

**The Independent Expert Panel**

# Appeals, referrals and sanctions

**Guidance for the parties**

Version 2  
October 2021

## **The Independent Expert Panel**

The Independent Expert Panel was established by resolution of the House of Commons on 23 June 2020. The Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament's Sexual Misconduct Policy or the Bullying and Harassment policy, under the Independent Complaints and Grievance Scheme.

### **Current membership**

Mrs Lisa Ball  
Ms Monica Daley  
Mrs Johanna Higgins  
Rt Hon Sir Stephen Irwin (Chair)  
Professor Clare McGlynn (Hon)  
Miss Dale Simon  
Sir Peter Thornton  
Dr Matthew Vickers

### **Contacts**

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**Independent Expert Panel  
Appeals, referrals and sanctions: guidance for the parties**

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# Part A: Guiding principles

- 1) The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality.
- 2) We understand the seriousness of, and the harm caused by, bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 3) Our aims are to:
  - a) help embed positive steps directed at improving the culture and behaviour of Members, staff and the wider Parliamentary community, and
  - b) support the commitments made by the House of Commons to the Independent Complaints and Grievance Scheme (ICGS).
- 4) To this end we:
  - a) Recognise that the ICGS is a workplace complaints and grievance scheme, not an adversarial process;
  - b) Adopt policies and procedures that are as understandable, accessible and straightforward as they can be while being consistent with natural justice;
  - c) Act in accordance with the principles of equality and diversity, being mindful of intersecting inequalities, the well-being of the parties and the need to protect potentially vulnerable people;
  - d) Ensure that the parties are able to make their case;
  - e) Determine cases flexibly, recognising the unique circumstances of each case;
  - f) Are guided by the need for timeliness and proportionality in our procedures and decisions;
  - g) Protect the confidentiality of proceedings and the identity of complainants and witnesses, handling data appropriately, while being open about the outcome of cases;
  - h) Publish timely information about how we work, engaging with the parliamentary community and others to promote understanding, listen and learn;
  - i) Abide by the Seven Principles of Public Life (the Nolan principles).

## Part B: This guidance – what you can expect

- 5) The Independent Expert Panel (the Panel) hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament’s Sexual Misconduct Policy or the Bullying and Harassment Policy, under the Independent Complaints and Grievance Scheme.<sup>1</sup>
- 6) This guidance is for use by you as a complainant or respondent. It is intended to help you understand what happens and what your options are once the Commissioner has made her decision.<sup>2</sup> Since each case is unique, the guidance does not cover every eventuality or possible outcome, but we hope you will find it a useful starting point.
- 7) You may also find it useful to read Part F of this guidance if you are a witness in an ICGS case where the respondent is an MP or former MP. Part F deals with confidentiality and reports and sets out how we will manage information about a case once it reaches the Panel.
- 8) The guidance is split into parts. It has been designed so that you need to refer only to that part of the guidance that applies to the current stage of the process for your case.
- 9) We will keep you updated at each stage of the process and tell you what happens next in your case. If we need to ask you for further information, we will give you sufficient time to respond. Please keep an eye out for emails from us.
- 10) This is a revised version of guidance first published in February 2021. The majority of the revisions provide additional information to assist you and will be applicable to all cases to be considered by the Panel. However, some substantive changes to our policies will only apply following publication of this revised version. Where this is the case, we will clearly indicate that in the relevant part of the guidance.
- 11) You can get in touch with us at [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk) at any time to find out more, or see our webpages [here](#).<sup>3</sup>

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<sup>1</sup> Independent Complaints and Grievance Scheme: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/>

<sup>2</sup> In this guidance ‘you’ means both the complainant and the respondent. Where there are differences in the guidance for the two parties, this will be clearly indicated.

<sup>3</sup> Independent Expert Panel: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/>

## Terms used in this guidance

**Adviser** – This is an individual who advises you on your case. They can help you to make decisions such as whether to appeal and draft documents for you, but they cannot make submissions, speak on your behalf, or otherwise represent you.

**Aggravating factors** – These are considerations that might result in a more serious sanction being imposed.

**Appeal** – This is an appeal by either of the parties to a case against a decision of the Commissioner, or by a respondent against a decision on sanction. Part C and Part E contain information about how we manage appeals.

**Commissioner** – This is the Parliamentary Commissioner for Standards who oversees investigations and makes decisions on complaints against MPs and former MPs in ICGS cases.

**Complainant** – This is an individual who reports or makes a complaint of bullying, harassment or sexual misconduct.

**Conclusion of a case** – This is when a report is published or, if no report is published, when there are no further stages of appeal available to either party.

**Confidentiality** – This is the requirement on the parties, the Panel and others involved in a case to ensure that information about the case is only disclosed to those with a need to know and that those individuals, in turn, do not pass on the information to third parties. Part F contains more information about your and our responsibilities with respect to confidentiality.

**Determination of sanction** – This is the process of deciding what sanction to impose in your case. Part D contains information about how we do this.

**ICGS** – This is the Independent Complaints and Grievance Scheme.

**ICGS helpline** – This is the service for reporting incidents of alleged bullying, harassment or sexual misconduct. It is also a source of information, advice and support for complainants, respondents and witnesses.

**Inquisitorial process** – This means that we can inquire into the evidence and arguments that are presented to us; we will not re-open the original investigation, but may require it to be re-opened or require re-investigation of specific matters following a successful appeal.

**Mitigating factors** – These are considerations that might result in a less serious sanction being imposed.

**Oral hearing** – This is when a sub-panel hears from one of the parties to a case. Appendix 2 contains information about how oral hearings will be conducted.

**Other party** – If you are the complainant, this is the respondent; if you are the respondent, this is the complainant.

**Panel (or we/us)** – This is the Independent Expert Panel, including its eight members and secretariat.

**Parliamentary privilege** – This is a legal rule that means that the Panel’s proceedings may not be used as evidence in any subsequent court proceedings, except to the extent that the references are agreed to be mere historic fact. It is not permissible for a court or tribunal to question or draw inferences from proceedings in Parliament.

**Reasonable adjustment** – This is any change to the process intended to help you participate. A request for a reasonable adjustment may be related to physical or mental ill-health or disability. You can also make a request for other reasons relating to your personal circumstances. We will consider any reasonable request.

**Referral** – This is where the Commissioner asks the Panel to make a decision on the appropriate sanction to be imposed. She will normally do this where she does not consider her own sanctioning powers to be sufficient. Part D contains information about how we manage a referral.

**Report** – This is a report published by the Chair of the Panel. It will appear on the Parliamentary website and is a formal and permanent record of the case. Part F contains information about reports.

**Respondent** – This is an individual who is accused of bullying, harassment or sexual misconduct.

**Sanction** – This is the penalty imposed on a respondent for a breach of the Bullying and Harassment Policy or Sexual Misconduct Policy. Part D contains more details of the sanctions that may be imposed.

**Standard of proof** – This is the degree of evidence necessary for a party to prove its case to succeed. For ICGS cases the civil standard of proof is applied – the balance of probabilities. This means that it was more likely than not that the event occurred.

**Submission** – This is any statement, request or representation that you make to a sub-panel.

**Sub-panel** – This is the three members of the Panel who are appointed to hear an appeal or determine sanction in your case. Sub-panels deliberate in private with no members of staff present; they also draft their own decisions. This reduces the risk that the secretariat might influence the decisions of the independent members of the sub-panel.

**Supporter** – This is anyone to whom you speak in confidence about your case. They may also be your adviser.

**Witness** – This is an individual who gives evidence in a case of bullying, harassment or sexual misconduct.

**Working day** – This is any Monday to Friday, other than bank holidays. It is not affected by sittings of the House.

# Part C: Appeals against a decision of the Commissioner

- 12) You may appeal against a decision of the Commissioner if you are the complainant or the respondent. Whether or not to appeal is a question that only you can decide. To help you make that decision, this section of the guidance sets out how you can appeal and what will happen next.
- 13) The Panel does not re-investigate the allegations during an appeal, nor does it take fresh decisions on the basis of the investigation. The role of the Panel in an appeal is to review the decisions taken by the Commissioner.

## How to submit an appeal

- 14) Your appeal must be submitted by you, not by your adviser or supporter.<sup>4</sup>
- 15) You should make your appeal submission in writing following the instructions set out in Appendix 1.
- 16) We will endeavour to make any reasonable adjustments you need to help you submit your appeal. You can ask for this help in confidence before you submit your appeal.

## Deadline for appeals

- 17) You should submit your appeal within **20 working days** of being notified of the Commissioner's decision. Normally, this means four weeks, but can be a little longer where there are bank holidays. The Commissioner's letter will give you the actual date by which you need to appeal. The deadline will be 5pm on this date.
- 18) The deadline may be extended where there are mitigating circumstances. If you think that you need an extension you should request one as early as possible and before the appeal deadline. You will need to say what the mitigating circumstances are and may need to provide evidence of these. We will consider your request as quickly as possible, but there is no guarantee that the deadline will be extended.
- 19) Any request for an extension to the deadline must be made by you, not by your adviser or supporter.<sup>5</sup>
- 20) If you do not wish to appeal, you can confirm this in writing by email to us before the deadline. The case can be concluded more quickly if we know sooner rather than later that there will be no appeal. This can benefit both parties. If we think

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<sup>4</sup> For more guidance on how your adviser or supporter can help you with this, see Part G.

<sup>5</sup> For more guidance on how your adviser or supporter can help you with this, see Part G.

you are unlikely to appeal (for example, because your complaint has been upheld in full), we may ask you to confirm this. You do not have to tell us.

### **Grounds for appeal**

- 21) Your appeal can be brought under one or more of the following grounds:
- a) The investigation was materially flawed in a way that affected the decision of the Commissioner;
  - b) The process followed by the Commissioner was procedurally flawed or her decision was unreasonable;
  - c) The decision of the Commissioner on sanction was unreasonable or disproportionate;
  - d) Credible fresh evidence has become available, which could not reasonably have been presented before the Commissioner made her decision, and which, if accepted, has a real prospect of affecting the outcome; and/or
  - e) Exceptionally, there is another compelling reason that an appeal should be heard or allowed.
- 22) Your appeal submission should set out which of the above grounds you think apply. You can raise a number of different issues under different grounds. We will be flexible in assessing the issues you have raised against the different grounds.

### **What to include in your submission**

- 23) You should include as much detail as you think we will need to consider the appeal and to understand the nature of the issues you have raised. We may ask you for more information, but will not necessarily do so. If you do not include sufficient supporting information in your appeal submission this may reduce the likelihood that the sub-panel will decide that there is any substance to the grounds raised.
- 24) Where your appeal is wholly or partly on the grounds of credible fresh evidence you may include that evidence in the appeal submission (for example, attaching a copy of a text message or email), or you may provide a summary (for example, 'Witness X has come forward and will give evidence that the incident did/didn't happen'). If you wish to submit a large volume of new evidence, contact us in advance of submission.

### **What happens if the other party appeals?**

- 25) Once the deadline for appeals has passed, we will inform you if the other party to the case has appealed the Commissioner's decision. Depending on the issues raised, we may ask you for information before considering their appeal.

26) If both the other party and you appeal (for example, where the Commissioner partially upholds a complaint) we will inform you both of this on the same day.

### **How appeals are managed**

- 27) Once an appeal has been submitted, the Chair of the Panel will appoint a sub-panel of three Panel members to consider it. We will let you know who has been appointed to hear the appeal. You can see who the members of the Panel are [here](#).<sup>6</sup> Once a sub-panel has been appointed, any submission, request or representation you make concerning your appeal will be considered only by the sub-panel.
- 28) There are two stages to each appeal. The sub-panel will first consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and whether there is any substance to the grounds. After this first stage, the sub-panel will consider whether to disclose your appeal submissions to the other party.
- 29) The sub-panel will then consider the substantive appeal and reach a conclusion on the merits. We may request additional evidence but will not conduct a re-hearing of the case. We will normally decide the appeal based on written submissions. Exceptionally the sub-panel may decide that it should hold an oral hearing with one or both of the parties, but only if there is a specific reason for doing so. You may ask the sub-panel to consider holding an oral hearing when you submit your appeal. You should set out your reasons for this in your written submission.
- 30) The process is inquisitorial: if you are asked to attend a hearing in person you may be asked questions by the sub-panel, but the other party will not attend and you will not be cross-examined by them. Similarly, you cannot attend any hearing with the other party or subject them to cross-examination.
- 31) We will apply the civil standard of proof – the balance of probabilities – as applied by the Commissioner and throughout the wider ICGS.
- 32) Some appeals can be dealt with quickly; others are complex and may require more meetings of the sub-panel and/or requests for further information from you or the other party.

### **Conclusion of an appeal**

- 33) The sub-panel will make a decision on the appeal and say whether or not the complaint has been upheld. The sub-panel will report its decision to the Chair of the Panel. Depending on the outcome, we may then need to go on to consider the question of sanction.

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<sup>6</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>

- 34) In cases where the complaint has not been upheld, no sanction will be imposed. You will be notified of the outcome of the appeal and a report may be published. See Part F for more information about this.
- 35) In cases where the complaint has been upheld, we will notify you of the outcome of the appeal and then go on to determine the sanction to be imposed. See Part D for more information about sanctions.
- 36) You cannot further appeal the decision of the sub-panel on an appeal.

## Part D: Referrals and determination of sanction

37) This part of the guidance will help you to understand what happens when we are considering what sanction should be imposed in your case. This is referred to as 'determination of sanction'.

### When we will determine the sanction to be imposed

- 38) Where the Commissioner has referred a case to the Panel for determination of sanction, we will consider the referral after the deadline for appeals has passed if neither party has appealed. If both parties confirm in writing that they do not wish to appeal, we may proceed to determination of sanction before then.
- 39) Where the Commissioner has referred a case to the Panel for determination of sanction and one or both parties appeal, we will conclude the appeal before going on to consider the referral.
- 40) Following an appeal in a case that was not referred by the Commissioner, we will also determine any sanction to be imposed, rather than remit the case back to the Commissioner.
- 41) We will not determine sanction in any case that involves a former MP who now sits in the House of Lords. Any sanction on a member of that House relating to their historic behaviour as an MP will be proposed by the House of Lords Commissioner for Standards.

### How we manage determination of sanction

- 42) The Chair of the Panel will appoint a sub-panel of three Panel members to determine sanction. If there has been an appeal, the same sub-panel will normally also determine sanction, but sometimes a different sub-panel will be appointed. We will let you know who has been appointed to determine sanction. You can see who the members of the Panel are [here](#).<sup>7</sup> Once a sub-panel has been appointed, any submission, request or representation you make regarding the determination of sanction will be considered only by the sub-panel.
- 43) Before determining sanction, we will give you an opportunity to express your views on anything relevant to the matter of sanction, including any views you may have on the appropriate outcome. We would encourage you to express yourself in your own words: this is not a court process and your statement need not be overly formal. If you prefer, you may refer us to earlier statements or documents.

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<sup>7</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>

44) If you are the complainant, you may wish to include the following points in your statement:

- How the conduct in breach of the relevant policy has affected you, both at the time and since;
- Any aggravating or mitigating factors that you are aware of;
- Any views you have on the appropriate outcome;
- Anything else relevant to the matter of sanction.

45) Your statement will normally be shared with the respondent. If there are matters that you do not wish to be disclosed to the respondent, you should include these in a separate document and we will discuss this with you. In either case, it may be necessary to follow up points you make in your statement with the respondent, the Commissioner, the investigator or others involved in your case. We will let you know if we do this.

46) If you are the respondent, we may ask you to reflect on proved facts and provide a reflective statement on your conduct before sanction is decided. Your reflective statement is not an opportunity to re-open the Commissioner's decision or matters already decided on appeal. You should reflect on your behaviour and its impact on the complainant and others. You may also wish to include in your submission:

- Any aggravating or mitigating factors that you are aware of;
- Any views you have on the appropriate outcome;
- Anything else relevant to the matter of sanction.

47) Your statement will not be shared with the complainant, though we may let them know that we have received a statement from you. It may be necessary to follow up points you make in your statement with the other party, the Commissioner, the investigator or others involved in your case. We will let you know if we do this.

48) Your statement must be submitted by you, not by your adviser or supporter.<sup>8</sup>

49) You should submit your statement in writing following the instructions set out in Appendix 1.

50) We will endeavour to make any reasonable adjustments you need to help you submit your statement. You can ask for this help in confidence before you submit your appeal.

51) If you are the respondent, you will be given the opportunity to speak to the sub-panel in an oral hearing, and we may require you to attend a hearing.<sup>9</sup>

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<sup>8</sup> For more guidance on how your adviser or supporter can help you with this, see Part G.

<sup>9</sup> For more guidance on what will happen during an oral hearing, see Appendix 2.

## **How we will approach the assessment of sanction**

52) In setting the appropriate sanction, we will follow the principles set out in Part A of this guidance and apply three further principles:

- a) the sanction should reflect the impact of the conduct on the complainant
- b) the sanction should reflect the nature and extent of the misconduct proved
- c) where possible, the approach to sanction should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community

53) We will consider:

- a) the findings of the investigation and the decision of the Commissioner
- b) all the relevant circumstances of the case
- c) all relevant aggravating and mitigating factors
- d) the views of the complainant
- e) the submissions of the respondent including any reflective statement.
- f) any relevant precedent cases as developed by the Panel
- g) any ongoing or future risk to the complainant or other members of the Parliamentary community posed by the respondent

## **Aggravating and mitigating factors**

54) The following lists of aggravating and mitigating factors are not exhaustive, and other factors are likely to arise on a case by case basis. Even where an aggravating or mitigating factor is present, we will decide what weight to give it.

55) Aggravating factors include:

- a) Abuse of power or authority
- b) Specific targeting of the complainant
- c) Vulnerabilities of the complainant, particularly those which were or should have been known to the respondent
- d) Conduct motivated by or demonstrating hostility based on any of the protected characteristics (or presumed characteristics), of the complainant<sup>10</sup>
- e) Failing to respond to relevant warnings or concerns expressed to the respondent by others

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<sup>10</sup> The protected characteristics under section 4 of the Equality Act 2010 are: age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

- f) Retaliation or victimisation as a result of the complaint
- g) Breach of the confidentiality of the complaint by or on behalf of the respondent
- h) Previous complaints about the respondent's behaviour, where relevant to the case in question
- i) Breach of previously agreed informal resolution or earlier sanction
- j) Non-cooperation with the investigation, the Commissioner, or the Panel (including delaying tactics)
- k) Withholding, concealing, or failing to volunteer relevant evidence

56) Mitigating factors include:

- a) Acknowledgment of breach and/or self-knowledge
- b) Genuine remorse (particularly early remorse)
- c) Steps taken to address behaviour
- d) Breach of the confidentiality of the complaint by or on behalf of the complainant
- e) Physical or mental ill-health, or other personal trauma

### **Sanctions available to the Panel<sup>11</sup>**

57) We may impose the following sanctions on our own authority:

- a) An apology to the complainant in writing
- b) An apology on the floor of the House by means of a point of order or a personal statement
- c) Requiring a Member to attend training or enter into a behaviour agreement
- d) Withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will not affect the core functions of a Member
- e) For non-Members, withdrawal of the right to hold a former Member's pass, either indefinitely or for a fixed period<sup>12</sup>
- f) A formal reprimand by means of a published report

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<sup>11</sup> The powers of the Panel to impose sanctions were set out in a resolution of the House of Commons on 21 April 2021, HC Deb, [cols 1088-1089](#).

<sup>12</sup> The Speaker of the House delegated his authority to the Panel to refuse or withdraw a former Member's pass by letter to the Chair of the Panel dated 19 April 2021. <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/correspondence/>

58) We may determine the following sanctions for decision by the House:

- a) Withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will affect the core functions of a Member, and where the sanction reflects the nature of the offence
- b) Dismissal from a select committee
- c) Suspension from the service of the House for a fixed period
- d) Withholding of a Member's salary or allowances even if he or she has not been suspended
- e) In the most serious cases, expulsion from the House
- f) For non-Members, a reprimand by the House<sup>13</sup>

59) The 'core functions of a Member' are defined as:

- a) participation in the formal proceedings of the House or its committees, and
- b) their ability to communicate with and make representations on behalf of their constituents.

If we are in any doubt as to whether a sanction would interfere with a Member's core functions, we will seek the views of the House authorities, where appropriate. If there is any reasonable doubt we will determine that the sanction should be imposed by the House.

60) If we determine a sanction that can only be imposed by the House the sanction will be voted on by the House without debate.

61) If the sub-panel determines that you should apologise to the complainant or the House, they may indicate points that should be included in the text of the apology. You will be expected to prepare a first draft of the apology. Your apology should be unequivocal and not undermined or qualified by anything else expressed. The text will be considered by the sub-panel and we may ask you to revise your text. The final text must be agreed by the Chair of the Panel and, if your apology is to the House, also by Mr Speaker. You should not seek to undermine your apology by any public statements you make, before or after you have given it.

62) A suspension imposed by the House will start on the day on which it is imposed. During the period of suspension the Member receives no salary and must withdraw from the Parliamentary estate.

63) Sanctions may be combined; for example, we may require the respondent to apologise and determine that they should be suspended. Sanctions may also be imposed conditionally; for example, we may withdraw a service until a course of training has been completed to the satisfaction of the training provider.

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<sup>13</sup> In his [letter](#) of 19 April 2021, the Speaker expressed his support for the Panel to determine that a former Member should be reprimanded by resolution of the House.

### **Conclusion of a first determination of sanction by a sub-panel**

- 64) The respondent will be notified of the outcome and a report may be published. The complainant will be notified of the outcome once the case has concluded. See Part F for more information about this.
- 65) If you are the respondent, you can appeal this decision to another sub-panel.

## Part E: Appeals against sanction

- 66) If you are the respondent, you may appeal against any sanction imposed by the first sub-panel.<sup>14</sup> This appeal stage will consider only the sanction that has been imposed; you cannot re-open the Commissioner's decision or the decision of a sub-panel that decided an appeal against a decision of the Commissioner on the complaint.
- 67) An appeal against sanction is not a re-hearing of the sanction decision from scratch. You cannot appeal on the basis that the appeal sub-panel might just take a different view, or simply to postpone the imposition of a sanction. If you do so, this might be considered a delaying tactic and affect the sanction imposed.

### How to submit an appeal

- 68) Your appeal must be submitted by you, not by your adviser or supporter.<sup>15</sup>
- 69) You should submit your appeal in writing following the instructions set out in Appendix 1.
- 70) We will endeavour to make any reasonable adjustments you need to help you submit your appeal. You can ask for this help in confidence before you submit your appeal.

### Deadline for appeals

- 71) You should submit your appeal within **10 working days** of being notified of the sub-panel's decision.<sup>16</sup> Normally, this means two weeks, but can be a little longer where there are bank holidays. The outcome letter will give you the actual date by which you need to appeal. The deadline will be 5pm on this date.
- 72) The deadline may be extended where there are mitigating circumstances. If you think that you need an extension you should request one as early as possible and before the appeal deadline. You will need to say what the mitigating circumstances are and may need to provide evidence of these. We will consider your request as quickly as possible, but there is no guarantee that the deadline will be extended.
- 73) If you do not wish to appeal, you can confirm this in writing by email to us before the deadline. The case can be concluded more quickly if we know sooner rather than later that there will be no appeal. This can benefit both parties.

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<sup>14</sup> In this Part of the Guidance, 'you' refers only to the respondent.

<sup>15</sup> For more guidance on how your adviser or supporter can help you with this, see Part G.

<sup>16</sup> In the February 2021 edition of the Guidance, the deadline for appeals against sanction was 20 working days. The 20-day deadline will continue to apply in any case where a decision on sanction was made before publication of this edition.

## **Grounds for appeal**

- 74) Your appeal can be brought under one or more of the following grounds:
- a) the decision of the sub-panel on sanction was unreasonable or disproportionate;
  - b) credible fresh evidence has become available, which could not reasonably have been presented before the sub-panel made its decision, and which, if accepted, has a real prospect of affecting the outcome; and/or
  - c) exceptionally, there is another compelling reason that an appeal should be heard or allowed.
- 75) Your appeal submission should set out which of the above grounds you think apply. You can raise a number of different issues under different grounds. We will be flexible in assessing the issues you have raised against the different grounds.

## **What to include in your submission**

- 76) You should include as much detail as you think we will need to consider the appeal and to understand the nature of the issues you have raised. We may ask you for more information, but will not necessarily do so. If you do not include sufficient supporting information in your appeal submission this may reduce the likelihood that the sub-panel will decide that there is any substance to the grounds raised.
- 77) Where your appeal involves credible fresh evidence you can include that evidence in the appeal submission (for example, attaching a copy of a letter from your doctor), or you can provide a summary (for example, outlining the steps you have taken to address the behaviour). If you wish to submit a large volume of new evidence, contact us in advance of submission.

## **How appeals against sanction are managed**

- 78) Once an appeal has been submitted, the Chair of the Panel will appoint a sub-panel of three Panel members to consider it. This will be a different sub-panel to the one that originally determined sanction. We will let you know who has been appointed to hear the appeal. You can see who the members of the Panel are [here](https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/).<sup>17</sup> Once a sub-panel has been appointed, any submission, request or representation you make concerning your appeal will be considered only by the sub-panel.
- 79) There are two stages to each appeal. The sub-panel will first consider whether the issues raised in the appeal fall within one or more of the grounds for appeal and if

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<sup>17</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/panel-members/>

there is any substance to the grounds. After this first stage, the sub-panel will consider whether to disclose your appeal submissions to the other party.

- 80) The sub-panel will then consider the substantive appeal and reach a conclusion on the merits. We may request additional evidence but will not conduct a re-hearing of the case.
- 81) You will be given the opportunity to speak to the sub-panel in an oral hearing, and we may require you to attend a hearing.<sup>18</sup>
- 82) We will apply the civil standard of proof – the balance of probabilities – as applied by the Commissioner and throughout the wider ICGS.
- 83) Some appeals can be dealt with quickly; others are complex and may require more meetings of the sub-panel and/or requests for further information from you or the other party.

### **Conclusion of an appeal against sanction**

- 84) If your appeal is successful, the same sub-panel will go on to determine sanction. We will follow the steps set out in paragraphs 41 to 51. If your appeal is successful, we will normally reduce or change the sanction but may keep it the same. If your appeal is unsuccessful, the sanction determined by the first sub-panel will normally stand.
- 85) You will be notified of the outcome of your appeal and a report may be published. The complainant will be notified of the outcome once the case has concluded. See Part F for more information about this.
- 86) There is no further stage of appeal.

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<sup>18</sup> For more guidance on what will happen during an oral hearing, see Appendix 2.

# Part F: Confidentiality and reports

## Confidentiality

- 87) You must not share any information about the case with anyone, other than as set out in this guidance. This is very important because a breach of confidentiality at any time might prejudice the process and may be taken into account in determining the appropriate sanction.
- 88) You are allowed to share confidential information with your adviser or supporter in confidence. It is highly important that they maintain confidentiality and do not under any circumstances disclose information about the case to any third party. You must make these requirements clear to them. Any breach of confidentiality by someone acting on your behalf may be taken into account in determining the appropriate sanction.
- 89) Although you may share information with more than one adviser or supporter, the number of people you share information with should be kept to a minimum.
- 90) If it appears that information about the case has been provided to people who do not have a need to know and/or published in the media or online, we may ask you for details of those individuals with whom you have spoken about the case. You should answer such questions promptly and honestly. These questions may form part of a wider leak inquiry. Depending on the circumstances, you may be informed of the outcome of such an inquiry, but it may be necessary to withhold that information from you.

## Reports

- 91) Following conclusion of a case, we may publish a report. We will do this in any case that requires a sanction to be imposed by the House or where we require an apology to be made in the House. We will normally publish a report in other cases where a complaint has been upheld, and where a complaint has not been upheld but the allegations have already been given publicity. We will not normally publish a report in cases where a complaint has not been upheld and confidentiality has been maintained but may do so if there is a subsequent breach of confidentiality.
- 92) We aim to keep our reports as short and concise as possible, summarising the key facts and clearly setting out our decision(s) and reasoning. The level of detail given about each case will differ from case to case. You can see our previous reports on our webpages [here](#).<sup>19</sup>
- 93) If you are the complainant or a witness we undertake to limit the information included in any published report in such a way as to keep your identity confidential so far as possible, unless you choose not to remain anonymous. We will discuss

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<sup>19</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/reports/>

with you the approach to be taken in your case. You may refer publicly to any published report, but you should not share any information that is not included in the report.

- 94) If you are the complainant or a witness and would prefer to be identified, but this would risk identifying another complainant or witness, we may ask you to discuss this together and reach an agreement on whether to remain anonymous. If no agreement is reached, we will keep your identity confidential.
- 95) If you are the respondent you will be named in the report. You may refer publicly to any published report, but you should not share any information that is not included in the report. It is particularly important that you do not identify the complainant or reveal any information that could identify them except in a case where they have chosen not to remain anonymous.
- 96) The Panel may only publish reports on cases on days when the House of Commons is sitting; this may affect the timing of publication. Subject to this, we will normally aim to publish a report around one week after the sub-panel has decided the final stage of a case or after any appeal deadline has expired. We will inform you in advance when a report is to be published and send you an embargoed copy one hour before publication. Where the full decisions of the sub-panel(s) are not published in the report, we will share these with you following publication of the report.
- 97) Embargoed copies of reports will be sent to the members of the relevant sub-panel(s), the Commissioner and the Director of the ICGS. Embargoed copies and summaries of reports may also be sent to House of Commons staff and officials for the purposes of managing the publication process, issuing internal and external communications, supporting Chamber proceedings and related matters. All those in receipt of information in advance of publication of a report are bound by the same requirements of confidentiality as the Panel and the parties to a case.
- 98) If we do not publish a report, we will let you know the outcome of the case in writing and share with you the full decisions of the sub-panel(s). You must continue to keep the case and its outcome confidential.

### **Information held by us**

- 99) We will hold information about your case securely, and we will not reveal any details about the case while an appeal or referral is ongoing. This information may be accessed by the Chair of the Panel, members of any sub-panel to which a case has been referred and a small secretariat. We may disclose information to the other party as set out in this guidance. Where necessary to determine an appeal or sanction, we may also disclose information to the Commissioner and her office, the Director of the ICGS and her team, witnesses, your adviser (if you have consented to this), and others who are, or have been, involved in your case.

- 100) We may disclose information to staff of the House Service, the police and/or other agencies in cases where we consider that someone is at risk of harm that cannot be mitigated in another way.
- 101) Following conclusion of your case, we will continue to hold the majority of records relating to your case securely for a period not exceeding six years. Copies of sub-panel decisions will be archived as an historic record, but will not be made publicly available. Information about your case may be accessed by Panel members and a small secretariat.
- 102) Reports will be published on the Parliamentary website and retained as a permanent record of your case.

### **Data protection and Parliamentary privilege**

- 103) The Data Protection Act 2018 restricts certain rights of individuals in relation to the processing of personal data – for example, the rights of access, objection, erasure, etc. conferred by the UK GDPR – on certain grounds, including where the exercise of those rights would infringe the privileges of either House of Parliament. This exemption applies to any processing of personal data in relation to the Independent Expert Panel because the work of the Panel is covered by Parliamentary privilege. Further information about your rights and the exemption can be found on the Information Commissioner’s website ([www.ico.org.uk](http://www.ico.org.uk)).
- 104) You can see the House of Commons data protection policies and privacy notices on the Parliamentary website.<sup>20</sup> Any queries relating to data protection should be addressed to the Information Rights and Information Security team (email: [iris@parliament.uk](mailto:iris@parliament.uk)).

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<sup>20</sup> <https://www.parliament.uk/site-information/data-protection/commons-data-protection-information/>

## Part G: Advice and support

- 105) The Panel's process is not adversarial, so you do not need to put your case in legalistic language, and you do not need a lawyer to engage with the process. We aim to answer any questions you have about the process as quickly and helpfully as possible. However, we cannot give you advice on how to proceed (for example, on whether or on what grounds to appeal).
- 106) We recognise that you might wish to obtain advice and support from an Independent Sexual Misconduct Advisor (ISMA), your whip, your line manager, a trade union or staff representative or a lawyer. You can also seek support from a family member, friend or colleague. You may have more than one adviser or supporter, but the number of people you seek advice and support from should be kept to a minimum.
- 107) Your adviser (this could be, but does not need to be, a lawyer) can:
- a) Draft a request for an extension to a deadline
  - b) Draft an appeal submission
  - c) Help you to draft a submission on sanction, though this should be in your own words
  - d) Collate evidence and draft a response to a request for further information
  - e) Draft covering letters for submissions
  - f) Help format submissions in accordance with the guidance in Appendix 1
  - g) Help you prepare for an oral hearing
  - h) Accompany you to an oral hearing and advise you during any adjournment<sup>21</sup>
- 108) Even if your adviser prepares a draft document for you, you must submit that document yourself.
- 109) A named adviser may also seek clarification from the Secretary to the Panel on any matters covered in this guidance. We will only respond to queries from your adviser if we have been given your express consent to do so in writing. We will copy you into any response, and you may ask that we copy in your adviser to all correspondence with you. Where we have not received your consent, any correspondence from a person claiming to act on your behalf will be deleted. This is to protect the confidentiality of the process.
- 110) You may withdraw your consent given under para 109 at any time and ask that a different adviser be copied into correspondence etc. The requirements of confidentiality continue to apply to any previous adviser.

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<sup>21</sup> See Appendix 2 for further guidance on oral hearings

- 111) Your adviser cannot:
- a) Themselves, make any formal submission or request for consideration by a sub-panel,<sup>22</sup> other than a request for a reasonable adjustment made on the ground of physical or mental ill-health or disability
  - b) Represent you, speak for you, or ask questions during an oral hearing, other than making a request for a short adjournment<sup>23</sup>
- 112) We understand that going through this process can be difficult and we will endeavour to deal with your case sympathetically and respond to your queries as quickly as possible.
- 113) The support services through the ICGS Helpline continue to be available to you (0808 168 9281 or [support@ICGShelpine.org.uk](mailto:support@ICGShelpine.org.uk)).
- 114) Other sources of support are available. Contact the ICGS helpline find out what further support is available to you. Your support could include:
- The Employee Assistance Programme – 0800 030 5182, or [healthassuredeap.co.uk](http://healthassuredeap.co.uk) (username House, password: Parliament)
  - Your line manager
  - Trade Unions in the House of Commons and Parliamentary Digital Service
  - Trade Unions in the House of Lords
  - Trade Unions for Members’ staff
  - The Workplace Equality Networks (WENs)
  - MAPSA (the organisation for Members’ and Peers’ staff)
  - House of Lords HR service
  - House of Commons HR service
  - PDS HR Support
  - Parliamentary Health and Wellbeing Service
  - Mental Health First Aiders
  - The Guardians
  - Voice Champions

**Contact us at [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk)**

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<sup>22</sup> See Appendix 1 for further guidance on how to make a submission

<sup>23</sup> See Appendix 2 for further guidance on oral hearings

# Appendix 1 – Submissions

- 115) The following instructions relate to any submission – including a request or other representation – that you would like the sub-panel to consider.
- 116) Although you may ask questions about the process by email or phone, and we will seek to answer these as quickly and helpfully as possible, points raised outside a formal submission will not normally be considered by the sub-panel. Exceptions may be made in relation to requests for reasonable adjustments, where time is of the essence, or where we have previously agreed a reasonable adjustment.
- 117) Your submission must be made in writing and sent from your own email account. We are not able to accept submissions from your adviser, though you may ask for their help with drafting and copy them into your submission.
- 118) If you have a Parliamentary email account, we recommend that you use this for correspondence with the Panel. However, you should consider whether anyone else (eg a staff member) has access to the account. You may instead use a personal email account to make a submission. We will send information to whichever account you choose to use; it is your responsibility to ensure that it is secure.
- 119) Your submission must be saved as a PDF, formatted as follows:
- a) Include your name.
  - b) Do not include any other personal contact information such as email address or phone number. Your submission may be disclosed in full to the other party – if we do so we will not redact contact information.
  - c) Include the case reference number.
  - d) Include the date of submission (this should be the same as the date on which the submission is emailed to us).
  - e) Use page and paragraph numbers – this will help the sub-panel discuss your submission and help you find the relevant part if the sub-panel have any questions about your submission.
  - f) You may use headings within the body of your submission. Whether or not you choose to do so will depend on the complexity of your submission. For example, an appeal made on two or more grounds would benefit from the use of headings whereas a simple request to extend an appeal deadline is unlikely to need them.
  - g) Unless you are submitting extensive fresh evidence or particularly sensitive information such as medical records, you should combine your submission into one PDF document. Use appendices to separate out copies of evidence. If you need to send separate documents, make sure that the latter documents are clearly cross-referenced in your submission and that all documents are in PDF format.

- 120) The Panel does not have a secure postal address or fax number. All submissions should be emailed to [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk).
- 121) If you are unable to comply with any of the above instructions, please contact us to ask about reasonable adjustments.

## Appendix 2 – Oral hearings

- 122) The following guidance sets out what is likely to happen if you are asked to attend an oral hearing, either virtually or in person.
- 123) As the circumstances of each case are different, the sub-panel in your case may choose to manage the hearing differently. We will let you know in advance how each hearing is going to be managed.
- 124) You may request a reasonable adjustment to the way in which the hearing is going to be managed, based either on the guidance set out here or on any specific instructions we may give you.
- 125) We may give you a choice whether to attend a hearing virtually or in person; if so, you should consider the general guidance below before making that choice.

### *In-person hearings*

- 126) Oral hearings held in person will take place on the Parliamentary estate. For reasons of confidentiality, we will aim to hold the hearing in a reasonably discrete location and we may use a meeting room away from the Palace of Westminster and other buildings regularly used by Members, such as Portcullis House. We will let you know where the hearing will be held.
- 127) We will specify a time for the hearing. We ask that you do not enter the meeting room until invited in as the sub-panel may be holding a private meeting in advance of the hearing.
- 128) You may be accompanied by one adviser. You should provide the name of your adviser in advance of the hearing. It is your responsibility to ensure that they are able to access the estate, including following any security requirements.
- 129) The sub-panel may ask if you wish to make a statement. You should not repeat any written submission you have already made, though you may refer to your written submission(s), clarify, extend or amplify points made in that submission and make additional points.
- 130) The sub-panel may ask questions to clarify your written and oral submissions.
- 131) You will be given an opportunity to ask any questions you may have about the process.
- 132) Your adviser cannot represent you, speak for you or ask questions of the sub-panel. They can request a short adjournment to advise you in private. If you wish to consult your adviser during the hearing, it will be your responsibility to find a suitable place to do so, though we may be able to offer some suggestions.
- 133) The sub-panel may wish to deliberate in private during the hearing. In this case, you will be asked to leave, and re-enter the meeting room when invited to do so.

- 134) Depending on the circumstances of the case, the sub-panel may let you know the outcome at the end of the hearing, but this will not always be possible. The sub-panel's full decision will not be available until after the hearing.
- 135) A non-verbatim note will be made of the hearing. We will send this to you as soon as possible after the meeting. We may ask that you send us any comments on the accuracy of the notes no more than three working days later. The notes and any comments received will be kept as a record of the Panel's consideration of the case.
- 136) We may record or arrange for a transcript to be made of the hearing. This is to enable the members of the sub-panel to verify precisely what was said. You may request access to any recording or transcript until your case has concluded. Any recording will normally be deleted as soon as your case has concluded.

#### *Virtual hearings*

- 137) Virtual hearings will take place using Microsoft Teams. We will send you the meeting invite; if others have access to your calendar, you may wish to make the meeting private. It is your responsibility to ensure that you can access Microsoft Teams, either through a Parliamentary account or otherwise.
- 138) We will specify a time for the hearing. You may join the meeting in advance of that time; the members of the sub-panel will join at the specified time.
- 139) You may be accompanied by one adviser; they can either be with you in person or separately join the Teams meeting. You should provide the name of your adviser and (if necessary) the email address to which the meeting invite should be sent, in advance of the hearing. It is your responsibility to ensure that they are able to access the Teams meeting.
- 140) Before we commence the hearing we will ask you to confirm that you can see and hear the sub-panel members, and we will confirm that we can see and hear you. If there are any technical difficulties we will seek to resolve them at this stage. If technical difficulties arise during the hearing, you should let us know as soon as possible; we may adjourn the hearing while we seek to resolve them.
- 141) The sub-panel may ask if you wish to make a statement. You should not repeat any written submission you have already made, though you may refer to your written submission(s), clarify points you made or make additional points.
- 142) The sub-panel may ask questions to clarify your written and oral submissions.
- 143) You will be given an opportunity to ask any questions you may have about the process.
- 144) Your adviser cannot represent you, speak for you or ask questions of the sub-panel. They can send brief private messages to you, for example by written note, text or email. They can also request a short adjournment to advise you in private. If you wish to consult your adviser during the hearing, you should turn off your microphone and video but otherwise stay in the Teams meeting.

- 145) The sub-panel may wish to deliberate in private during the hearing. In this case, the sub-panel members will leave the Teams meeting and give you a time when they expect to return (this time cannot be guaranteed). Whilst the sub-panel members are away, you may wish to turn off your microphone and video but otherwise stay in the Teams meeting so that you can be alerted when the sub-panel members return.
- 146) Depending on the circumstances of the case, the sub-panel may let you know the outcome at the end of the hearing, but this will not always be possible. The sub-panel's full decision will not be available until after the hearing.
- 147) A non-verbatim note will be made of the hearing. We will send this to you as soon as possible after the meeting. We may ask that you send us any comments on the accuracy of the notes no more than three working days later. The notes and any comments received will be kept as a record of the Panel's consideration of the case.
- 148) We may record or arrange for a transcript to be made of the hearing. This is to enable the members of the sub-panel to verify precisely what was said. You may request access to any recording or transcript until your case has concluded. Any recording will be deleted as soon as your case has concluded.