances, Cm 7724, November 2009

implications further when I come to prepare my report to the Committee following the conclusion of this consultation.

John Lyon CB
Parliamentary Commissioner for Standards

7 March 2011

Appendix: Summary of Questions

1. Should the Code of Conduct continue to set out only the high-level principles for Members' conduct, or should it provide a detailed rules-based Code?
- 5 2. Should there be revisions to the expression of the purpose of the Code so as better to reflect its intentions, taking account of the issues discussed in this section?
3. Should the Code apply to all aspects of a Member's public life, or only those aspects related in some specific way to their position as a Member of Parliament?
4. Should the scope of the Code extend to some aspects of a Member's private and personal life? If so, how should that be expressed in the Code?
- 10 5. Should there be a general duty or duties in respect of a Member to their constituents? If so, how should these be phrased?
6. Should there be a fuller codification of any such duties?
7. Should a Member who failed in these obligations to their constituents be subject to disciplinary sanction in the House?
- 15 8. Should the general principles of conduct established by Lord Nolan continue to be included in the Code?
9. Should there be any additions to the general principles and, if so, what?
10. Should paragraph 15 of the Code be repositioned as a general principle?
11. Should the general principles continue not by themselves to found a complaint against
20 a Member?
12. Should paragraph 9 remain as drafted and remain subject to adjudication?
13. Should paragraph 10 remain as drafted?
14. Should paragraph 11 remain as drafted?
15. Should paragraph 12 remain in the Code? If so, should it be aspirational or
25 adjudicable? Does it require amendment?
16. Should paragraph 13 remain as drafted?

17. Should paragraph 13 be extended to prevent Members from disclosing confidential information which they receive; and, if so, should there be a public interest test for any such disclosure?
- 5 18. Should paragraph 14, relating to Members' expenses, allowances, facilities, and services be recast on the lines of the principles identified by the Committee on Standards in Public Life?
- 10 19. Should there continue to be a distinction between Members' behaviour which reflects adversely on themselves, and behaviour which reflects on all Members and the institution of the House? Should only the latter be subject to the Code and, if so, should the reference be aspirational or adjudicable?
20. If this provision is to extend to aspects of a Member's private life (see question 4 above), should it be aspirational or adjudicable (in other words, should it be possible to complain to the Commissioner about a Member's conduct of their private life)?
- 15 21. Should the requirement to declare an interest in paragraph 16 be extended to public officials (as provided in paragraph 12 and the Guide to the Rules)?
22. Should part VII be revised to become a section on enforcement? If so, what provisions should it include?
23. Should all Members be asked to sign their commitment to the Code when they first take their seats in each Parliament?
- 20 24. Should there be any further additions to the Code and, if so, what should they be, and should they be aspirational or adjudicable?
25. Are there any parts of the Code which should be removed and, if so, why?