

**Independent  
Expert Panel**

# The Conduct of Mr John Bercow

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## **The Independent Expert Panel**

The Independent Expert Panel was established by the House of Commons on 23 June 2020. The Panel hears any appeals from decisions by the Parliamentary Commissioner for Standards in complaints against a MP or former MP under the Independent Complaints and Grievance Scheme (ICGS); and considers referrals from the Commissioner to determine sanctions in such cases. These are cases involving an allegation of a breach of the Bullying and Harassment Policy for UK Parliament, or the Sexual Misconduct Policy for UK Parliament.

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Mrs Johanna Higgins  
Sir Stephen Irwin (Chair)  
Professor Clare McGlynn  
Miss Dale Simon  
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Dr Matthew Vickers

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## Report by the Chair of the Panel

1.1 The Independent Expert Panel was established by the House of Commons on 23 June 2020. The Panel hears any appeals from decisions by the Parliamentary Commissioner for Standards (the Commissioner) on complaints against a MP, or former MP, under the Independent Complaints and Grievance Scheme (ICGS); and considers referrals from the Commissioner to determine sanctions where she has upheld a complaint in serious cases. These are cases involving an allegation of a breach of the Bullying and Harassment Policy for UK Parliament, or the Sexual Misconduct Policy for UK Parliament.<sup>1</sup>

1.2 The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality. 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.

1.3 This is a report of the decisions of the Panel on appeal and sanction made following a referral from the Commissioner of three complaints under the Bullying and Harassment Policy she upheld against the respondent, Rt Hon John Bercow, the Member for Buckingham from 1997 to 2019 and Speaker from 2009 to 2019. The respondent appealed the Commissioner's decisions in all three cases.

1.4 The complainants were:

- Mr Angus Sinclair, a former member of House staff
- Lord Lisvane (formerly Sir Robert Rogers), a former member of House staff
- Ms Kate Emms, a current member of House staff

All three complainants have agreed to be named in this report, as has Lieutenant General David Leakey, a witness to one of the complaints.

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<sup>1</sup> See, UK Parliament, [Independent Complaints and Grievance Scheme](#), for more detail on the ICGS and copies of the relevant policies.

1.5 The decision on the respondent's appeals (page 7 onwards) sets out the full background to the case and the details of the individual allegations. In total, the Commissioner upheld 21 allegations across the three complaints, all relating to events between 2009 and 2014 when Mr Bercow was Speaker. The Commissioner found that, for example, Mr Bercow had:

- Displayed 'intimidatory' and 'undermining behaviour', and 'threatening conduct' towards Mr Sinclair, including verbal abuse, displays of anger, and seeking to humiliate him in front of others;
- Shouted at and mimicked Ms Emms, created 'an intimidating and hostile environment', and was responsible for 'intimidating, insulting behaviour involving an abuse of power' towards her; and
- Subjected Lord Lisvane to 'a sustained course of conduct ...that involved repeated unfounded criticism of the complainant ... both publicly and privately ... often made at length and at volume and included derogatory inferences about [his] upbringing and background.'

1.6 Given the overlap between the allegations, and that Mr Bercow wished to raise the same procedural points in all three appeals I decided to appoint the same sub-panel of three members to hear them. The sub-panel was:

- Mrs Lisa Ball
- Rt Hon Sir Stephen Irwin (chair)
- Sir Peter Thornton

1.7 The sub-panel proceeded in two stages. We first considered Mr Bercow's argument, common to all three cases, that he was not covered by the Bullying and Harassment Policy. We dismissed this argument in a decision of 16 December 2021.

1.8 The sub-panel then considered the further grounds of appeal that had been raised in relation to the individual complaints. These included, but were not limited to, generalised complaints about the fairness of the investigations and the Commissioner's decision-making, and allegations that the complainants had colluded or co-operated to fabricate their complaints.

- 1.9 The sub-panel dismissed these appeals in a decision of 7 February 2022, finding that the procedural issues raised by the respondent were groundless. We also decided that there was no evidence that the complainants had colluded or fabricated their complaints. Instead, the sub-panel found, for example, in relation to Mr Sinclair's complaint that:

*... the respondent has been widely unreliable and repeatedly dishonest in his evidence. He has attempted to defeat these complaints by false accusations of collusion and by advancing lies.*

- 1.10 Overall, we concluded that:

*The ICGS Bullying and Harassment Policy was breached repeatedly and extensively by the most senior Member of the House of Commons. In all, 21 separate allegations were proved and have been upheld. The House may feel that his conduct brought the high office of Speaker into disrepute.*

*This was behaviour which had no place in any workplace. Members of staff in the House should not be expected to have to tolerate it as part of everyday life. No person at work however senior, indeed particularly such a senior figure, should behave in this way. This was an abuse of power.*

- 1.11 The sub-panel then proceeded to determine sanction. We received submissions from all three complainants that emphasised the serious and sustained nature of Mr Bercow's bullying. The conduct was the more serious because of his pre-eminent and powerful position in the House. The complainants also noted his denials, lack of any remorse and repeated publicity in breach of the confidentiality of the process. The impact on all three complainants can be described as very significant: severe at the time and enduring.

- 1.12 Mr Bercow provided a short response to the summary of the complainants' submissions. He rejected the sub-panel's finding on his appeal and made no acknowledgement of the impact of his behaviour. The sub-panel concluded that he had 'little or no insight into the way he behaved or its consequences.'

- 1.13 The sub-panel decided that the appropriate sanction was a formal reprimand by means of a published report. We observed that:

*It is for historians to judge whether the respondent was a successful reforming Speaker of the House of Commons. However, there was no need to act as a bully in order to achieve that aim. A great office can be filled forcefully and effectively without descending to such behaviour.*

*The findings of the Parliamentary Commissioner for Standards, which we have upheld, show that the respondent has been a serial bully. Like many bullies, he had those whom he favoured and those whom he made victims. These three complainants were victims.*

*His evidence in the investigations, the findings of the Commissioner, and his submissions to us, show also that the respondent has been a serial liar.*

*His behaviour fell very far below that which the public has a right to expect from any Member of Parliament.*

*The respondent's conduct was so serious that, had he still been a Member of Parliament, we would have determined that he should be expelled by resolution of the House. As it is, we recommend that he should never be permitted a pass to the Parliamentary estate.*

- 1.14 Mr Bercow did not appeal the sub-panel's decision on sanction.
- 1.15 I make this report to the House to make public this reprimand and the context in which it was given. The sub-panel's decision on the appeals has been published in full to provide background to the case and to explain why Mr Bercow's complaints about the fairness of the process are groundless. Those who wish to understand the reasoning behind the decision should read the detail in the report. All other material in the case, including the investigator's report and the Commissioner's memorandums except as referred to in the decision, remains confidential.

**Sir Stephen Irwin**

**08 March 2022**

# Appeal against the decisions of the Commissioner

## Appeal by the respondent against the decisions of the Parliamentary Commissioner for Standards as follows:

- **Case 1871: Memorandum of decision 6 July 2021 – complainant Katharine Emms**
- **Case 1875: Memorandum of decision 23 September 2021 – complainant Angus Sinclair**
- **Case 1840: Memorandum of decision 1 November 2021 – complainant Lord Lisvane, KCB DL (formerly Sir Robert Rogers).**

## Decision of sub-panel dated 7 February 2022

**Sub-panel members: Mrs Lisa Ball, Rt Hon Sir Stephen Irwin (chair), Sir Peter Thornton**

## Introduction and procedural issues

### *Background to the appeals*

- 2.1 From 22 June 2009 until 4 November 2019 the respondent, John Bercow, served as Speaker of the House of Commons. The three complainants worked for him or with him during that period. They each complain of sustained bullying by the respondent.
- 2.2 Angus Sinclair was appointed as the Speaker's Secretary in July 2005 and served under Speaker Martin until the respondent took up office in June 2009. He then continued to serve as Speaker's Secretary under the respondent until retiring at the end of June 2010. He made seven allegations of bullying. The Parliamentary Commissioner for Standards (the Commissioner) agreed with the report of the investigator that four of the allegations should be upheld. On 23 September 2021 the Commissioner concluded that she had insufficient powers for sanction and referred the case to the Independent Expert Panel (the Panel or IEP) for consideration of sanction. On 7 December 2021, the

respondent appealed the decision of the Commissioner. This sub-panel was appointed to consider the appeal and the referral on sanction. In this decision we address the appeal only.

- 2.3 Katharine Emms, who is known as Kate, succeeded Angus Sinclair as Speaker's Secretary in June 2010. She served in that capacity until March 2011. She made seven allegations of bullying and harassment in relation to that time. The investigator recommended that one of those complaints should be upheld. However, on 6 July 2021 the Commissioner concluded that three of the allegations should be upheld. Here, too, the Commissioner referred the case to the Independent Expert Panel for sanction. On 30 September 2021 the respondent appealed the Commissioner's decision to the Panel.
- 2.4 Lord Lisvane (as Sir Robert Rogers) was for some years a senior official of the House of Commons, becoming the Clerk of the House (the senior officer in the service of the House) on 1 October 2011 and serving until 31 August 2014. In that capacity he had to work closely with the respondent. Lord Lisvane made 18 allegations of bullying and/or harassment against the respondent, all arising from his time as Clerk. The investigator recommended that nine of the allegations should be upheld. However, on 1 November 2021 the Commissioner concluded that 14 complaints of bullying should be upheld on the evidence, and in addition held that two of the complaints should properly give rise to findings of harassment. The Commissioner referred the case to the panel for sanction. On 7 January 2022 the respondent appealed the Commissioner's decision to the Panel.
- 2.5 Each of the three cases was investigated separately by different individual investigators, and a senior investigator was appointed to oversee all three investigations. As will be clear, the Commissioner took individual decisions in each case. However, the context and many of the individuals, complainants and witnesses, overlap in the three cases. As the appeal sub-panel in all three cases, we are able to consider each case separately, then take an overview of the evidence overall.
- 2.6 The respondent not only rejects all the allegations made against him but has also made it clear that his case is that all the complainants are lying, or at the very least wilfully exaggerating, in the complaints made against him. He says that there has been collusion, or at the very lowest a high degree of

cooperation, between these complainants. Given the degree of overlap between the cases, the Chair of the Panel directed that the appeals should be heard together. He gave directions accordingly, and granted extensions to the respondent to the time for lodging appeals.

### *Bullying and harassment policy*

2.7 All three complaints were made under the Bullying and Harassment Policy, which forms part of the Independent Complaints and Grievance Scheme (ICGS), first established by Parliament in July 2018. The Bullying and Harassment Policy has been updated twice since it was first adopted in 2018, in 2019 and 2021.<sup>1</sup> The full definitions of bullying and harassment from the 2021 edition of the policy are reproduced in Annex One. They include:

*Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened.* [paragraph 2.3]

*Harassment is any unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.* [paragraph 2.6]

2.8 The question as to which version of the policy applied to these complaints, and indeed whether he fell within its scope, was a point raised by the respondent in his appeals. For the reasons set out in paragraphs 2.25 to 2.29 below and in the preliminary decision in Annex Two, the Commissioner, and the sub-panel, have applied the definitions in the 2021 edition of the policy. All references to the policy are to the 2021 edition unless otherwise stated.

### *The overall investigation*

2.9 The ICGS process for bullying and harassment complaints against MPs and former MPs can be summarised as follows.<sup>2</sup>

2.10 A complaint is made by the complainant calling the ICGS helpline. This is operated on an arms-lengths basis from the ICGS and the House by the independent charity Victim Support. When a formal complaint is made this is

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<sup>1</sup> UK Parliament, [Bullying and Harassment Policy for UK Parliament](#), Edition 2021, April 2021.

<sup>2</sup> For full details of the process see UK Parliament, [Bullying and Harassment Procedure for UK Parliament](#), Edition 2021, April 2021.

passed on to the ICGS team.

- 2.11 An independent investigator is selected by the ICGS team to carry out an initial assessment of a formal complaint to ensure it meets the criteria to be investigated. The Parliamentary Commissioner for Standards must approve a recommendation before a complaint moves to a full investigation.
- 2.12 The complaint is then investigated fully by an independent investigator appointed by the ICGS. The investigator completes a full report of the evidence and provides the Commissioner with recommendations on whether to uphold the complaint. The Commissioner has oversight of the investigation, but does not have prior sight or influence over the independent investigator's findings and recommendations.
- 2.13 The Commissioner then reviews the investigator's report and recommendations and decides whether to uphold the complaint. When a complaint is upheld, she must also decide whether it is so serious to require referral to the IEP to determine the sanction.
- 2.14 The IEP then hears any appeals against the Commissioner's decisions, and if necessary, determines the appropriate sanction.
- 2.15 It should be stated clearly that the ICGS process, dealing with allegations of bullying, harassment or sexual misconduct, is a comprehensive workplace disciplinary process.
- 2.16 In these three cases, the investigations were extensive. It is true that they took some time to complete. That was necessary because of the far-reaching nature of the case against the respondent. The evidence alone amounts to more than 1,850 pages. The investigators took comprehensive evidence from the respondent and read his very full written submissions by way of responses to the allegations. He submitted a total of 87 pages of grounds of appeal. The respondent was given every opportunity to reply to the allegations. At no time has he complained that he was not given adequate opportunity.
- 2.17 It should also be noted that the ICGS process is independent at all stages. The three investigators acted independently of each other and independently of the Commissioner (and of the House authorities). They were supervised by an independent senior investigator. The Commissioner acted separately and

independently. The IEP is a small group drawn from outside of the House (and approved by the House), entirely independent of the Commissioner and the investigators. MPs and members of the House Service play no part in the process of making our decisions.

- 2.18 We have considered with care the respondent's complaints about the disciplinary process, but we reject them. In our view there is nothing of substance in them. We shall deal with some of the respondent's specific complaints about procedure below. But we are satisfied that there was no unfairness either in the investigations or in the role of the Commissioner. There was no flaw in the way the set procedures were carried out.

### *The appeals*

- 2.19 The role of the sub-panel on appeal (on behalf of the IEP) is to review the decisions taken by the Commissioner. It does not conduct a re-hearing of the case. The principles by which we conduct a review are set out in our guidance.<sup>3</sup> The sub-panel will make decisions on the appeal and say whether the complaints have been upheld. Depending on the outcome, a sub-panel may then need to go on to consider the question of sanction.
- 2.20 Exceptionally in this case, the sub-panel agreed to a request by the respondent to hold an oral hearing on the appeal itself. The respondent made oral representations to us on 19 January 2022.
- 2.21 The normal procedure of the Panel following receipt of an appeal is to go through a preliminary step of considering whether the appeal is arguable. The criteria for that decision are set out in the guidance.<sup>4</sup> In this case, given three appeals each of real significance, each reaching far back in time, and each complex, we omitted the preliminary step and treated the matters as substantive appeals without going through the preliminary phase.

### *Burden of proof*

- 2.22 As in all ICGS cases, an allegation against a respondent will only be upheld if it is proved on a balance of probabilities (the standard of proof of the civil law). The respondent in this case has submitted that he has been required in effect

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<sup>3</sup> Independent Expert Panel, [Appeals, referrals and sanctions: Guidance for the parties](#), Version 2, October 2021.

<sup>4</sup> Ibid, para 28

to prove his case, not the other way round. We do not accept this. This is a submission without merit.

### *Anonymity*

- 2.23 The practice of the Panel, in common with other aspects of the operation of the ICGS, is to maintain the confidentiality of witnesses and particularly of complainants. The reason for this is well established. It is necessary to bring about conditions so that proper complaints may be made while minimising unfair negative consequences for complainants. The Panel maintains a strict policy of confidentiality and of anonymity of complainants and witnesses. However, because of the particular history of this case, we have decided it is necessary to name the complainants, and they have consented to this. As we set out below, there has already been extensive publicity over some years, in the course of which the complainants have been named. Indeed, two complainants, Mr Sinclair and Lord Lisvane, have been interviewed for television programmes or newspaper articles, and the respondent suggests that Ms Emms must have been interviewed off the record. All three have been written about extensively by the respondent, principally in his autobiography. All the complainants and the respondent, using different words, have made it clear that their reputations are at stake in these cases. It would be highly artificial, on the particular facts here, for us to follow our normal practice of anonymising the complainants. With his consent, we also name Lieutenant-General David Leakey, who was a fourth complainant against the respondent, and a witness to one of these complaints.
- 2.24 We do anonymise all the other witnesses in the course of summarising the evidence. The priority given to confidentiality means that such an approach is right and necessary for the protection of individuals. We nevertheless recognise that readers of this decision who are familiar with the House of Commons may in some instances be able to discern who is who.

*A point of law: Do these cases fall within the scope of the ICGS and therefore the jurisdiction of the Panel?*

- 2.25 As we have indicated, at a relatively early stage the respondent raised with the Commissioner the argument that he fell outside the scope of the ICGS scheme under which the complaints in the Emms case (Case 1871) had been raised. In very short summary, his argument was that, at the time when the

complaints were made, he was neither a serving MP nor did he hold a Parliamentary pass, and thus he fell outside the scope of the scheme. The Commissioner took time to consider the point in the early part of 2021. One consequence was that the wording of the relevant policy was amended in April 2021. The complaints in all these cases were renewed or re-stated pursuant to the new formulation. The investigations resumed and the decisions of the Commissioner proceeded from there.

2.26 When the Emms case came to the Panel on appeal, the respondent re-stated his argument, suggesting that the decision of the Commissioner on the point was in error. He also indicated that he would advance the same argument in relation to the other complaints, where the appeal procedures at that time were less advanced.

2.27 After some consideration, the Chair directed that the legal point should be decided as a preliminary issue. Directions were given as to timetable.

2.28 A process was laid down intended to maximise the fairness for the parties. The objective was that all parties, including the respondent, would be able to address the point, even though we operate a workplace scheme which is not adversarial, and where the parties may be advised by lawyers but not represented by them. The sub-panel drafted a document which identified the relevant legal arguments on both sides of the question, in a neutral fashion. That document was then given to the complainants and the respondent, so that if they wished, they could take legal advice and then present written submissions on the point. The parties were signposted to relevant provisions in the successive versions of the Bullying and Harassment Policy issued in 2018, 2019 and 2021, and to relevant legal authority.

2.29 The respondent and one of the complainants made submissions on the point. The sub-panel took time to consider the submissions and on 16 December 2021 gave a ruling rejecting the respondent's arguments. In short, we concluded that the respondent's submissions were without merit. His argument rested on the fact that when he left the House he had not applied for a pass to the Parliamentary estate. He argued that with a pass he would have been subject to the ICGS scheme, but not without one. His argument also turned to some extent on the dates when the complaints were formally made. Had they been made later, he had to accept that his argument could

not succeed. These submissions failed, in our view, because, on a fair reading of all the material, Parliament had always intended that bullying and harassment was unacceptable and that the ICGS scheme should cover past cases including those before the ICGS was approved by the House on 19 July 2018, initially from the beginning of the 2017–19 Parliament, and from July 2019 without limit (although that position will change in April 2022). Since this is of general significance for some other potential complaints, we append the full ruling to this decision as Annex Two.

*Further points affecting these appeals*

- 2.30 Considerable time elapsed between the events leading to the complaints, and the complaints being laid. The respondent submits that it is unfair and unjust that complaints against him under the Policy should be heard when they relate to occasions many years earlier, namely from June 2009 to March 2014. The respondent claims that he has been prejudiced in responding to the allegations. He emphasises that, as a result, there is no video evidence, no audio evidence, no email evidence, no text evidence, and in one case no documentary evidence.
- 2.31 We recognise that it is inevitable that the recollection of parties and witnesses is bound to have lost some precision. In some instances, the recollection of potential witnesses has vanished. Experience and common sense tell us that the variability of lost recollection often depends simply on the individual concerned, but also on the significance of the events to the person concerned. We have been vigilant to keep this issue in mind when reviewing the evidence and findings.
- 2.32 However, there are two factors here which tend to rebut the respondent's claims. First, in countering any specific allegation, the respondent does not suggest that he would have wished to rely upon any identified or any particular video, email, text or document which would have existed but has been lost because of the passage of time. Second, it is a notable feature of the respondent's account of events that he states he can recall most, if not all, of the events referred to in the allegations. For example, in relation to Case 1840 (Lisvane) he states that he can recall almost every incident, meeting and conversation, emphasising that he has an excellent memory of events going back decades. He claims that he can recall the very words that he and the

complainant in question said to each other in all of the relevant meetings. He confirmed explicitly to the investigators that he had been able to 'respond in detail' to all the allegations. He has indeed responded in great detail and at considerable length.

- 2.33 In scrutinising the Commissioner's decisions, we have therefore been astute to consider whether the investigator in question and the Commissioner have been sufficiently rigorous to allow for the effects of the passage of time when judging the evidence. Broadly, we conclude that they have. For these reasons, we do not feel that the respondent has been put at an unfair disadvantage by the historic nature of the allegations.
- 2.34 There is another consideration in relation to the passage of time: why were the complaints made so long after the events? The respondent submits that the complaints made against him are demonstrably false because they were not made at the time of the events or reasonably soon after. We touch on that question in the individual cases later in this ruling, but there are important questions of context which apply to all of them.
- 2.35 There is no question but that bullying and harassment were always a breach of the Code of Conduct or of the obligations of Members of the House of Commons, however formulated. Although the ICGS Bullying and Harassment Policy sets out definitions of bullying, which have been considered in this case by the investigators and by the Commissioner, those definitions are not 'new' in the sense of altering or extending the meaning of bullying or harassment. Rather, they represent clear formulations of what was always prohibited.
- 2.36 The historic problem relevant to these cases is not the standard of behaviour required but the inadequate or imperfect processes available to those complaining of bullying or harassment within the House at the relevant times (June 2009-March 2014). The point is made by some of the witnesses in these very cases:

*A senior clerk: 'The reality was that people would not make a formal complaint because they had no confidence that anything would be done about it.'*

*A very senior clerk: 'Back in 2010/2011 I think we were only just in what was the very first version of the Respect Policy, and that version of the*

*policy was truly hopeless, as it proved in the case of X ... Actually, I think that was under the 2nd one .... which also didn't work, but I think the only way the policy worked was somehow Whips were meant to be tipped off and help if there was any bad behaviour. That has subsequently been a very discredited approach, and I think it's fairly obvious why. You're asking the people who have the most vested interest in protecting members of anyone in the world to somehow [discipline members].'*

*A former clerk: 'How then could someone ... in 2011 think their career was going to flourish if they'd reported the Speaker in any official way? I experienced minor bullying one-off incidents with Members, like most members of House staff. I would report the incident to my line manager. My line manager would say "Yes, well he is a bit unpleasant, I'll mention it to his whip." That was how it was dealt with. There wasn't any expectation that anything good would come out of it for you. So there was a sense of "why bother?", mainly. It can only end up with you being seen as in some way inadequate...'*

- 2.37 These views exemplify the concerns later identified and expressed by Dame Laura Cox in her report of 15 October 2018,<sup>5</sup> which led to the extension of the ICGS to cover historic complaints and to the establishment of the Panel.
- 2.38 The complainants have between them expressed a number of reasons for the delay in bringing forward their complaints. They include the concern there was no adequate grievance procedure at the time; the fact that the ICGS process was not created until July 2018; the change in the ICGS procedure in July 2019 explicitly to include historic complaints; the fact that the respondent did not leave his role as Speaker (the highest office for an elected MP) until November 2019; the publication in February 2020 of the respondent's autobiography "Unspeakable", in which he rebutted allegations of bullying not yet made to the ICGS by two of the complainants, and in which he made allegations of his own against them; widespread discussion in the media about a possible peerage for the respondent; and the fact that another complainant had made a complaint. We accept that these were reasonable explanations for the reservations expressed by complainants about raising a

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<sup>5</sup> Dame Laura Cox DBE, [The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report](#), 15 October 2018.

complaint sooner than they did.

- 2.39 We have considered the respondent's submission carefully, but we do not feel, in these cases, that the passage of time between events and complaints can be the subject of criticism. We do not agree that this in any way demonstrates fabrication by any of the complainants (as the respondent alleges).
- 2.40 The sequence of events also bears on two other connected issues: the question of collusion between the complainants, and breaches of the principle of confidentiality. The respondent claims that there was or must have been collusion or as he puts it 'heavy cooperation' between the complainants. In particular, he cites the timing of the complaints, correspondence between the complainants and the use of the word 'spittle' by two of the complainants. He also claims that early breaches of confidentiality have caused him to be publicly 'reviled' and have prejudiced his case, in addition to having a significant effect on his prospects of being awarded a peerage.
- 2.41 In order properly to analyse the respondent's submissions on collusion and confidentiality, it is necessary to look at each separately and to look closely at the sequence of events. We attach a chronology of these complaints as Annex Three.

### *Collusion*

- 2.42 As a general matter we consider there is no evidence of collusion, in the sense of these complainants collaborating so as to create or reproduce false allegations, or even to dovetail their accounts of events. There are differences, particularly of detail, between the accounts given. They are differences, in our view, which are consistent with genuine recollection from somewhat different positions. There is no evidence of any degree of consciously coordinated evidence.
- 2.43 The chronology makes clear that there was a stuttering process by which the complainants made their complaints, rather than a clearly coordinated sequence of events. Mr Sinclair left the House in late June 2010. Ms Emms's last day in the Speaker's office was 4 March 2011. Lord Lisvane was appointed Clerk of the House on 1 October 2011, and all of his allegations postdate that appointment. Thus, there was a considerable hiatus in time

between the end of the difficulties for Mr Sinclair and Ms Emms and the beginning of the significant difficulties between Lord Lisvane and the respondent. Lord Lisvane retired on 31 August 2014. Much time passed thereafter before any event relevant to these complaints. In March 2018 Newsnight named Ms Emms as having been bullied by the respondent. Her case is that she did not speak to Newsnight, and the information reached them without her direct cooperation. The respondent suggests otherwise. However, there was still no formal complaint under the then existing system by anyone.

- 2.44 On 2 May 2018 both Mr Sinclair and the former Black Rod, Lieutenant General David Leakey, were interviewed on Newsnight and in Politics Home respectively. There was still no formal complaint by any of these complainants.
- 2.45 In July 2018 the House of Commons approved the creation of the ICGS. In July 2019 the House of Commons amended the Bullying and Harassment Policy in order to permit complaints prior to June 2017. However, there was still no complaint by any of these complainants during 2019.
- 2.46 On 19 January 2020, a little over two months after the retirement of the respondent as Speaker, the Sunday Times reported that the respondent would be nominated for a peerage. It was in response to this that Mr Sinclair wrote to the House of Lords Appointments Commission to inform them that he intended to make a complaint through the ICGS. He confirmed to journalists that he intended to make a complaint, and also confirmed the same to General Leakey. On 22 January 2020, Lord Lisvane made his complaint to the ICGS helpline and on the following day reports appeared in the press of that complaint. A few days later, Ms Emms emailed Lord Lisvane in response to the press report in which she was mentioned, and Lord Lisvane responded by letting Ms Emms see an extract from his complaint. Ms Emms's interpretation of this is that Lord Lisvane was making her aware of how a complaint could be made. On her case there was no direct encouragement and certainly no collusion, but the natural interpretation is that she thought he was tacitly encouraging her to complain.
- 2.47 Also, in late January 2020 Ms Emms contacted General Leakey seeking contact details of a potential witness, and she makes it clear that he

encouraged her to make a complaint. General Leakey's complaint was lodged on 5 February 2020. (His complaint was not upheld.) On the following day, 6 February the respondent published his book of memoirs "Unspeakable". Mr Sinclair's complaint was made on 11 February 2020 and on the following day Ms Emms made her complaint. It was on 12 February that Lord Lisvane emailed Mr Sinclair asking if he intended to make a complaint. As will be clear, he had already done so.

- 2.48 Thus, although there was a degree of contact and some degree of coordination between these three complainants and General Leakey, the detailed pattern of events does not, in our judgment, give rise to any clear inference of preplanning or collusion between the complainants. The natural inference in our view is that all three of these complainants made their complaints in response to one or more of three developments: firstly, the instigation of an independent complaints system, secondly, the prospect of the respondent going to the House of Lords and thirdly the publicity generated by the respondent, whether in his book or otherwise. We do not see this sequence of events as supportive of any collusion in their cases. Certainly, their accounts are that there was no such collusion. The chronological pattern we have identified does not lead to the inference of collusion, and nor does the evidence they have given.
- 2.49 As we have said, the central plank of the respondent's case is that these three complainants are lying about what happened. Since their picture of the events affecting them individually, and their picture of the behaviour of the respondent, is similar (despite detailed differences) the suggestion must be that they are lying in a similar fashion. This is not a case where the differences of position can be explained by different interpretations of events, by misunderstanding, or by different viewpoints on agreed events. In simple terms, this case is either to be explained by similar lies told by all three complainants, or to be explained because they are telling the truth.
- 2.50 We have concluded that they are telling the truth. We have no doubt about it. We have concluded that there is no evidence of collusion. The respondent's submission is rejected. Such contact as there was between the complainants has had no bearing on the factual decisions taken by the Commissioner in each case. No procedural flaw has been demonstrated.

### *Breaches of confidentiality*

- 2.51 In the preceding paragraphs, we have touched on the sequence of events leading to the lodging of complaints. There was undoubtedly contact between both Mr Sinclair and Lord Lisvane and the press before those formal complaints were lodged. We have no reason to disbelieve Ms Emms who says she did not contact the press before lodging her complaints. The key point here is that before the complaints were lodged, there was no obligation or duty of confidentiality within the ICGS.
- 2.52 Once those complaints were lodged, however, each complainant signed an ICGS confidentiality statement: the dates are set out in the chronology annexed (Annex Three). There is no direct evidence that any of these three complainants said anything to the press after signing the confidentiality statement. It is the respondent's case, at least in regard to Lord Lisvane, that much of the publicity which did arise between the making of the complaints and mid-January 2022 must have come from the complainant, albeit with the rather conventional rubric of 'friends of' or 'sources close to' to conceal the truth of the source. We draw no inference that this is so. It is firmly denied by Lord Lisvane.
- 2.53 In evidence to the investigator, the respondent said that in his autobiography (published February 2020) he 'treated of and responded to allegations which weren't then crystallised in the form of formal complaints, but allegations that had surfaced in the media' about his conduct. For example, he named Ms Emms who was then (and still is) a member of the House of Commons service, for which breach of privacy and data protection the respondent was rebuked by the House authorities.
- 2.54 There is simply no evidence that there was a breach of the duty of confidentiality by any of these complainants after they signed the statement of confidentiality shortly following their complaints being lodged. On the other hand, it is certain that the respondent himself breached the obligation of confidentiality in a burst of publicity on 16 January 2022 and shortly thereafter. He stated directly to us that he did this on the suggestion of his media adviser.
- 2.55 We reject the respondent's contention that the early publicity prejudiced his case adversely before the investigators and the Commissioner. We are sure that it did not.

- 2.56 We make it clear that we draw no inference as to the truth or accuracy of the complaints made, and no conclusion as to the reliability of the conclusions of the Commissioner in respect of any of the allegations, by reference to the actual breaches of confidentiality by the respondent (or the suggested breaches on the part of the complainants).

*General evidence and patterns of behaviour*

- 2.57 As we have explained, each investigation was conducted separately, by different investigators, albeit under the overall supervision of a senior investigator. As we will make clear in more detail below, the Commissioner took the view that she would rest her conclusions only on the evidence bearing on each specific complaint, rather than looking at any broader pattern in the evidence overall. We take the view that the decisions of the Commissioner are properly supported by the evidence upon which she did rely, even though she might reasonably have looked more broadly for support.
- 2.58 It is our view that it would have been appropriate to consider more broadly whether the evidence bearing on a specific allegation in a given case, established a pattern relevant to interpreting the evidence in another allegation in that case, or indeed to consider whether evidence not directly bearing on a specific allegation was relevant to establish a pattern of behaviour by the respondent, properly assisting the interpretation of evidence in the other cases.
- 2.59 A tribunal is entitled to follow such a course, provided caution is exercised, firstly to exclude fabrication or collusion, or tailoring of evidence, and secondly to ensure that such evidence is used only to interpret or support direct evidence of the substance of the allegation being considered. It is our view that such an approach would have been legitimate when considering these cases.

*Hearsay*

- 2.60 At various points in his submissions, the respondent has sought to criticise the approach of the investigators and of the Commissioner in that they have relied on hearsay evidence. In fact, in our view the Commissioner has been careful to avoid any widespread reliance on hearsay evidence.
- 2.61 It may be helpful to cite one example, illustrative of the general approach.

Allegation 2 in the Emms case concerns an episode arising from a work trip which the complainant and the respondent took together to Kenya. The complainant's account is that the respondent had in his hand luggage an item which was refused on security grounds. She describes it as 'a toiletry item'. She says that in response to the refusal to allow the item through security and onto the flight, the respondent threw a temper tantrum and then sulked, refusing to acknowledge the complainant during the flight and on arrival in Kenya. Her account is that she was shocked and distressed by the respondent's attitude, which was, she says, aggressive and quite out of proportion. Her evidence is that she reported the episode as a significant and difficult event to other people, including three witnesses from whom statements were subsequently taken. The respondent's case is that there was no significant episode, no aggression or sulking by him and indeed no difficulty. He was irritated with himself, he said, and expressed some annoyance, but the whole episode was trivial.

- 2.62 In considering this episode, the investigator and the Commissioner attended to the account of the complainant and accepted it as substantially accurate. They recited the fact that other witnesses had been spoken to by the complainant about the incident and recognised her shock and distress.
- 2.63 In our judgment the approach of the investigator and the Commissioner was not only defensible but arguably rather conservative. There was no reliance by the Commissioner on the description of the content of the episode by the three witnesses concerned. The care shown by the Commissioner is readily observed from her memorandum in the Emms case at paragraphs 36 and 40.
- 2.64 Had there been such reliance, that would in truth have been to rely upon hearsay evidence. It is worth saying that in our view that would have been acceptable in proceedings such as this. This is not a criminal trial; but since 2003 hearsay evidence is often admissible even in criminal trials. With hearsay evidence must come proper caution, born from the fact that the person giving hearsay evidence was not present and therefore the evidence is at one remove. Nevertheless, it may be valuable. Here the evidence of the three witnesses was direct evidence of the impact on the complainant of what had taken place. The distress of the complainant in the face of what had happened is something about which they could form a direct and independent assessment themselves.

2.65 Hearsay evidence, so long as it is relevant, may be valuable in ICGS cases. It must always be considered carefully, with a fair assessment of its weight or value in the particular context. Is it helpful? If so, to what extent? It should not be ignored just because it is hearsay. In general terms therefore we reject the respondent's criticism on this ground.

#### *Cross-examination*

2.66 At one point the respondent submitted that the procedure was flawed because he had no opportunity to cross-examine any witness. We will take this point shortly. Cross-examination is rarely a feature of any workplace disciplinary process. Indeed, in later submissions, the respondent appeared to accept this and did not pursue the point.

2.67 It is the norm for the process to be, as here, inquisitorial not adversarial, meaning that the investigators take evidence from witnesses, including complainants and respondents, and a decision is made upon the evidence collected. A respondent will always, as here, be given the opportunity to challenge other evidence and make submissions about it. But there is no right to cross-examine. This was, for example, the conclusion of the House of Lords Committee for Privileges and Conduct in Lord Lester's appeal in relation to sexual misconduct allegations.<sup>6</sup> We therefore find no merit in this complaint of the respondent.

#### *Our overall conclusion*

2.68 We will address the individual cases in detail. However, our overall conclusion is that the respondent's appeals are rejected.

#### *The individual cases*

2.69 We now turn to the specific evidence in the three cases. Despite the case numbering, the events of BH1875 (Sinclair) come first in time.

### **Case 1875 (Sinclair)**

#### *General*

2.70 This complainant was a former naval Captain who applied successfully for the post of Secretary to the Speaker of the House of Commons from outside

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<sup>6</sup> House of Lords, Committee of Privileges and Conduct, Third Report of Session 2017–19, [Further Report on the Conduct of Lord Lester of Herne Hill](#), HL 252, 10 December 2018.

Parliament. He was appointed as Secretary to Speaker Martin in July 2005 and served with Speaker Martin until the respondent became Speaker on 26 June 2009. The complainant then stayed in post until he was, in effect, dismissed as Secretary and left the House at the end of June 2010.

- 2.71 This complainant made seven allegations of misconduct by the respondent, contrary to the Bullying and Harassment Policy, in the period from June 2009 to June 2010. The independent investigator recommended that four allegations should be upheld. On review the Commissioner agreed. The respondent now appeals against the Commissioner's decision.
- 2.72 We shall consider each of the seven allegations by way of review. In doing so we shall consider whether any of the decisions taken by the Commissioner were materially flawed or unreasonable.
- 2.73 The complainant adopted the practice, when acting as Speaker's Secretary of keeping contemporaneous notes, largely for operational purposes. He retained five large Black and Red notebooks. There are also various notes on loose individual sheets in the notebooks, or 'Post-it' notes stuck to the pages. The investigator noted that the notes were often written in short form and not always in complete sentences or in sequence. The investigator found that the great majority of the notes were made principally for the complainant's benefit as a reminder of what to do or of what had taken place. The investigator found that they were not fabricated or made after the event but were made contemporaneously and were reliable sources of evidence.
- 2.74 In her decision, the Commissioner agreed with that conclusion, stating that: '... it is improbable that the complainant made up these notes to support the allegations he has made. If this was the case, I would have expected them to be more comprehensible, thoroughly detailed and appear in sequence. My view is that the imperfection of these notes makes them more credible as evidence...'
- 2.75 The respondent advances a contrary view, stating that in relation to these allegations '... there is either no documentary evidence or... such limited material as exists is undated, uncertainly dated or of questionable provenance.' He says that 'it is an unsustainable conclusion to determine that Post-it notes attached to the complainant's notes must have been made

contemporaneously with those notes, despite the lack of any dates and the clear possibility that they were added later.’

- 2.76 Having ourselves seen sample copies of these notes, we regard the Commissioner’s conclusion as reasonable, and indeed firm. It is evident that the notes of significance for these complaints are a minor component of what was written down, in what appears to us to be clearly a broad-based set of contemporaneous working notes. We agree that they are a reliable source of what took place. The only alternative conclusion would be that they were elaborately fabricated, deliberately misleading entries made as rare interpolations in otherwise uncontroversial working notes, which were not then used for any purpose for many years thereafter. Given the history and context of this case, we regard such a possibility as remote and safely to be discounted.
- 2.77 The respondent gave extensive evidence to the investigator in this case. He claimed that he had a very wide and detailed recall of all the events of significance arising in these allegations. He denied that he had lost his temper or had bullied or harassed the complainant in any way. The complaints were, in his submission, ‘at best, a grossly and maliciously distorted exaggeration of true events and, at worst, pure fabrication’. In broad terms the complaints were, in his submission, either completely false or at best deliberate exaggerations of the truth. He denied much of what the complainant alleged to have been said. He said that the complainant had brought these allegations out of ‘sheer animosity and malice’.
- 2.78 In the end, however, we are satisfied that the complainant, supported by the evidence of his various notebook entries, and to a significant extent by other witnesses, has told the truth. However hard the respondent tried to refute the content of the notes, he was not able to do so. The evidence from them is cogent and compelling. We are therefore bound to conclude that the respondent has lied extensively to try and avoid the thrust of these allegations. Having considered all the evidence, we come to that conclusion confidently.
- 2.79 The respondent was the complainant’s direct superior, as well as the leading (and one could fairly add, dominant) figure in the House of Commons. It is clear from the overall evidence that the complainant and the respondent have

very different personalities and may well have had a different outlook on what was the proper answer to many relevant questions in the management and organisation of the House. The complainant is described by many witnesses as having a very high sense of responsibility and duty, a rather formal manner and a sensitive nature. Putting the matter neutrally, the respondent is a forthright man who never pulled his punches. He entered the office of Speaker, on his own account (here not contradicted by any evidence) with a very large and comprehensive agenda for reform. Part of the respondent's case is that this complainant was resistant to that agenda, and that such tension as there was between them derives from that and nothing more. In various ways, the complainant has expressed his disagreement with that. His case is that he did not seek to obstruct the respondent's plans for reform, recognising that it was not his place to do so. He may of course have given advice as to the approach to be taken, but that would be clearly within his responsibilities.

- 2.80 It will be obvious that the respondent was in a position of very considerable relative power to the complainant, even acknowledging that the complainant's role was a significant and senior one. The Speaker is the most powerful figure within the House of Commons.
- 2.81 We find no convincing basis for the explanation advanced by the respondent that such tensions as there were between these parties derived from obstruction of the respondent's reform programme or his zeal to put it into effect. The detailed findings on the allegations are clearly inconsistent with such an explanation of the story. In any event, it goes without saying that no tension of that kind could justify bullying or harassment.
- 2.82 As we have indicated in general, the respondent raised the question of collusion in relation to this complainant. We have given our general conclusion above. Specifically in relation to this complainant, the Commissioner found: (1) there had been no contact between this complainant and Ms Emms since the complaint, apart from a note the complainant sent to Ms Emms when she left her role as Speaker's Secretary; (2) General Leakey did contact this complainant to ask if he was going to submit a complaint and there was a discussion of the route for complaint, but they did not share information about each other's complaints; (3) there was contact between this complainant and Lord Lisvane, and Lord Lisvane encouraged this

complainant to lodge a complaint but this complainant did not share any information about his complaint with Lord Lisvane; and (4) this complainant had not spoken to General Leakey or to Lord Lisvane between February 2020 and the investigator's report in April 2021. We find those conclusions to be sound.

### *Allegation 1*

- 2.83 Under this head, the complaint is that Mr Sinclair was given insufficient direction in relation to handling the press. He says he was excluded from decision-making and was the subject of abusive language and threatening words. This matter arose principally out of a request for press comment in June 2009 concerning the pay of MPs. In answer to a press enquiry, the complainant stated that the Speaker would, unless required, probably not vote on the issue of members pay. The complainant states he was berated for doing so and sworn at. He made notes about some of the swearing, the Speaker calling him 'fucking stupid' and saying that he (the Speaker) did not give a 'flying fuck'. This was the first time the complainant had experienced this sort of outburst, so the contemporaneous notes are an important record.
- 2.84 The investigator found that there was insufficient evidence to support the complainant's case that press comment was crucial to his role, that he was subject to a deliberate lack of direction or inclusion by the respondent, or that the claimant had consulted the respondent before answering the journalist's query. The Commissioner agreed.
- 2.85 Both parties agree that there was a 'difficult exchange' on this occasion. The Commissioner agreed with the assessment of the investigator that this complainant would not have written the notes he did unless the swearing was used, despite the respondent's denial. The Commissioner found that on this occasion the respondent's behaviour could properly be categorised as offensive and intimidating, making the complainant feel vulnerable, upset undermined and threatened. She agreed that this was an abuse of power and constituted a breach of the Bullying and Harassment Policy.
- 2.86 We agree and confirm the Commissioner's findings of fact, supported as they are by what we accept to be genuine contemporaneous notes. We therefore agree with the conclusion of the Commissioner. Her reasoning was correct. There was sufficient evidence and a breach of the Policy was proved. The

decision of the Commissioner was a reasonable one.

### *Allegation 2*

2.87 This complaint concerns an allegation of a deliberate changing of work structure, routines and responsibilities in September and October 2009, including the appointment of a Special Advisor. For reasons set out in the Commissioner's memorandum this allegation was not upheld. In any event, the Commissioner noted that the respondent was entitled to change the working arrangements affecting the complainant. Although the complainant alleged that these changes led to 'diary clashes and other errors' to which the respondent reacted with verbal abuse and threats, there is no contemporaneous note or directly supporting evidence confirming the complainant's recollections, which are less specific and graphic than in other allegations.

2.88 The Commissioner expressed no doubt about the complainant's evidence as to his own reactions and feelings; but without being in a position to uphold specific complaints of verbal abuse, threats or demeaning language, the Commissioner took the view that a breach of the policy was not made out. We consider this was a careful conclusion and, of course, it is not the subject of any appeal by the respondent. We note that had the Commissioner taken a broader view of patterns of behaviour established in other allegations, both in this case and in that of the other complainants in these appeals, then it might well have been possible to lend support to the account of the complainant in this allegation.

### *Allegation 3*

2.89 This episode relates to an incident in September 2009.

2.90 The complainant's case is that he had arranged for an introductory visit by a senior official of the Northern Ireland Boundary Commission to meet the respondent at the beginning of the relevant day. He said that he had fully briefed the respondent in writing. At the time when the meeting was due, the complainant states the respondent said he was leaving, cutting the meeting, and that he 'did not give a flying fuck for the visit'. The complainant reported that the respondent claimed at the time that the complainant had 'secretly placed the papers [meaning the briefing paper] into his programme' and that

the complainant could cover up his own incompetence by telling the visitor whatever story he wished.

- 2.91 Both parties agreed that the meeting had been arranged and was cancelled at very short notice by the respondent, who went instead to his constituency. It is agreed that the relevant conversation between them was without witnesses. However, it is the subject of a notebook entry by the complainant, which reads in part 'had to lie to him or did I? I did lie as the easier course so he will think less ill of Sp[eaker] – what wd. he had made of the truth. He knew I am sure'.
- 2.92 The respondent recalled the incident. He agreed that the complainant had arranged the meeting and that it had to be cancelled at very short notice. But he denied swearing or accusing the complainant of hiding papers.
- 2.93 In her conclusions, the Commissioner recorded that the handwritten note supported the complainant's statement about the position he was placed in and his embarrassment. However, she went on to conclude that there was no corroborating evidence confirming the further elements of the complainant's version of events. For those reasons she declined to uphold the complaint.
- 2.94 We agree with the Commissioner's approach. Some may have found the detailed evidence of the complainant sufficiently credible for the complaint to be proved. Certainly, there does not have to be corroborating evidence for an allegation to be upheld. But the Commissioner's conclusion was a reasonable one on the evidence as she saw it. We therefore agree with the Commissioner's decision that this allegation is not upheld.

#### *Allegation 4*

- 2.95 Following a Freedom of Information request, the *Daily Telegraph* published negative reports about the cost of work on the Speaker's apartment. As a consequence, the respondent accused the complainant in a meeting in November 2009 of a lack of interest, support, control and leadership. This was in front of other members of staff. The complainant described the level of anger expressed by the respondent as '...way over the top: there is spittle coming out of the mouth and arms being waved about.' The anger was uncontrolled, and the complainant said he was afraid that someone might be 'thumped'.
- 2.96 There were notes supporting this episode. The complainant defended himself

by saying that work on the apartment was not within his responsibilities. The complainant reported that a witness had commented to him on how unfair had been the respondent's treatment of him. However, when asked, the witness could not recall that comment. Another witness was said to have observed to the complainant 'you're being bullied'. During an interview, yet another witness volunteered that he had been given a description of this episode at the time by the complainant and had told him that he was being bullied. The investigator disregarded this last evidence as being hearsay.

2.97 The Commissioner's conclusion was that such an episode occurred but there was insufficient evidence to demonstrate that the behaviour was so extreme as to constitute bullying. In particular, the complainant's note does not confirm many of the more extreme aspects of the claimed behaviour of the respondent.

2.98 We accept that this conclusion was reasonable. We would note that neither the Commissioner nor the investigator concluded that this episode undermined the complainant's credibility. This was a matter of degree after many years. We accept that that conclusion also was appropriate.

#### *Allegation 5*

2.99 This complaint concerns a meeting in January 2010 with the CEO of the United Kingdom's Commonwealth Parliamentary Association [CPA]. The complainant prepared a brief for both parties, with papers in advance. The meeting was diarised. When the respondent arrived at the meeting, he cut it short, claiming that the complainant had not briefed him and criticised him in front of the CEO. The contemporaneous note sets out the detail, including the observation 'SPKR very rude to me'.

2.100 The respondent denies that he had claimed he had no knowledge of the meeting or that he had been poorly served by the complainant. He denies that he got angry or that he belittled the competence of the claimant in front of the witness or at all.

2.101 The witness remembered the meeting and confirmed the account of the complainant. In response to this, the respondent simply accused the witness of being partial, a friend of the complainant, and thus giving misleading evidence.

- 2.102 Both the investigator and the Commissioner found the complaint to be made out and to constitute bullying, as it involved insulting and denigrating the complainant in front of another without any justification.
- 2.103 We agree with the conclusion of the Commissioner to uphold this allegation. Her reasoning was correct. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

#### *Allegation 6*

- 2.104 There are a number of elements to this allegation, spanning the period November 2009 to April 2010. The first concerns criticism of the complainant that he failed to ensure the Speaker's accommodation in the Palace of Westminster would be available to the Speaker's family during the campaign for the 2010 general election, or at least failed to ensure that the respondent had sufficient notice that it would not be available. It is not necessary for us to recite all the twists and turns of this part of the complaint. It seems to be beyond issue that the complainant was not in a position to make the decision about this. Part of the problem was that the Speaker's wife was intending to stand as a local government candidate, and there was a strong hesitation on the part of the House authorities on that account: there could not be political campaigning from the Speaker's House.
- 2.105 It is agreed that there was a meeting between the complainant and the respondent where the former informed the latter that he would not be able to use the accommodation. There was then an episode which the complainant described as 'an amazing display of temper in my office, in which he ordered me to stay seated, so he was standing over me, and then threw the mobile phone right in front of me on my desk and it burst into hundreds of bits and I could feel them hitting me. It was the most violent, extraordinary display of temper....' According to the complainant this was the only episode where the respondent apologised for his behaviour afterwards. The complainant also describes how the son of the office cleaner gathered up the parts of the mobile phone and later reassembled it.
- 2.106 The respondent accepts that he was disappointed by this decision but denies the display of anger, throwing his mobile phone down so that it came to pieces and telling the complainant that he would hold him responsible. In his autobiography, the respondent accepted this episode as an admittedly heated

argument.

- 2.107 Various witnesses supported elements of the complainant's account. One witness who had the confidence of the complainant remembered being told about the incident the same evening. The witness, the son of a member of House staff, did not remember fixing the phone. A suggestion from the complainant that there had in fact been another phone-throwing episode in front of another witness was rejected by that witness.
- 2.108 The investigator and the Commissioner placed heavy reliance on the detailed contemporaneous note and thus concluded that the critical elements of the complainant's account were reliable and that the respondent's behaviour was offensive and intimidating involving an abuse of power. That aspect of this allegation was upheld. We agree with that conclusion.
- 2.109 A second aspect of this complaint is a further episode of temper by the respondent who blamed the complainant for failing to ensure that a licence for civil partnership ceremonies could take place on the Parliamentary estate in time for the ceremony desired by an individual MP. This again was a matter outside the complainant's responsibilities.
- 2.110 Here too there was a contemporaneous note, part of which records the respondent's remarks as follows: 'what the fuck! Nothing surprises me about you – it's your job – don't you understand you (are stupid) – fuck! It's your job you are to do this despite what Clerk has said – you are to find out.' The notes record 'further rage'. The complainant told the investigator that the respondent had accused him of being homophobic.
- 2.111 The complainant named a witness who was present for part of the discussion. That witness conveyed the impression 'the respondent was displaying actual anger... It made the witness feel very uncomfortable. [The complainant] reacted in a calm manner, trying to explain the issue....' Another witness heard 'blasts of shouting' from the respondent and described the complainant as being 'white as a sheet, shaken and shell-shocked.'
- 2.112 The investigator accepted that the witness who had heard the shouting and observed the effect upon the complainant was describing the relevant episode. The Commissioner concluded that she was unable to reach a decision on whether the term 'homophobic' had been used, but otherwise

accepted the description of this episode and concluded that it was properly proved.

2.113 We accept this conclusion as reasonable and proper.

2.114 The third aspect of this allegation concerned the appointment of two Parliamentary clerks to work in the Speaker's office. We intend to take this matter very shortly, since this part of the complaint was not upheld. That outcome is explicable by a lack of relevant knowledge on the part of the complainant. In essence, without the complainant being consulted, the House authorities (including Lord Lisvane) redeployed two clerks to work in the Speaker's office, in large measure as a means of protecting or supporting the complainant. The complainant was not informed of this. He assumed that this arrangement was at the behest of the respondent and was preparatory to undermining or displacing him. We regard this as explicable misunderstanding on his part.

2.115 The Commissioner concluded that this aspect of this complaint was not made out and we agree.

2.116 However, our decision on allegation 6 is that two serious aspects of that complaint were properly made out, and the Commissioner's decision to uphold them was reasonable. Her reasoning was correct. There was sufficient evidence, and a breach of the Policy was proved in relation to them.

### *Allegation 7*

2.117 This allegation falls into two parts, each concerned with the respondent's behaviour when displeased with a process of recruitment, in the first instance recruitment of a chaplain to the Speaker and in the second instance recruitment of a new diary secretary. The subject of the first part of this allegation is of significance, in part because it represents the subject of the first allegation by the complainant Ms Emms. We have considered both these complaints together, a helpful exercise in determining whether or not there has been collusion between these complainants.

2.118 The complaint by Mr Sinclair is that, because of his displeasure at the progress of the recruitment of the new chaplain, and then his anger that the recommended candidate was not his favoured candidate, the respondent engaged in unbridled anger and bullying of the complainant. A critical

episode, says this complainant, took place in the presence of Ms Emms. The respondent denies any such behaviour, and specifically denies that the relevant meeting or discussion was in the presence of Ms Emms.

2.119 The complainant's account is that initially the respondent was told that he could not have an active role in the recruitment process of his chaplain. He was disappointed by this, telling the complainant 'you fucking fix it that I'm on that panel.' When that proved impossible, the respondent stipulated that he wanted to meet all of the candidates, which he did after some negotiation. That sequence of events is in its essence confirmed by the evidence of external witnesses. Once the respondent had met the candidates, he fixed upon one whom he wished to be appointed. The candidate was a woman of colour. From that point the respondent set out to ensure that she was selected.

2.120 A witness whose evidence was accepted as accurate confirmed that there was an 'unholy row' between the respondent and the relevant Church authorities over this issue.

2.121 Before this was resolved by a compromise involving an alteration of the pattern into which previous chaplains had been recruited, this complainant was required to tell the respondent who the selection panel proposed to appoint. The complainant made detailed notes about the respondent's reaction. He described it as being 'furious beyond the normal reaction' with the respondent swearing at the complainant, thumping the table and waving his arms, with spittle coming from his mouth. The complainant's written account records that Ms Emms was present at the scene. The central passages from the note read:

*'[the Speaker] was furious beyond a normal reaction – swore (F) and thumped the table – “distressed that he had been forced into this assessment (suggested I was part of this conspiracy)” Kate chipped in to try and calm him. Very poor behaviour – anger caused physical reaction – white spittle and waving arms. Unreasonable temper. Believed he could smash the glass ceiling. refused to talk to... (“He has not represented me... He has not done what I asked (of him). Persuaded him to talk to... And to... (Both rants and I had failed to pass on things which they knew not to be the case...)'*

- 2.122 The complainant, Ms Emms, confirms her presence at the meeting. By that stage, it was known to Mr Sinclair and to Ms Emms that she would be taking over his responsibilities when he departed. Her account is that she was taken to this meeting by Mr Sinclair so that she could see in advance 'what it could be like'. Her account, given to the different investigator who handled her complaint, is broadly consistent with that of this complainant, Mr Sinclair. She describes the respondent as losing his temper spectacularly 'like Jekyll and Hyde', his face being totally red, as spittle came from his mouth. He shouted and used abusive words to the complainant, Mr Sinclair.
- 2.123 The respondent denies that Ms Emms was present 'as she had no locus, duty or role in the matter.' His case is that the suggestion she was present is a lie. He states that 'the suggestion that I waved my arms... with spittle coming from my mouth is disgusting, offensive and untrue.'
- 2.124 In the transcription of this complainant's note appearing in the Commissioner's Memorandum in the Sinclair case, the date given for the meeting is 21 May 2010. That date came from the complainant's typed version of his notes. The respondent challenged the date with evidence indicating that the meeting could not have taken place on that day. However, the investigator then examined the original notes and magnified them, concluding that the manuscript note actually recorded the date of 27 May 2010, a date which fitted in with evidence provided by independent witnesses.
- 2.125 It is illuminating to consider how this episode was addressed by the respondent and the investigator in the Emms case. According to the investigator in that case, the respondent alleged collusion '15 times in his rebuttal of the draft [investigator's] report'. The respondent also alleged that the complainant Ms Emms colluded with Lord Lisvane and with General Leakey. That investigator went on to observe: 'However, he did not refer to any example or evidence of how such conduct has manifested itself in the formulation of any part of the complainant's complaint, nor indeed any other.'
- 2.126 The investigator in the Emms case concluded that the meeting with which we are concerned probably took place on 1 June 2010, a conclusion which the respondent sought to undermine in what he described as 'fresh evidence' to us in the course of the appeal: the evidence which he described as fresh was

simply the assertion that 1 June 2010 was not a sitting day, and hence none of these parties would be present in the House of Commons. That evidence was not ‘fresh’, in the sense that it could have been offered before the investigator’s report and the Commissioner’s decisions.

2.127 The importance of the overlap in complaints between these two complainants is high. Either there was collusion between them, or they genuinely corroborate each other. In our judgment, this evidence, taken as a whole, is very highly unlikely to be the result of collusion, given all the circumstances, not least the existence of contemporaneous notes made by Mr Sinclair, set alongside the fact that no contemporaneous notes were made by Ms Emms, in addition to the fact that Mr Sinclair gave a clearly incorrect date for the relevant episode, and Ms Emms gave no date. The date is itself of lesser importance, provided other matters are consistent with the event taking place. The point is that such detailed differences run counter to collusion. In any event, the respondent accepts that he was given what he regarded as bad news at a specific meeting about the originally recommended candidate and accepts that he was displeased by this.

2.128 For these reasons we conclude that the Commissioner’s decision that this part of allegation 7 was made out, was correct and must be upheld. We further conclude that the approach by the respondent is a clear example of a false allegation of collusion, designed to displace damning evidence against him.<sup>7</sup>

2.129 The second part of allegation 7 in the Sinclair case concerns the selection of a diary secretary. The complaint is that during the process the respondent claimed he had not been properly consulted and threw down his pen, blaming the complainant and using bullying and offensive language. It is said the respondent told the complainant that the candidate who had been selected was chosen because he, the complainant, thought the other candidates ‘were below stairs’, and the respondent proceeded to mimic the complainant’s voice.

2.130 This episode is recorded in notes which the investigator concluded were contemporaneous, a conclusion accepted by the Commissioner. This is an

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<sup>7</sup> We wish to point out that this difficult appointment process carries absolutely no negative reflections on the candidate appointed, who was almost certainly unaware of the events we have described.

example where the note in the main notebook page is amplified by a Post-it note stuck onto the page.

- 2.131 The respondent rejects any bullying although he does accept that he believes the complainant in the relevant meeting demonstrated a ‘snobbish’ attitude. Here, too, his suggestion is that there has been deliberate fabrication. The respondent denies ever throwing a pen or imitating the complainant.
- 2.132 The Commissioner accepted the account from the complainant principally because of the particularised contemporaneous note. We regard that conclusion as reasonable and capable of support from the other matters which have been established, demonstrating a pattern of behaviour by the respondent towards this complainant. Had the Commissioner chosen to do so, she could also have relied on other evidence from other occasions, such as the account of a senior member of the House of Lords who recalled a different occasion when the respondent threw down a pen and was rude and contemptuous to a separate complainant. We also accept the conclusion of the Commissioner that this behaviour constituted bullying and harassment.
- 2.133 We therefore agree with the conclusion of the Commissioner to uphold this allegation. Her reasoning was correct. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

#### *Overall Conclusions on Case BH 1875*

- 2.134 It follows from the above that the respondent’s appeal fails on all counts in relation to this complainant. The Commissioner upheld Allegations 1, 5, 6 (in part) and 7, and those decisions are upheld by us. Moreover, we conclude that the respondent has been widely unreliable and repeatedly dishonest in his evidence. He has attempted to defeat these complaints by false accusations of collusion and by advancing lies.

## **Case 1871 (Emms)**

### *General*

- 2.135 The complainant Kate Emms has been an officer in the House Service since 1994. As we have already indicated above, she succeeded the complainant Angus Sinclair as Speaker's Secretary in July 2010 and served in that capacity until March 2011. She made seven complaints of bullying against the respondent, beginning with the episode giving rise to the last complaint by Mr Sinclair and culminating in an allegation of ostracism from the staff team, running from November 2010 until the complainant's last day in the Speaker's office on 4 March 2011. The complaints are of angry episodes accompanied by abuse, and of undermining and isolating behaviour. The complainant's case is that the respondent's behaviour caused her to become seriously unwell through stress and anxiety, culminating in her precipitate departure from the post, without notice or warning.
- 2.136 The respondent denies all of the complainant's allegations. In broad terms the complaints were, in his submission, either completely false or at best deliberate exaggerations of the truth. The respondent rejects the suggestion of undermining or isolating behaviour. He denies ever losing his temper in the ways alleged by the complainant.
- 2.137 The investigator found that the events complained of occurred as described by the complainant, but concluded that only one of the complaints represented a breach of the Bullying and Harassment Policy.
- 2.138 The Commissioner upheld the finding on the single allegation by the investigator, but in respect of two other allegations disagreed with the investigator and concluded that those two allegations were also made out. The Commissioner referred the case for sanction. The respondent has appealed the Commissioner's decision to uphold three allegations.

### *Allegation 1*

- 2.139 We have already set out the facts and analysis of this episode under allegation 7 by Mr Sinclair. This episode concerned the appointment of a chaplain to the Speaker. By the time of this incident, it was known that this complainant would succeed Mr Sinclair as Speaker's secretary, and Mr Sinclair brought this complainant into the relevant meeting. Her presence is

denied by the respondent, but we have already sustained the finding that she was present. The investigator in this case accepted the evidence of anger, swearing, production of spittle and shouting as described. However, since the outburst of anger was aimed at Mr Sinclair and not at this complainant, the investigator found that this incident did not constitute a breach of the Bullying and Harassment Policy in relation to this complainant.

- 2.140 The Commissioner took a different view. She considered the terms of the Policy and concluded that ‘there is no ... requirement that the behaviour has to be targeted towards the complainant for the allegation to be considered within scope. The relevant consideration is the experience of the complainant during the incident.’ The Commissioner went on to set out the impact on this complainant, quoting her as follows: ‘[the respondent’s loss of temper] was explosive and sudden, I did not know where to look. [Mr Sinclair] was clearly used to it and remained calm. I have dealt with many, many ministers, junior ministers and whips and I’ve seen some of them lose their tempers or display demanding behaviour. But the Speaker was that day confrontational, malign and mean, it seemed like he was deliberately trying to injure and belittle [Mr Sinclair] rather than just letting off steam. He didn’t seem to be able to stop at simply expressing his frustration. I was cringing and feeling a sort of stomach-clenching anxiety’. The investigator had indeed accepted that the complainant was ‘shocked, discomfited and made anxious’ by the respondent’s behaviour.
- 2.141 The Commissioner considered that the respondent’s behaviour had created an intimidating hostile environment, within the meaning of the Policy. She also considered the terms of paragraphs 2.9 and 2.10 of the Policy: see Annex One. Paragraph 2.10 states: ‘A person may also be harassed even if they were not the intended ‘target’ of harassment...’
- 2.142 The Commissioner concluded that the policy does not require that a complainant should be the target of the behaviour. It is the quality of what the respondent has done, and its effect upon the complainant, which are the necessary ingredients for a breach to be established. For those reasons, the Commissioner reversed the conclusion of the investigator and found this allegation to be proved.
- 2.143 We agree with the conclusion of the Commissioner. Her reasoning was correct. There was sufficient evidence, and a breach of the Policy was proved.

The decision of the Commissioner was a reasonable one.

### *Allegation 2*

- 2.144 This complaint concerns a work trip to Kenya undertaken by both parties. The complainant's account is that she warned the respondent he had an item in his hand luggage which would have to be checked in as it would not be allowed into the passenger area of the aircraft. Her account was that the respondent was 'irascible and disproportionately rude and threatening in his body language'. He shouted at her in public. She then describes how the respondent failed to speak to her, in effect shunning her, during the flight which occupied many hours.
- 2.145 When the parties arrived at Nairobi airport, they were met by a witness who received an account of these events from the complainant. The complainant recalls that the item in question was toothpaste; the witness recalls shaving foam. We do not consider the distinction important.
- 2.146 The complainant also described this episode (and its effect upon her) to her then husband, and to a third witness.
- 2.147 The respondent recalled an incident involving toothpaste. He says that he was irritated with himself (not the complainant) and accepts that he showed some annoyance. However, he directly denies that he showed displeasure towards this complainant, in front of others or at all, and he also denies any 'shunning'.
- 2.148 The investigator and the Commissioner both found that the account of events from the complainant was accurate as to the substance of what occurred. The Commissioner relied in part on the fact that the complainant had described this episode to three witnesses, something to which the respondent objects. As we have already indicated, using this episode as an illustration, we consider the Commissioner was fully entitled to rely on such hearsay evidence: see paragraphs 2.60 to 2.65 of this decision.
- 2.149 The investigator concluded that this behaviour did not represent a breach of the Policy. Here too, the Commissioner took the opposite view, concluding that shouting at the complainant was sufficient to constitute a breach. We agree. The Commissioner's reasoning was correct. Accordingly, we agree with the conclusion of the Commissioner to uphold this allegation. There was sufficient evidence on which to rely, and a breach of the Policy was proved.

The Commissioner's decision was a reasonable one.

*Allegation 3*

- 2.150 This complaint relates to a work trip taken by these parties to Warsaw. After arrival, the complainant alleges that the respondent demanded, aggressively, that she arrange for his suit to be dry-cleaned and delivered to his room, in time for his engagements the next day. The complainant describes his behaviour as 'slightly aggressive', 'brooding' and 'basically just threatening'.
- 2.151 The respondent flatly denies this allegation, again suggesting that it is simply untrue. He asserts he would never behave in this fashion.
- 2.152 The investigator took the view that he had two directly conflicting accounts, and in this instance, had no corroborative account from any other witness or from any note or record. He therefore found that she was unable to conclude events had occurred as described by the complainant.
- 2.153 The Commissioner took a similar view. Bearing in mind the length of time between the episode itself and the complaint and bearing in mind 'the lack of specific detail of the behaviour', the Commissioner felt herself unable to say that the complainant's account in this instance was established. She went on to say that, even if the incident had taken place as described by the complainant, she was not in a position to conclude it represented a breach of the Bullying and Harassment Policy. Accordingly, this complaint was not upheld.
- 2.154 In relation to this complaint, we accept that there was insufficient detail to establish that the behaviour complained of represented a breach of the Policy. As previously indicated, in our view the investigator and the Commissioner could properly have had reference to the patterns of behaviour of the respondent established in other evidence, so as to support the account of the complainant. However, we support the conclusion that in this instance the behaviour complained of may reasonably be regarded as falling short of a breach.

#### *Allegation 4*

- 2.155 This complaint relates to an episode of confused expectation, between the respondent and a Deputy Speaker, as to which of them would chair the afternoon session of a Youth Parliament taking place in the Chamber. It seems likely that the complainant may have made an error in the arrangements, meaning that both the respondent and the Deputy Speaker in question expected to be taking the lead in that session. The original complaint made by the complainant was that the respondent had directed fury at her over this in front of others, bringing her to tears. However, later in the investigation the complainant expressed doubt about that account and retracted the suggestion that the respondent had been abusive. The investigator could find no corroborative evidence of the episode. Witnesses recalled the complainant's distress in relation to the day in question, but could not recall the reason why.
- 2.156 The respondent minimised this episode when asked to address it.
- 2.157 The Commissioner considered the investigation into this episode to have been insufficient to reach a clear conclusion. Although describing this as a 'finely balanced decision', she decided that the matter was not made out and she declined to uphold the allegation.
- 2.158 We consider that the Commissioner was correct. We note that a striking feature of this story is the approach taken by the complainant in volunteering that she may have been wrong in her original complaint. In our view, this retraction augments rather than detracts from her credibility.

#### *Allegation 5*

- 2.159 This complaint arises from a meeting in November 2010 between the respondent and the then Clerk of the House. The complainant had briefed the respondent, prior to the meeting, about the business to be conducted, including briefing him about the policy line which she understood would be taken by the Clerk. In fact, in the meeting the Clerk took a different line.
- 2.160 The complainant's account is that when this difference emerged, the respondent turned to her in the meeting and looked at her 'as if he wanted to rip my guts out'. After the meeting she sought to make peace by saying 'Are we all right Mr Speaker?' His response was abusive and angry. She does not

recall him swearing but she describes his response as loud, insulting, personally abusive and a 'really direct personal attack'. In the course of this attack, he mimicked the complainant. She describes him persisting until she interrupted him, and asked him to stop talking, telling him that 'the person you are describing is not someone I recognise'. She then left the office. On the complainant's account, this was the only occasion on which the respondent apologised: she had from him what she describes as 'a grovelling voicemail', admitting that his behaviour had been inappropriate.

- 2.161 The respondent recalled this episode, but he denied that he looked at the complainant with hostility during the meeting or that he had been abusive after the meeting. He states that the events as described by this complainant cannot have happened, because the day in question was his wife's birthday and he would have rushed upstairs to celebrate as soon as the meeting had finished. He denies that he apologised: there was nothing to apologise for.
- 2.162 There were no other witnesses to the conversation after the meeting with the Clerk of the House had finished.
- 2.163 In this instance, the investigator had evidence from the complainant's husband who described her account to him of these events, which was memorable. She told him that she may have lost her job because she had spoken back to the respondent and stopped him shouting at her. In this instance, the investigator did rely on evidence of similar behaviour on other occasions. When considering this allegation, the Commissioner agreed that 'evidence by third parties of similar behaviours can be of relevance but must be approached with caution'. We agree.
- 2.164 The investigator found that the complainant's account was more credible than that of the respondent, and the Commissioner agreed. The Commissioner relied upon the extensive detail, including as to what was said, as provided by the complainant; the account of the complainant's husband as to the fact of such an episode given immediately on her return home; similar accounts of the respondent's propensity to lose his temper; the incident in allegation 1 from this complainant which demonstrated similarity and her rejection of the respondent's account that he would have 'rushed upstairs'. The Commissioner confirmed the investigator's conclusion that this behaviour was sufficiently serious to be a breach of the policy. For those reasons, the

Commissioner upheld this complaint.

- 2.165 We agree with this conclusion. The facts of what happened were properly supported. The unbridled nature of this verbal attack, its persistence and the use of mimicry, provide a firm basis for a conclusion of bullying. The Commissioner's reasoning was correct. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner to uphold this allegation was a reasonable one.

#### *Allegation 6*

- 2.166 This allegation relates to a late-night phone call from another member of staff in the Speaker's office, who suggested to the complainant that 'Mr Speaker wants me to tell you that he is very angry about [an administrative issue] and he wants to see you first thing in the morning'. However, no meeting transpired the next day. The investigator noted that very similar behaviour had been recorded by Mr Sinclair. The staff member in question stated that he had no memory of such an event. The respondent stated that he too had no memory of such an event and said he would never have asked for such a call to be made.
- 2.167 The investigator concluded that such a call had taken place but could not establish that the call was made at the behest of the respondent. For that reason, the investigator concluded that no breach of the Bullying and Harassment Policy could be established as against the respondent. Accordingly, this complaint was not upheld by the Commissioner.
- 2.168 We agree with the conclusions of the investigator and the Commissioner. Her reasoning was correct. Even if there was sufficient evidence to prove the facts of the allegation, we doubt that the threshold for a breach of the Policy would have been reached.

#### *Allegation 7*

- 2.169 In this allegation, the complainant suggests that she was met with a lack of engagement and a lack of respect from the rest of the team in the Speaker's office, including resistance even to small changes in office practice which she might have wished to initiate. Her view was that this pattern of behaviour must have been 'sanctioned' by the respondent.

- 2.170 An example of the behaviour complained of is that the complainant was excluded from photographs taken during or after the State Opening of Parliament. Another example given by the complainant is that on an occasion when she was showing her parents around Parliament, she found the respondent and another member of staff having a late-night drink in the office. Instead of greeting her parents politely, the respondent simply stated that he was very busy and did not introduce himself.
- 2.171 Part of the backdrop to this complaint is that it is agreed by both parties that when the respondent took office as Speaker, he was keen to consider an office restructure, a project which was a specific responsibility of the complainant to implement. However, after some time, the respondent decided to cancel the restructure plan, essentially because he had decided that long-established staff in the Speaker's office should be maintained in their positions.
- 2.172 The respondent acknowledges that he changed his mind from his initial intended restructure, but that he did so rationally and in his view for good reason. He denies demonstrating a pervasive or consistent lack of respect for the complainant. In his assertion, he engaged 'consistently and respectfully' with the complainant. He never set out to exclude her nor did he instigate or sanction other staff to act towards her in a belittling or hostile way.
- 2.173 The investigator found that there was no evidence that the respondent had deliberately excluded the complainant from formal work activities or had deliberately ostracised her. The investigator went on to find that there was no evidence the respondent asked other team members to undermine the complainant. On the other hand, the investigator concluded that the respondent had done nothing to prevent or stop that conduct. Whilst this was a demonstration of poor leadership, the investigator concluded that the respondent's actions fell short of a breach of the Bullying and Harassment Policy.
- 2.174 The Commissioner agreed. For a breach to be established, the Commissioner concluded that 'clear agency' on the part of the respondent would have to be proved. The respondent was fully entitled to change his mind about the reorganisation. Whilst the Commissioner concluded on the balance of probabilities that the complainant had experienced progressive difficulty in

working for the respondent and his team, the evidence fell short of establishing that the respondent had excluded or ostracised the complainant from meetings, communications or other work events. For those reasons, the Commissioner declined to uphold this complaint.

- 2.175 We agree with the Commissioner's conclusion. Her reasoning was correct, and her decision not to uphold the allegation was a reasonable one.

#### *Overall Conclusions on Case BH 1871*

- 2.176 It follows from the above that we accept and uphold the conclusions of the Commissioner. Three allegations are properly maintained. The appeals of the respondent are dismissed.

### **Case 1840 (Lisvane)**

#### *General*

- 2.177 As we have indicated, in Case 1840 the complainant is Lord Lisvane, formerly Sir Robert Rogers, who was Clerk of the House of Commons and Chief Executive from 1 October 2011 to 31 August 2014. He had been employed in the House since 1972. Prior to being Clerk of the House, he had been Clerk Assistant.
- 2.178 The complainant made 18 allegations of misconduct by the respondent contrary to the Bullying and Harassment Policy in the period from February 2012 to March 2014. The independent investigator recommended that nine allegations should be upheld. On review the Commissioner upheld a total of 14. The respondent now appeals the Commissioner's decision.
- 2.179 This complainant produced diary entries in support of his complaints. He gave evidence that he started the entries early in 2012 after he had already been subjected to several months of bullying by the respondent. He recorded entries on his computer at work. He did not write down all instances of bullying, only those that he felt affected him most.
- 2.180 We note at the outset that the Commissioner, in making her findings, relied heavily on the diary entries as primary evidence. There is an entry for each of the 18 allegations. She held that the diary entries were recorded contemporaneously by the complainant and clearly accepted their accuracy. We agree with that conclusion. We are satisfied from the evidence that they

are contemporary or near-contemporary accounts of events and of what was said by the respondent. The entries are compelling evidence.

- 2.181 The respondent gave extensive evidence to the investigator in this case. He stated that he recalled almost every meeting and event, every conversation and all of the words said between himself and the complainant relating to the specific allegations. He denied that he had lost his temper or had bullied or harassed the complainant in any way. The complaints were, in his submission, 'at best, a grossly and maliciously distorted exaggeration of true events and, at worst, pure fabrication'. He denied much of what the complainant had alleged to have been said. He said that the complainant had brought these allegations out of 'sheer animosity and malice'.
- 2.182 In the end, however, we are satisfied that the complainant, supported by the evidence of his diary, has told the truth. However hard the respondent tried to refute the content of the entries in the diary, he was not able to. The evidence from them is cogent and compelling. We are therefore bound to conclude here, too, that the respondent has lied extensively to try and avoid the damning reality of the truth. Having considered all the evidence, we come to that conclusion without hesitation.
- 2.183 Inevitably, the investigation looked closely at the working relationship of the complainant and the respondent. Both were at the top of their respective echelons in the House of Commons. As Clerk of the House and Chief Executive, the complainant was the most senior constitutional adviser and administrator: he was head of the House Service. As Speaker of the House, the respondent held the highest office for an elected MP. Their lines of authority were different, but the Speaker held the lead (as the respondent firmly believed).
- 2.184 Some witnesses referred to the respondent's suspicion about clerks, the complainant being a longstanding clerk in the House, and at the relevant time the most senior. The respondent considered himself to be a reforming Speaker. He said in evidence: 'I was a reformer, a moderniser, a progressive change-maker'. But the evidence suggested that he believed the clerks, particularly the complainant, wished to pursue a more 'traditionalist', less reforming approach (or reforming at a slower pace than the respondent wanted), and did therefore not provide sufficient support for his reforming

agenda, particularly on the issue of diversity.

- 2.185 This difference of approach may have put stress on what was an almost daily working relationship. The respondent considered the complainant to be ‘every inch the traditionalist and custodian of precedent’. He described him in evidence as pompous and patronising. It was, he said, ‘a rather strained working relationship’, with conflict and disagreements, differences of opinion and approach, and robust discussions. But, he states, he did not bully.
- 2.186 The complainant said that although his working relationship with the respondent had started well – the respondent had been involved in his appointment as Clerk of the House, chairing the House of Commons Commission which made the appointment – it quite quickly became fraught, to such an extent that after six months in post the complainant drafted a resignation letter (which he showed to the then Leader of the House) but decided in the end not to put forward. The draft letter is in evidence. Its creation preceded the diary entries on the complainant’s computer. In it the complainant describes difficult working conditions with the respondent from the short period during which, by then, he had served as Clerk and before that as Clerk Assistant: ‘I have had to put up with your rude and insulting behaviour, your outbursts of temper and your untrue allegations ... I have had to put up with your obscene language in private meetings despite the revulsion that others present had clearly felt.’
- 2.187 The letter is, in our view, strong evidence of a general nature of complaints against the respondent. It was not used by the Commissioner as support for specific allegations, but in our view it could have been. It is telling evidence against the respondent. It depicts the general level of misconduct by the respondent at that particular time. It also goes on to record the complainant’s view of the respondent’s behaviour to Ms Emms: ‘I have seen you bully those you consider to be in your power. I had to watch while you bullied out of office the first woman Speaker’s Secretary in the history of the House, damaging her health and making a sham of your alleged commitment to diversity. I have seen you insult and bully officials at all levels.’
- 2.188 The respondent has complained of the use of this letter by the investigator, claiming that it is irrelevant to any specific allegation and should therefore be ignored. He describes it as defamatory and misleading. We do not criticise the

investigator for considering it. It is strong evidence against the respondent. But, in any event, it is clear that the Commissioner did not rely upon it. She could have relied upon it, in our view, but did not. It is our function to consider what evidence the Commissioner relied on and whether it is sufficient proof.

2.189 It is in the context of this working relationship that the complainant made his specific complaints. His formal complaint to the ICGS was dated 22 January 2020. The investigator's investigation commenced on 25 March 2020. The investigator reported to the Commissioner on 8 September 2021. The decisions of the Commissioner are recorded in her Memorandum of 1 November 2021. The respondent's grounds of appeal are dated 7 January 2022.

2.190 We shall now look at all the specific allegations. We shall consider, by way of review, whether her decision on each allegation was procedurally correct and reasonable.

#### *Allegations 1-4*

2.191 These allegations were not upheld. Since there is no appeal brought against these findings, we shall take them briefly. All four allegations relate to interactions between the respondent and the complainant, either in private work meetings alone or with others. Allegation 1 relates to events in February 2012. Allegations 2-4 relate to events in July 2012. There are diary entries for all of them.

2.192 The Commissioner relied upon the diary entries and accepted the complainant's account, including allegations of insulting words and poor behaviour, some of it demeaning conduct. But in the end, she was not satisfied that the threshold for a breach of the Policy had been reached in all four cases. We agree with that approach. These were reasonable decisions. In short, the conduct alleged, and found proved, fell below the threshold required. The conduct may have been rude or discourteous or even insulting, but not sufficiently so to be a breach of the Policy. In allegation 4 the Commissioner concluded that a miscommunication may have occurred. We agree.

#### *Allegation 5*

2.193 Allegation 5 relates to the end of a daily Conference on 11 September 2012 in

the respondent's study. This is the first of a number of allegations arising from the discussion of diversity and inclusion. The complainant had convened the meeting in order to consider the implementation of the House Commission's decisions on a paper on under-representation of minorities in the House Service. After others had left, the complainant and respondent were left alone. The complainant alleges that the respondent launched into a personal and sneering attack on what the respondent called his lack of support for diversity. He states that the respondent broke into a torrent of abuse, accusing him of being duplicitous, manipulative, of lying, and of bullying the complainant's staff, and that 'lots of people' agreed with him (the respondent), without supplying names.

- 2.194 The respondent accepted that disagreements between them on diversity issues could become heated. He did not say that he did not recall this meeting, and he referred to a number of meetings where they disagreed on diversity. But he denied this behaviour. The allegation ought, he said, to be found on 'a fiction shelf at Waterstones'.
- 2.195 The investigator recommended that the allegation should be upheld. The Commissioner agreed. The Commissioner relied upon the evidence of the diary entry that the words were said, and the conduct was proved: 'I conclude that Mr Bercow did insult the complainant, made false allegations that the complainant was a bully, unfairly criticised the complainant, and made some of those remarks in a raised voice.' She found there was a breach of the Policy. Based primarily upon the diary, we agree there was sufficient evidence for her conclusion. The diary entry is convincing. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

#### *Allegation 6*

- 2.196 This allegation relates to a further private work meeting between the complainant and the respondent two days later on 13 September 2012. No witnesses were present. On this occasion the complainant alleges that the respondent launched into an extended 'diatribe' about the complainant's role as Chief Executive, that he was no good in the role, and that he had lost confidence in him in the role.
- 2.197 The respondent recalled the meeting. He said that the complainant was

'putting it too strongly'. He did not criticise the complainant in this way face to face.

- 2.198 The investigator recommended that this allegation should not be upheld. The Commissioner disagreed and upheld the allegation. She decided that the investigator had placed insufficient weight on the diary entry. She found that the words were said: 'I conclude that Mr Bercow did criticise the complainant's performance as Chief Executive.' She considered that to be unjustified criticism and a breach of the Policy. We agree. There is sufficient evidence from the diary entry to come to this conclusion and the conduct proved rises above the threshold for a breach of the Policy. The Commissioner's decision in upholding this allegation was therefore reasonable.

#### *Allegation 7*

- 2.199 Allegation 7 relates to a further private work meeting between the complainant and the respondent. On 26 October 2012 the respondent asked the complainant to stay behind after the daily Conference in the respondent's study. The complaint is as follows. After raising a matter of routine business, the respondent turned on the complainant accusing him of going behind his back in relation to Honours, charging him with disloyalty, deceit and a 'wish to control everything', and then returned to a previous complaint that the complainant was no good at his job and had bullied his staff. The complainant says that he asked what evidence he had and the respondent replied 'I'm not telling you'. When the complainant tried to leave the room, the respondent blocked his way, stood very close and continued to abuse him.
- 2.200 It is not necessary to deal with the further complaint that shortly afterwards, while the House was sitting, the respondent returned to his criticism of him both as Clerk and Chief Executive.
- 2.201 The respondent recalled the exchange in his study. He said in evidence that he was 'irritated' but did not lose his temper. Nor, he states, did he accuse the complainant of disloyalty.
- 2.202 The investigator recommended that the allegation should be upheld. The Commissioner agreed. The Commissioner accepted the content of the diary entry and concluded that the words had been said and said in the manner alleged. She found that the respondent's criticism was unjustified. She

concluded that the Policy had been breached. We agree. On the basis of the diary entry, there was sufficient evidence to prove this allegation. There was a breach of the Policy. The Commissioner's decision was a reasonable one.

2.203 We observe that in her decision the Commissioner did not follow the investigator's reliance on other witnesses. They had given evidence of the respondent's general conduct on other occasions. As we have stated before, she could have relied on some of this evidence, so long as it was relevant and sufficiently similar so as to show a consistent pattern of behaviour. There was in this case a considerable body of evidence about the respondent's behaviour on occasions other than those alleged in the specific allegations.

#### *Allegation 8*

2.204 This allegation relates to a meeting with the respondent on 15 May 2013 in which amendments on the last day of the debate on the Queen's Speech were discussed. The complaint is as follows. The complainant provided advice on the interpretation of the wording of a Standing Order, whereupon the respondent unleashed a torrent of abuse about how the complainant had exceeded his duties, deliberately misinterpreted the Standing Order and how he was incompetent and unreliable.

2.205 The respondent recalled the meeting and how it was 'the subject of conflict.' But he denied the words alleged; it was not, he said, 'a cauldron of conflict'. He claimed that the complainant had overstepped the mark by insisting that his advice be followed.

2.206 The investigator recommended that the allegation should not be upheld. The Commissioner disagreed. She relied essentially on the relevant diary entry for that date and stated that the investigator had given insufficient weight to the diary entry. There was also some similarity in the basic recollection of both complainant and respondent. The respondent's claim of the complainant overstepping the mark tallied with the complainant's note that the respondent said that the complainant was deliberately misinterpreting the rules. She also drew support from one witness present who said that he recalled that the respondent had replied aggressively to the complainant's advice, but, when shown the diary entry, could not recall the respondent's use of those particular words. The witness, did, however, conclude that the sort of outburst towards the complainant as recorded in the diary for that particular date, was 'not

uncommon’.

- 2.207 The Commissioner therefore found the allegation proved and upheld it. We agree with her conclusion. The diary entry is convincing. Some support is provided by the evidence of the witnesses (above) and from the respondent who recalled the ‘conflict’ at that meeting.
- 2.208 It is right to say that two other witnesses said to have been present did not support the complaint. Both recalled the meeting and said that there was no torrent of abuse or any words of criticism directed at the complainant. One said there was a ‘robust discussion’. The other said that they ‘simply disagreed’. In our view, and looking at the evidence of these two witnesses elsewhere in these investigations, the Commissioner was right not to place too much reliance upon them. We conclude that their evidence often conflicts with other more credible evidence and should therefore not be given too much credence.
- 2.209 We agree with the Commissioner’s decision. There was sufficient evidence (on the evidence upon which she relied) and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.
- 2.210 We would add (as we have done above in similar contexts) that the Commissioner could have taken further evidence into account in support of the allegation. This is part of more general but clearly relevant evidence. For example, one of the senior clerks described how the respondent became more and more impatient and irritable with the complainant from 2012, becoming less respectful, more resistant to accepting his advice; often wrongly attributing a motive to the advice; attributing the false motive to his gender or background; sometimes going beyond what the witness considered acceptable behaviour and often describing the House Service (of which the complainant was the head) as useless, on occasions describing the complainant personally as useless or hopeless, sometimes with profane language such as ‘fucking useless’. The witness concluded that this behaviour seriously undermined the complainant, often in front of junior staff. This is important background evidence to this particular allegation. It could, and perhaps should, have been used as evidence supporting the complaint.
- 2.211 There was further evidence of a general nature which could have been used

(but was not used) as support for this allegation. A senior MP described how the respondent would belittle the complainant at daily Conferences in a brutal and demeaning way, such as ‘You come here with your privileged background and offer your opinion, but I’m not interested in your opinion.’ The witness recalled the meeting, which is the subject of the allegation, but not the detail. When shown the diary entry he added that the words and behaviour recorded there were ‘similar’ to how the respondent would respond to the complainant when he had provided advice which the respondent did not like.

- 2.212 Similarly, another witness present at the meeting could have been relied on. This member of the House of Lords did not recall the specific meeting but said in evidence that advice from the complainant on amendments was the sort of flashpoint which led the respondent to criticise the complainant directly, often mimicking him in a demeaning way or referring to his privileged background. He would refer to the complainant as being ‘posh’ and would belittle him in front of others. This witness described it as ‘a familiar pattern’, with the flashpoint always the same. He would shout at the complainant in his anger and call him useless, in meetings with other staff present.

### *Allegation 9*

- 2.213 This allegation relates to a meeting of the respondent’s steering group on diversity on 17 July 2013. The complainant alleges that in front of others the respondent suddenly launched an attack on his role as Chief Executive saying that the Commission made a mistake in appointing him and that he wanted to see his roles separated, with the appointment of a BAME woman as Chief Executive. The respondent sneered at the complainant, told him how hopeless he was and that he was not prepared to put up with white middle-aged men anymore.
- 2.214 The respondent recalled the meeting and the discussion on diversity. He said in evidence that the complainant, being very institutionalised, was reluctant to, but finally did, agree to the respondent’s plan which would give female junior clerks the opportunity to serve at the Table (of the House). But he denied the allegation. He thought the splitting of the complainant’s roles was not discussed.
- 2.215 The investigator recommended that the allegation should not be upheld. The Commissioner disagreed. She relied on the diary entry for that date,

supported in part by an MP witness who was present. This witness recalled a heated exchange on splitting the complainant's roles, with the respondent doing most of the talking and saying that he wanted to appoint a BAME woman as Chief Executive. This witness offered her sympathy to the complainant afterwards.

- 2.216 We agree with the Commissioner. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.
- 2.217 We would add that there was additional evidence which the Commissioner could have relied on. It is notable that the complainant in the diary entry states that the respondent 'suddenly' launched this attack upon the complainant. This 'sudden' change of behaviour was noted by others at other meetings. One MP who attended other meetings described the respondent's behaviour as 'mercurial': 'Sometimes the Speaker would lose his temper in the middle of a sentence which he had started quite placidly.' Another witness also described his behaviour as 'mercurial'. Often he was courteous and professional, said the witness, but sometimes he would just 'snap': 'This unpredictability made the meetings very uncomfortable ... you never knew how he was going to react.' This was relevant evidence which the Commissioner could have relied on should she have chosen to have done so. The complainant himself had referred to the respondent's 'extraordinary mood-swings' in his diary entry for allegation 7.

#### *Allegation 10*

- 2.218 Allegation 10 relates to a further private work meeting on 2 September 2013, with only the respondent and the complainant present. The topic was Burma and support for the Burmese Parliament. The complainant outlined recent and proposed measures of support. The respondent responded with his opinion that this was 'pathetically inadequate'. He was aggressive, critical of the performance of the House Service (of which the complainant was the head) and critical of the complainant's staff. The complainant considered this to be aggressive, bullying behaviour which he could no longer put up with. He told the respondent that 'This meeting is over' and walked out. The respondent followed him to the door and repeated personal accusations of incompetence and pathetic performance.

- 2.219 The complainant further stated in the diary entry that in the subsequent daily Conference held that morning the respondent was courteous. He found 'this unpredictability' made things worse.
- 2.220 The respondent recalled the meeting. He denied the allegation. He described the complainant's account as 'lamentably inaccurate' and alleged that the complainant shouted in response to just criticism of the House Service. He was very upset by the complainant's attitude. He thought the complainant knew nothing about Burma.
- 2.221 The investigator recommended that the allegation should not be upheld. The Commissioner disagreed. She relied on the relevant diary entry and concluded that although criticism by the respondent of the House Service was not bullying of the complainant, criticism of the complainant personally was. She also found that the complainant had shouted; the evidence is that he had raised his voice aggressively. He had been provoked by the respondent's approach. She concluded that this did not mitigate the respondent's behaviour because he continued to criticise the complainant in unacceptable terms. The onus was on the respondent as the organisation's senior leader to react professionally and moderately. He did not.
- 2.222 We agree with the Commissioner's approach. The diary entry is sufficient evidence of unacceptable behaviour by the respondent which amounted to a breach of the Policy. The Commissioner's decision to uphold the allegation was reasonable.

#### *Allegation 11*

- 2.223 This allegation relates to a further private work meeting on 3 September 2013, the following day, with only the respondent and the complainant present. The respondent said he had been waiting 24 hours for an apology. The complainant decided to apologise to avoid more conflict although he felt it was unnecessary. The respondent then insulted him for 15 minutes, referring, amongst other things, to the mistake in his appointment and his incompetence. The complainant responded by alleging that the respondent had been incompetent, insensitive and bullying. The meeting ended, surprisingly, on a friendly note.
- 2.224 The respondent recalled the meeting. He agreed that he had been waiting 24

hours for an apology, which, he said, was warranted. He denied the allegation. Instead of abuse, he thanked the complainant profusely for his apology.

- 2.225 The investigator recommended that the allegation should not be upheld. The Commissioner disagreed. She relied on the relevant diary entry and concluded that the allegation had been proved. We agree. There is sufficient evidence based on the complainant's evidence and the diary entry alone. The Policy was breached. The decision of the Commissioner was reasonable.

#### *Allegation 12*

- 2.226 Allegation 12 relates to the daily Conference on 14 January 2014, which a number of witnesses attended. The complainant alleges, quoting his diary, that 'out of nothing' the respondent produced some complaint against him and 'behaved in his usual way'. In evidence he added that the respondent verbally abused him; criticised his performance and deliberately humiliated him in front of others.
- 2.227 The diary entry is headed *Tuesday 11 January*. As the respondent pointed out, 11 January 2014 was not a Tuesday but a Saturday. The complainant accepted the error and later corrected the date to Tuesday 14 January.
- 2.228 The respondent did not clearly recall the meeting, repeatedly asserting that the date had been changed. He denied the complaint, alleging that there was no 'specificity' from the complainant or the witnesses.
- 2.229 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon the diary entry and other evidence in support. One senior MP recalled the meeting but not the exact words spoken. The witness said the respondent's treatment of the complainant was demeaning and degrading to such an extent that he went afterwards to see if he was alright. A second witness, another senior MP, recalled being present at this meeting when 'out of nowhere' the respondent exploded in an absolute diatribe at the complainant personally when the complainant provided some advice. The respondent shouted at him in anger, with a shower of non-stop insults, and called him useless. Everyone else was frozen in shock. This witness went with the first witness to see if the complainant was alright. A further senior MP present described the respondent's behaviour to the complainant as 'appalling'.

2.230 We agree with the Commissioner. Although the diary entry is brief, the complainant amplified his complaint in evidence. Moreover, his account is strongly supported by the three witnesses who were present. We agree with the Commissioner's conclusion. There was sufficient evidence, and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

2.231 It may be helpful to set out an extract from one of the respondent's two interviews in response to a question by the investigator about the second witness's evidence. This gives a flavour of the approach of the respondent to some of the evidence:

*Oh, I see, so what you're—let's just take this point, Mr [investigator]. You're saying your interpretation of [witness X, a senior MP] is that [the witness is] saying that I behaved badly towards Robert Rogers [Lord Lisvane]. There was apparently a diatribe, and that I was very angry, and allegedly shouted, and there was a diatribe, [the witness] cannot recall a single thing about the said diatribe. I'm sorry, that simply isn't credible, and if it is the best—I don't mean this rudely, I've known [the witness] a very long time—if that is the best [the witness] can do, that's the best [the witness] can remember, I very politely suggest to you its not serious evidence ... In a sense, people are now saying, six and a half years later, in relation to a meeting the date of which has changed, on the back of a conversation or proffered advice they know not what, that I was discourteous or aggressive to Robert Rogers, but when asked, if they were asked, if you did ask them, what did [a witness] say, they don't know. I'm sorry, but I can only answer honestly, as I have done throughout. I didn't shout at him, I didn't call him useless, I'm not accused of calling him useless, I'm apparently accused of calling him 'things like useless', which is utterly meaningless, and when you say, how do I account for the evidence of the witnesses who describe my conduct, Mr [investigator], forgive me, it's not my job, it just isn't, in my opinion, my job to account for what they say.'*

### *Allegation 13*

2.232 This allegation relates to a pre-Commission briefing on 20 January 2014, with the respondent and complainant alone. The respondent was angry that a specific paper on contract working had been put on the agenda without his

knowledge. Before the complainant could explain that the paper had been on the agenda for the previous meeting of the Commission in December 2013 but the agenda item had not been reached during the meeting and had therefore been carried over, the respondent launched into a diatribe. Physically shaking with fury, his fists bunched and trembling, his eyes popping, he accused the complainant for over 15 minutes of incompetence, duplicity and subversion, casting himself in the role of wise Speaker when all around him were evilly intentioned incompetents.

- 2.233 The respondent recalls the meeting. He states he may have raised his voice because he was 'utterly mystified' as to why the paper had been put on the agenda. They disagreed and argued about that. He was irritated, not angry or shaking. He denied any abuse.
- 2.234 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon a diary entry and a piece of circumstantial evidence in support. A member of staff, who was asked to wait outside and sat 15 feet away from the door to the respondent's study, heard raised voices, notably the respondent's, saying that the complainant should have done something different, and saw the complainant leaving the study 'red in the face and obviously unhappy'. The respondent also confirmed that he had been irritated in the meeting and that there had been argument.
- 2.235 We agree with the Commissioner. There was sufficient evidence, and a breach of the Policy was proved. The Commissioner's decision was a reasonable one.

#### *Allegation 14*

- 2.236 Allegation 14 relates to a meeting convened by the respondent on 27 January 2014 to discuss a serious security issue. The complaint alleges that towards the end of the meeting the respondent said, in front of a number of senior members of both Houses: 'Of course, we all know that whoever is responsible for this it won't be the Clerks of the two Houses. They'll scuttle off to avoid any blame.'
- 2.237 The respondent appears to recall the meeting. He cannot recall making these remarks, although he concedes that if he did say them, they would have been said 'in a resigned fashion' and would not have been belittling: 'I don't think its

intrinsically belittling to express frustration at an unwillingness to take responsibility for an issue, an error, when you have experienced similar difficulties in the past.'

- 2.238 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon the diary entry and other evidence. One senior member of the House of Lords remembered the meeting but not the detail. Another senior member of the House of Lords recalled the meeting but not the precise words. That last witness said that the dismissive nature of the words recorded in the diary were 'quite typical' of how the respondent would speak to the complainant.
- 2.239 The Commissioner also relied on the evidence of a senior member of the security staff who recalled that when the discussion came to responsibility ('who would carry the can'), the respondent turned from being quite measured and calm to being angry and said something like: 'That's typical of you Clerks. The first sign of big trouble and you'll head for cover and leave me to hold responsibility'. Another witness, a senior member of staff, had a similar recollection, remembering that the respondent was extraordinarily rude, unkind and quite brutal: 'I'm sure you'll find some slippery way of getting out of this. You Clerks always do.' We acknowledge that this last witness, General Leakey, also made a formal complaint against the respondent which was not upheld.
- 2.240 We agree with the Commissioner. There was extensive evidence in support of the complaint. The witnesses did not all have the same precise recollection, but that was to be expected over the passage of time. They nevertheless produced a cogent body of evidence on this specific allegation. The Commissioner also suggested that if this were a one-off incident it would not alone have reached the threshold for a breach of the Policy. We do not agree. There was a clear breach of the Policy in the proven remarks of the respondent. His behaviour was offensive, malicious and insulting, leaving the complainant feeling undermined, humiliated and denigrated. But in any event, the Commissioner upheld the allegation, because this was yet another occasion of the respondent criticising the complainant publicly in front of junior colleagues. Her approach was acceptable. We therefore conclude that the Commissioner's decision was a reasonable one.

### *Allegation 15*

2.241 This allegation relates to a further example of a private work meeting between the complainant and the respondent. On 3 February 2014, at the regular Monday morning meeting, the issue of MPs bullying their staff was discussed because the BBC was expected to run a radio programme about it. The complaint is as follows. The complainant suggested that there could be no intervention in the relationships between MPs and their directly employed staff, because Members had always been very protective of these relationships and the House Service had no duty of care. According to the complaint, the respondent took strong exception to this approach. He went into 'rant mode', accusing the House Service of a typical response of avoiding responsibility for anything, and accusing the complainant of being useless: this being a typical example of what the respondent suggested was his appalling performance as Chief Executive. This 'rant' was timed by the complainant as lasting 13 minutes.

2.242 The respondent recalled the meeting but denied the rant or any insult or abuse.

2.243 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon the diary entry. She did not rely, as the investigator did, on general evidence of the respondent's behaviour. We have already commented on the way in which we believe this type of evidence may be used in support in the right case, namely where the evidence is sufficiently similar in nature to the complaint alleged. Whatever the merits of the discussion between the respondent and the complainant, upon which we do not comment – this was more than four years before the report from Dame Laura Cox – we agree with the conclusion of the Commissioner that the allegations should be upheld. There was sufficient evidence and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

### *Allegation 16*

2.244 Allegation 16 relates to a meeting on 11 February 2014 about immigration checks for staff in the House. A minister had resigned over the immigration status of his cleaner. The complainant was off sick but others attended, including junior staff. After the meeting a witness, a senior member of the

House administration, reported to the complainant that the respondent had implied that the complainant's absence was because he was malingering so as not to have to discuss the issue of immigration checks on staff employed by MPs. The respondent had launched an attack on the absent complainant, insulting him by saying he was hopeless and an incompetent Chief Executive who did not care about the reputation of the House. The complainant recorded what he was told about the meeting in his diary.

2.245 The respondent recalls the meeting and the discussion. He concedes that he was irritated during the meeting. He denies that he described the complainant in the terms alleged.

2.246 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied in part only upon the diary entry, suggesting it was partly hearsay. Whether hearsay or not (and hearsay is admissible and can often be useful evidence, see paragraphs 2.60 to 2.65 above), this was contemporaneous evidence in support of what the witness recalled of the meeting and told the complainant. It was strong supporting evidence for the witness who could not recall, by the time the witness gave evidence, the precise words of the respondent but described them as 'strongly negative, and of both a personal and a professional nature'. The diary entry adds valid detail to that recollection. The witness was embarrassed by the very derogatory and insulting nature of the respondent's remarks. A second witness, another senior member of the House administration also present at the meeting, recalled the respondent 'ranting' about the complainant and shouting. The Commissioner relied upon these two witnesses in upholding the allegation.

2.247 We agree with the Commissioner. There was sufficient evidence and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

#### *Allegation 17*

2.248 Allegation 17 relates to a pre-Commission meeting on 10 March 2014 when, amongst other topics, diversity and inclusion were discussed. The complaint alleges that the respondent repeated previous attacks on the complainant about his handling of diversity, suggesting that he had done nothing except take cosmetic steps. The respondent said that the complainant had appointed

a particular person just in order to tick a box, even though that person had no relevant contribution to make. The respondent further stated said that when the complainant left his post, he would not be replaced by a white male Oxbridge type but would be replaced by someone who was competent and not useless like him. According to the diary entry this attack lasted about 15 minutes.

- 2.249 The respondent recalled the meeting. He stated that there was a continuing disagreement between them on the extent of progress on diversity and inclusion: 'I distinctly recall saying that we had barely scratched the surface and far more was required.' He denied the remarks alleged, including the 'tick box' remark.
- 2.250 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon the diary entry. She further relied upon support for the complaint from a witness who was present, a member of the House administration, who said that the diary entry on remarks about the 'tick box' person was accurate. The Commissioner did not rely, as the investigator did, and as she could have done, on relevant general evidence of the respondent's repeated behaviour.
- 2.251 We agree with the Commissioner. There was sufficient evidence and a breach of the Policy was proved. The decision of the Commissioner was a reasonable one.

#### *Allegation 18*

- 2.252 This allegation relates to a private work meeting with the respondent and complainant alone after the daily Conference on 20 March 2014. The complainant alleges that the respondent was in an obviously poor mood (lower lip pushed out, deep sighs, shaking head). The respondent claimed that the clerks (of whom the complainant was the head) had 'unsexed' a named woman staff member so that she was no longer an independent woman but a 'proxy man'. He described it as a typical example of how badly the place was run, the last three years (the period of the complainant's tenure as Clerk of the House and Chief Executive) having been a disaster, because the complainant thought he was perfect and did not care about the House. The respondent said that he wanted a competent Chief Executive to replace him and, imitating the complainant's voice, asked how long he was going to

stay, but answered the question himself by sneering that he had said that he would not stay longer than three years but 'I suppose you'll go back on that, naturally. You would.'

- 2.253 The respondent recalled the meeting. He described it as a 'serious and mildly disputatious meeting'. He denied the remarks alleged. His response was vigorous: 'I reject this allegation totally ... It is a smear, astonishing, untrue and damaging ... I did not imitate him, ridicule him or sneer at him ... This is the warped testimony of a vitriolically hostile person.'
- 2.254 The investigator recommended that the allegation should be upheld. The Commissioner agreed. She relied upon the diary entry.
- 2.255 The Commissioner did not, however, rely, as the investigator did, on general evidence of the respondent's behaviour. In our view she could have done so. We take mimicry as an example. In this specific complaint the complainant alleges that the respondent mimicked him to his face and deliberately sneered at him by way of mocking caricature. The respondent denied it. He accepted in evidence that he did 'very occasionally' mimic the complainant, but only in a good-natured way. For example, he might mimic him and say: 'Robert, your scholarly cranium on the basis no doubt of the application of hot, wet towels over your head last night, what is your sage advice to us?' When asked in interview whether he thought, good-natured or otherwise, it was appropriate to mimic people, he was reluctant to answer the question directly: 'I'm sorry these are really very vague questions ... I don't think these abstract questions advance matters ...'
- 2.256 There is other evidence in the case concerning mimicry, and in our view, it would have been relevant to consider it as support for this complaint. A senior Member of the House of Lords gave evidence that in meetings the respondent would often mimic the complainant to the witness when he was criticising him and calling him useless (which the witness found surprising and insulting). A senior MP said that the respondent would mimic the complainant in a dismissive and demeaning way when responding to his advice. This witness said that his treatment of the complainant was belittling and inappropriate. Another witness, a clerk, was 'acutely embarrassed' when the respondent mimicked the complainant to his face at meetings in front of others, deliberately demeaning him. (And remarkably, in his interviews with the

investigator in this investigation, the respondent chose to imitate the complainant's voice and words on at least 20 occasions.) In total, this would have been cogent evidence in support of this part of allegation 18, had the Commissioner chosen to rely upon it.

2.257 We do, however, agree with the Commissioner's conclusion. On the evidence she relied upon, the diary entry alone, there was in our view sufficient evidence and a breach of the Policy was proved. The decision of the Commissioner was therefore a reasonable one.

#### *Overall Conclusions on Case BH 1840*

2.258 We therefore uphold allegations 5-18 in this case. We reject the appeal by the respondent.

2.259 In our view, having carefully reviewed the evidence and the decisions taken by the Commissioner, we are satisfied that there was sufficient evidence, and that a breach of the Policy was proved in respect of each of those allegations. The decisions of the Commissioner were all reasonable. She could have come to no other conclusions.

2.260 It is clear from our conclusions that the evidence of the respondent, set out extensively in two interviews (and amplified in his responses to the allegations and in his grounds of appeal), was not credible. We are satisfied that his denials of behaviour, alleged and now proved, were quite simply lies, deliberate lies in a vain attempt to excuse the inexcusable.

2.261 In our view the evidence in Case 1840 (Lisvane) discloses an extensive pattern of misconduct.

2.262 The respondent complained that the investigator in this case was biased against him: 'I have been subject to persistent partiality.' The investigator's approach was adversarial, he claimed, and did not start from the standpoint of the presumption of innocence. The investigator asked questions in interview using the word 'mimic' and did not consider sufficiently the respondent's complaints about the draft resignation letter. He did not deal sufficiently with his complaint that generalised and unspecific evidence not related to specific allegations should not be considered. He also refers to his complaints of breaches of confidentiality which he claims the investigator ignored. We have dealt with this above. There were other concerns expressed which we do not

feel need specific mention, except perhaps the following by way of illustration. The respondent complained that the investigator showed bias against him when he used a password which might be taken as being close to the word 'Macbeth' (it also had numbers in it) for communications with the respondent. In the respondent's submission this was a deliberate, 'grossly offensive in-joke', because it obviously referred unfavourably to him and his wife.

2.263 We have looked carefully at the respondent's submissions and complaints on the procedure, both generally and in the context of individual allegations. We have had the opportunity to consider these complaints in some detail, because they have been made at length by the respondent in his response to the initial allegations; in his interviews with the investigator and in his grounds of appeal. We have looked at them carefully but find no merit in any of them. In our view the procedure adopted by the investigator and by the Commissioner in relation to this case was full and fair. There was no procedural flaw.

2.264 We also find that there was no flaw in the investigatory process. We reject attempts by the respondent to cast doubt on the workings of the independent investigator and the Commissioner.

## **Overall Conclusions**

2.265 The ICGS Bullying and Harassment Policy was breached repeatedly and extensively by the most senior Member of the House of Commons. In all, 21 separate allegations were proved and have been upheld. The House may feel that his conduct brought the high office of Speaker into disrepute.

2.266 This was behaviour which had no place in any workplace. Members of staff in the House should not be expected to have to tolerate it as part of everyday life. No person at work however senior, indeed particularly such a senior figure, should behave in this way. This was an abuse of power.

2.267 It follows that these appeals fail. The Commissioner has referred the sanction in this case to the Panel. The Panel will consider the question of sanction separately.

## **Annex One: Definitions of bullying and harassment from the *Bullying and Harassment Policy for UK Parliament* Edition 2021.**

### **What is bullying?**

2.3 Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation.

2.4 Like harassment, bullying can take the form of physical, verbal and nonverbal conduct. Bullying behaviour may be in person, by telephone or in writing, including emails, texts or online communications such as social media. It may be persistent or an isolated incident and may manifest obviously or be hidden or insidious. Whether conduct constitutes bullying will depend on both the perception of the person experiencing the conduct and whether it is reasonable for that person to have perceived the conduct as bullying.

2.5 Elements of bullying may include, but are not limited to:

- Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language;
- Abuse of a similar nature carried out in writing or electronically (including posters, graffiti, emails, messages, clips or images sent by mobile device or posted on the internet);
- Physical or psychological threats or actions towards an individual or their personal property;
- Practical jokes, initiation ceremonies or rituals;
- Overbearing or intimidating levels of supervision or micro-management, including preventing someone from undertaking their role or following agreed policies and procedures;
- Abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work, or coercing someone to meet such expectations;
- Ostracising or excluding someone from meetings, communications, work events or social events;
- Sending, distributing or posting detrimental material about other people, including images, in any medium.

## **What is harassment?**

2.6 Harassment is any unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. All harassment, regardless of whether or not it relates to a protected characteristic, is covered by this policy.

2.7 There is a separate Sexual Misconduct policy and procedure for dealing with allegations of sexual misconduct (including sexual harassment). Further information about reporting incidents that are covered by both policies can be found in paragraph 2.17 of this policy

2.8 Harassment may be persistent or an isolated incident and can be manifest, hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications, including social media.

2.9 Harassment can be intentional or unintentional. It can occur where A engages in conduct which has the effect of violating B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A didn't intend this. Whether conduct constitutes harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way.

2.10 A person may also be harassed even if they were not the intended 'target' of harassment. For example, a person may complain of harassment by jokes about a religious group that they do not belong to, if these jokes create an offensive environment for them.

2.11 Examples of harassment, other than sexual harassment, may include, but are not limited to:

- Sending or displaying offensive material in any format (including posters, graffiti, emails, messages, clips or images sent by mobile device or posted on the internet);
- Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype);
- Use of unacceptable or inappropriate language or racial or other stereotypes (regardless of whether the complainant is in fact a member of the group stereotyped);
- Deliberately holding meetings or social events in a location that is not accessible for an individual (by reason of disability, religious prohibitions or otherwise);
- Using profanities that could have the effect of creating an offensive environment for a person to work in.

## **Annex Two: Sub-panel decision of 16 December 2021 on Preliminary Point**

### **BH1871; BH1875 AND BH1840**

#### **PRELIMINARY LEGAL POINTS**

##### **Decision**

1. The respondent has taken a point of law in BH1871 as to the scope of the Independent Complaints and Grievance Scheme (ICGS) and its application to his cases. Following a Directions hearing with the respondent on 18 November 2021, Sir Stephen Irwin, as Chair of the Independent Expert Panel (IEP), directed that the legal issues bearing on scope should be addressed as a preliminary matter. The issues were identified, by the sub-panel based on the respondent's submissions, as set out in bold type below.
2. The process before the IEP is inquisitorial and parties are not permitted to be represented by advocates. However, it is permitted to seek legal advice. Since the issues identified were in principle capable of determining these complaints, the parties were given the opportunity within a prearranged timetable to make representations on those legal issues. The respondent and one complainant have done so.
3. For the avoidance of doubt, the respondent also argues that the passage of time since the events relevant to these complaints, irrespective of any argument on scope, means that it was and is unfair to proceed against him. This is not to be dealt with as a preliminary argument. On that point the validity of the argument depends on assessment of the facts.
4. There are key dates as follows:
  - a. 22 June 2009 - The respondent takes the chair as Speaker
  - b. 2010/2011 - The events underlying BH1871
  - c. 2009/2010 – The events underlying BH1875
  - d. 2012/2014 – The events underlying BH1840
  - e. July 2018 – Bullying and Harassment Policy and Procedure published
  - f. October 2019 – Bullying and Harassment Policy updated
  - g. 4 November 2019 – The respondent retires as Speaker. He does not retain a Parliamentary Pass.
  - h. 22 January 2020 – Complaint by C in BH1840
  - i. 11 February 2020 – Complaint by C in BH1875
  - j. 12 February 2020 – Complaint by C in BH1871

- k. December 2020 – following legal advice, R complains he is out of scope
- l. 19 January 2021 – PCS suspends investigation(s) to consider ‘eligibility’
- m. 28 April 2021 – Policy amended by House of Commons
- n. 26 May 2021 – Investigations(s) resumed (at least in BH1871)
- o. 6 July 2021 – PCS reports in BH1871
- p. 23 September 2021 – PCS reports in BH1875
- q. 1 November 2021 – PCS reports in BH1840
- r. 18 November 2021 – directions hearing
- s. 3 December 2021 – IEP serves “Points for the Consideration of Parties”
- t. 10 December 2021 – respondent serves representations
- u. 10 December 2021 – C in BH 1840 serves representations
- v. 13 December 2021 – IEP sub-panel meets to consider representations.

**[1] General retrospectivity: save in particular circumstances, it is clearly wrong retrospectively to impose a prohibition or sanction on conduct not formerly prohibited. Does that arise here?**

5. The essential distinction here is whether the retrospective extension of scope of the ICGS, and of the IEP, under any of the formulations of the Bullying and Harassment Policy (“BHP”), was procedural or affected substantive rights and obligations.
6. In order to assist the parties, the published opinion dated 27 June 2018 of Thomas Linden QC, was copied to them. His opinion considered “Complaints based on events occurring before the ICGP [now ICGS] comes into effect and the relevance of the common-law presumption against retrospective effect”. The opinion was given and published as part of the ICGS Delivery Report.<sup>1</sup> We do not intend to rehearse its contents, which can be read by any interested party. Mr Linden’s conclusions relevant to this case are that the ICGS codes and policies “will in effect articulate standards or requirements which were already in existence at all material times.” In straightforward language, the analysis proceeds on the basis that bullying, harassment, sexual harassment and conduct of that kind has always been prohibited conduct for a Member of Parliament.
7. The respondent does not challenge that last proposition. He, of course, vehemently denies that he has ever conducted himself in that way. However, his central argument on this issue is that Mr Linden is in error in regarding the retrospective extension of scope under the ICGS as a matter of procedure rather than a matter of substance. He relies

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<sup>1</sup> See UK Parliament, [Independent Complaints and Grievance Scheme Delivery Report](#), July 2018, pp 93-98.

upon the case, quoted by Mr Linden, of *Yew Bon Tew v Kenderaan Bas Mara*.<sup>2</sup> The respondent emphasises, drawing on that authority, that in his submission the retrospective extension of scope would “impair [his] existing rights and obligations”.

8. The case of *Yew Bon Tew* turned on a statutory change by which an existing 12-month time limit as to when a civil claim for damages could be brought, was converted retrospectively to a 36-month limit, meaning a claim that had previously been too late could now be made. The Privy Council (Lord Brightman) concluded that a time bar to a civil claim represented “in every sense a right, even though it arises under an Act that is procedural”.
9. We disagree with the respondent’s submission. In our view it does not establish any principle binding in our circumstances. The case of *Yew Bon Tew* is no precedent here. There is a clear distinction between, on the one hand, a time bar which explicitly extinguishes a right of civil action, followed by retrospective legislation purporting to re-establish that right of civil action (and, crucially, the concomitant liability for the respondent), and, on the other hand, an extension of scope to a disciplinary system, enabling that system to address historic misconduct. In the first case the legislation challenged sought retrospectively to override an express time limit, after which rights and obligations were to be regarded as finally extinguished. In the respondent’s case, (and in similar cases) there never was a time bar: such conduct could always have been subject to a complaint to the Parliamentary Commissioner for Standards; and the conduct could always also have been addressed in the courts, if nowhere else.
10. Bullying and harassment have always amounted to misconduct in the workplace, particularly where such conduct is sustained. Such conduct is prohibited by law, for example by the Protection from Harassment Act 1997 and the Equality Act 2010. Such conduct has always been unacceptable behaviour by an MP and was prohibited by the Code of Conduct and the Respect Policy (first enacted in June 2011 and updated in July 2014). In substance, the policies, prohibitions and obligations in relation to Parliament have not changed. What has changed is the procedure by which such matters are to be addressed.
11. It is self-evidently in the public interest that MPs owe a duty to uphold acceptable standards of behaviour. We do not understand the respondent to argue otherwise.

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<sup>2</sup> [Yew Bon Tew v Kenderaan Bas Mara](#) [1983] 1 AC 553

12. It may be relevant to consider the decision of the Court of Appeal in *Reilly and Hewstone v Secretary of State for Work and Pensions*,<sup>3</sup> citing the European Court of Human Rights,<sup>4</sup> where the Court of Appeal noted that retrospective application of standards, provided no direct unfairness was caused on the facts of the case, may be justified on “compelling grounds of public interest”. That may be referred to as “the *Zielinski* principle”. It might be argued that there is a compelling public interest in ensuring that elected MPs should not bully or harass with impunity, setting aside any question of a particular code of conduct applying from time to time. However, there is in our view no need to rely upon the *Zielinski* principle, since in this case there is no override of substantive rights.
13. It is also obvious, in our view, that the ICGS policy was all along intended to have retrospective effect. We attach for convenience to this ruling an Annex [A] which sets out the comparative text from paragraph 4 of the ICGS BH policy as it evolved from 2018, through 2019, to 2021. Under the 2018 wording, a complaint was possible “where the respondent was working for or with Parliament at the time the alleged behaviour took place”: that is to say before the policy was brought into force, and indeed with no specific limitation of time from the 2019 edition. Were it otherwise, there would have to have been an additional requirement with some such wording as “and where the behaviour took place after the inception of this policy”. Indeed, the 2<sup>nd</sup> element of the test under 4.3 requires the operation of the ICGS to be retrospective, precisely because a respondent who is no longer “working for or with Parliament” may still be proceeded against, where he or she “was working for or with Parliament at the time the alleged behaviour took place”, subject to the proviso about holding a Parliamentary pass.
14. We note with interest that, in the cases of *Lord Lester* and *Lord Ahmed*,<sup>5</sup> the Conduct Committee of the House of Lords, and its predecessor, had to address alleged misconduct taking place some years earlier (in the *Lester* case over a decade earlier), both before the ICGS was in place, and they did so pursuant to the scope granted under the ICGS, having assured themselves that the misconduct alleged was caught by the Code of Conduct in force at the time.

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<sup>3</sup> *Reilly & Anor v Secretary of State for Work and Pensions* [2016] EWCA Civ 413 (29 April 2016)

<sup>4</sup> *Zielinski v France* (2001) 31 EHHR 19.

<sup>5</sup> House of Lords, Committee for Privileges and Conduct, Second Report of Session 2017–19, *The conduct of Lord Lester of Herne Hill*, HL 220, 12 December 2018. House of Lords, Conduct Committee, Sixth Report of Session 2019–21, *The conduct of Lord Ahmed*, HL 170, 17 November 2020.

15. For these reasons, we dismiss the respondent's argument that the general retrospective scope of the ICGS is unlawful or in some way to be impugned.

**[2] Was the respondent caught by the 2018/2019 formulations of Paragraph 4.3?**

16. The respondent argues that the two bulleted requirements in the 2018/2019 formulations of para 4.3 of the BHP are *conjunctive* – i.e. both must be fulfilled. The word “and” is said to carry that meaning, beyond doubt. Since he neither worked for Parliament nor held a Parliamentary pass at the time the complaints were made, he therefore fell outside scope.

17. A supporting argument in favour of this position would be that Parliament can hardly have intended to bring within scope a complaint against an individual who fulfils the second requirement (i.e. was working for or with Parliament, or holding a Parliamentary pass, at the time the complaint was made) but who could not fulfil the first requirement (i.e. was **not** working for or with Parliament at the time the alleged behaviour took place). That would be to extend the scope of the ICGS to cover behaviour at any remove in time or context from Parliament and the Parliamentary community.

18. The counterargument is that the 2018 and 2019 versions of paragraph 4.3 must always have been taken as intending to penalise MPs found guilty of such misconduct, whether still sitting or not. It can hardly have been the intention of Parliament to include MPs who had resigned by the time of the complaint, except for those who had declined to apply for a Parliamentary pass. The latter, it might be said, would be a merely technical or arbitrary distinction. Indeed, that distinction might be thought of as a potential conscious route to avoid the jurisdiction.

19. The complainant in BH 1840 adds a further submission based on the amendments brought in in 2019. For convenience, the words added in 2019 to paragraphs 4.1 and 4.2 are underlined in the central column of Annex A. In paragraph 4.1 the phrase “present or former [member of the Parliamentary community]” was added. In paragraph 4.2 the words “[those] who have worked for or with, or who are currently [working for or with Parliament]” were added. In substance, the submission from the complainant mirrors the view taken by the legal adviser to the PCS, when the respondent raised the issue in 2020. It is that the wording in 2019, at the very least, demonstrates a policy intention that the ICGS had scope in respect of all former MPs.

20. On this issue, we accept the argument of the respondent and we reject that of the complainant. The complainant accepts that “paragraph 4.3 could have been more

precisely drafted in order to ensure consistency with paragraphs 4.1 and 4.2”. With respect to that submission, we take the view that it understates the difficulty of the language. The clear and obvious meaning of the wording of paragraph 4.3, in either of the earlier formulations, is that both of the bullet-point requirements must be fulfilled. This is not merely a semantic argument, derived from the use of the word “and”. We do accept that under both the 2018 and 2019 formulations Parliament intended to bring former MPs into scope. We do accept that the 2019 amendments were intended to make that clear. But the plain meaning of the words used suggests that the scope was limited to those who were working for or with Parliament, or held a Parliamentary pass: no more, no less. Misconduct by an MP who subsequently, resigned, retired or lost his or her seat, might well damage the reputation of Parliament, even though they had left the House. However, if such a former MP did not hold a Parliamentary pass, then they would have no automatic access to the Palace of Westminster and therefore less opportunity to repeat such conduct on the premises. That distinction, and the different risks to be considered between those who held a pass and those who did not, might have formed a rational purpose in distinguishing between the two groups, and therefore it cannot be said on the face of the language that the distinction made no sense at all.

21. For those reasons, we accept this submission made by the respondent. We must now turn to consider where that may lead us.

### **[3] The 2021 amended policy**

22. We raised the question as to whether there might be any argument that the respondent is not caught by the language of this formulation? The respondent has conceded that if this formulation applies, he is caught by it. We agree.

### **[4] The intention of Parliament in amending the policy in 2021, and the meaning of the revised Policy**

23. By reference to a number of the contributions to the debate on 28 April 2021,<sup>6</sup> as a consequence of which the policy was changed, the respondent argues that Parliament did not intend that this change should have retrospective effect. In particular, he relies upon the remark by the Leader of the House who said “it would be for the Commissioner to determine what the rules at the time meant but not to jump to a change in the rules.... I am simply making it clear that any decision-maker should base it on the language of the policy at the time.”<sup>7</sup>

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<sup>6</sup> HC Deb, 28 April 2021, [cols 454-468](#).

<sup>7</sup> HC Deb, 28 April 2021, [col 458](#).

24. One difficulty with this proposition is that the proposal from the Commission, in its Report that recommended amendments to the BHP,<sup>8</sup> runs directly counter to the interpretation which the respondent seeks to found on some of the various expressions relied on in the debate. As the complainant in BH 1840 recites, the Commission Report which was before the House at the time of the debate reads, in paragraph 16, as follows:

*“16. The drafting of the two policies has been updated so that it more clearly reflects the policy intention of the Commission and the House, when the resolution relating to non-recent cases was passed in July 2019, that it should be possible to complain of the conduct of any former member of the Parliamentary community, whether or not they hold a Parliamentary pass when the complaint is made.”*

25. The Resolution of the House adopting the 2021 policy was explicit: “... this House endorses the report of the House of Commons Commission entitled Amendments to the Independent Complaints and Grievance Scheme HC 1384, laid on Thursday 22 April; and approve the revised bullying and harassment policy and outline procedure and sexual misconduct policy and outline procedure, set out in Annexes 1 to 4 of that report”.<sup>9</sup>

26. In addition, in our view, the submissions of the respondent in relation to the contributions to the debate are at best overstated. If there were those who considered that the revised test would only apply to future complaints, then their view did not sound in the outcome. In respect of the passages most heavily relied on from the speech of the Leader of the House, the complainant in BH 1840 is correct in submitting that the respondent has misunderstood what was being said. In our view the Leader was referring to substantive standards when he stated that “the decision-maker should base any decision on the language of the policy at the time”.

27. A further difficulty with the respondent’s position is that by one of the canons of statutory construction, language used by Parliament must be interpreted by reference to the reasonable meaning of the language employed, in the absence of some clear purposive interpretation or the application of the principle of legality: see *Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg Aktiengesellschaft*.<sup>10</sup> As Lord

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<sup>8</sup> House of Commons Commission, [Amendments to the Independent Complaints and Grievance Scheme](#), HC (2019–21) 1384, 22 April 2021.

<sup>9</sup> House of Commons, Votes and Proceedings, [28 April 2021](#), item 11.

<sup>10</sup> [Black Clawson International Ltd v. Papierwerke AG](#) [1975] UKHL 2 (05 March 1975)

Reid observed in that case: “We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said.” In the same case, Lord Simon of Glaisdale said: “Courts of construction interpret statutes with a view to ascertaining the intention of Parliament expressed therein. But, as in interpretation of all written material, what is to be ascertained is the meaning of what Parliament has said and not what Parliament meant to say.” For this reason, the way matters were expressed in debate is not relevant to the interpretation of statutes (or resolutions) unless the meaning of the policy adopted is unclear, or some other principle, such as the presumption against illegality, is engaged. Here we see no basis for any such argument.

28. For those reasons we reject the submissions of the respondent on this point.

**[5] In the absence of a general retrospective bar, and if scope is otherwise properly founded by the 2021 formulation but not by the earlier formulation, is there any further relevant unfairness arising from proceeding against the respondent on the basis of “restatement” of complaints following the change in formulation?**

29. Additional to the points already made, the respondent submits that the complainants are “seeking to exploit... a lacuna” in the policy, by the restatement of their complaints. He points out that, as of 28 April 2022, there will be a one-year limitation period prescribed by paragraph 6.3 of the 2021 policy. This he says constitutes “a plain attempt by the complainants to exploit the existence of this gap after the fact”. He goes on to submit that what has happened amounts to an abuse of process, in part by reference to the limited sanctions available if his appeals fail, and in part by reference to his factual case that the complaints against him are fabricated, the result of collusion and arise from motives of malice. As we have already made clear, we can of course reach no conclusions based on factual matters yet to be decided, and our considerations here must be restricted to legal reasoning only.

30. One problem with this argument is that it is impossible to avoid the inference Parliament intended there to be a period lasting until April 2022, when there would be no limitation period between alleged misconduct and effective complaint. No other construction of what was done is possible. To describe use of those provisions as “taking advantage of a lacuna” really adds nothing.

31. It is important to understand that the respondent’s arguments, to a very important degree, turn on the date when the complaints were made. He is driven to accept that, if these complaints had been first made after the inception of the 2021 policy, then he

would fall within the scope of the policy. Hence, it is the case that if the respondent's interpretation were accepted, complaints of alleged misconduct in 2009 to 2014, which were first lodged after April 2021, and thus after an even greater lapse of time from the relevant events, would face no procedural bar. In our view, that would be a perverse outcome.

32. It would of course be different if the complaints against the respondent had been dismissed on their merits. In such circumstances, to permit complaints to be revived, at least in the absence of compelling fresh evidence which could not have been made available during the initial proceedings, would clearly be wrong. However, that is not the situation here.
33. In our judgment, a fair reading of the situation here is that the relevant wording in paragraph 4.3 of the 2018 and 2019 formulations represented poor drafting, which did not properly reflect what was intended to be achieved. For the reasons we have given, there was no illegality or breach of proper principle in extending the scope of the ICGS retrospectively to include earlier misconduct by MPs or former MPs. The fair view is that Parliament thought it was doing that in 2018 and 2019 but failed to achieve it, at least in respect of all of those whom they would have wished to bring within scope. It is clear beyond doubt that the 2021 Commission Report set out to remedy the poor drafting, and did so, when the House of Commons voted to implement that Report. In our view, Parliament cannot have been under any misapprehension but that that was what they were doing, and for the reasons we have given, the 2021 formulation did so effectively. That sequence of events was unfortunate, but in our view, it does not represent any breach of principle nor yet an abuse of process.
34. A similar process was applied in the House of Lords when the scope of the Code of Conduct was extended from misconduct 'in the course of their parliamentary duties' (2018) to 'parliamentary duties and activities' (2019). This allowed a complaint to be re-submitted after the revision, see *Lord Ahmed*.
35. For those reasons we reject the final submission made by the respondent. It follows that there is a proper legal and principled basis for continuing with these three appeals. We will now proceed to do so.

**Stephen Irwin**

**Peter Thornton**

**Lisa Ball**

**16 December 2021**

**Annex A to Annex Two: Evolution of para 4.1 to 4.3 of the Bullying and Harassment policy**

<a href="#">2018 Policy</a> [annex B of delivery report]	<a href="#">2019 Policy</a>	<a href="#">2021 Policy</a>
<p>4.1 This policy and procedure applies to all acts of workplace bullying and harassment by and against any member of the Parliamentary Community, including bullying or harassment by a third party, such as a visitor to the Parliamentary Estate.</p> <p>4.2 For the purposes of this policy and procedure, the Parliamentary Community comprises all those working for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of their employment and/ or parliamentary work. This includes: [there are no material changes to the subsequent list between policies]</p> <p>4.3 Under this policy and procedure, it is possible to report and make a complaint about bullying and harassment in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the respondent was working for or with Parliament at the time the alleged behaviour took place; and</li> <li>• Where the respondent is working for or with Parliament or continues to hold a Parliamentary pass at the time the complaint is made.</li> </ul>	<p>4.1 This policy and procedure applies to all acts of workplace bullying and harassment by and against any <b>present or former</b> member of the Parliamentary Community, including bullying or harassment by a third party, such as a visitor to the Parliamentary Estate.</p> <p>4.2 For the purposes of this policy and procedure, the Parliamentary Community comprises all those <b>who have worked for or with, or who are currently</b> working for or with, Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of their employment and/ or parliamentary work. This includes: ....</p> <p>4.3 Under this policy and procedure, it is possible to report and make a complaint about bullying and harassment in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the respondent was working for or with Parliament at the time the alleged behaviour took place; and</li> <li>• Where the respondent is working for or with Parliament or continues to hold a Parliamentary pass at the time the complaint is made.</li> </ul>	<p>4.1 This policy applies to all acts of bullying and harassment by and against any member of the Parliamentary Community on the Parliamentary estate or elsewhere in connection with their Parliamentary activities.</p> <p>4.2 For the purposes of this policy, the Parliamentary Community comprises all those who work for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of their parliamentary work. This includes: ....</p> <p>4.3 Under this policy, a person may report and make a complaint about bullying and harassment where both the complainant and the respondent were members of the Parliamentary Community at the time when the alleged bullying and harassment took place, whether or not they remain members of the Parliamentary Community at the point when the complaint is made (but a complaint will not be investigated after the death of the respondent).</p>

### Annex Three: Chronology

Only events, press reports and other matters included or referenced in the evidence or representations to the Panel are included in this chronology. It is not exhaustive regarding media reports referenced in the evidence. Where exact dates have not been given in the evidence events have been placed in a likely order.

Year	Date	complainant	Event(s)
<b>2009</b>	22 June		BERCOW elected Speaker
	July	SINCLAIR (1875)	Allegation 1: Press briefings
	September	SINCLAIR	Allegation 3: Cancelling meeting with senior official
	September/October	SINCLAIR	Allegation 2: Change of 'working structures'
	October		LISVANE (1840) appointed Clerk Assistant
	14-19 November	SINCLAIR	Allegation 4: FOI request and press reports
<b>2009-10</b>	November to May	SINCLAIR	Allegation 6a: Disputes on whether BERCOW could stay in Speaker's House during election inc. phone throwing
<b>2010</b>	21 January	SINCLAIR	Allegation 5: Meeting with CEO of Commonwealth Parliamentary Association
	January	SINCLAIR	Allegation 6c: Placing of clerks in Speaker's office
	February	SINCLAIR	Allegation 7b: Appointment of Speaker's Secretary
	March	SINCLAIR	Allegation 6b: Dispute over holding civil partnerships in the Palace
	'early May'		EMMS (1871) joins Speaker's office
	24 May	SINCLAIR	SINCLAIR told he was to be 'dismissed'
	27 May?	EMMS & SINCLAIR	Allegation 1 [Emms] & Allegation 7a [Sinclair]: Meeting in relation to appointment of Speaker's Chaplain
	End June	SINCLAIR	SINCLAIR leaves House
	4 July	SINCLAIR	Mail on Sunday report about SINCLAIR leaving and signing NDA
	27 July	EMMS	EMMS appointed Speaker's Secretary permanently
	17 September	EMMS	Allegation 2: Trip to Kenya
	4-5 October	EMMS	Allegation 3: Trip to Poland
	'early' November	EMMS	Allegation 4: Fall out from Youth Parliament
	22 November	EMMS	Allegation 5: 'Fury and abuse' after HoC Commission meeting
	From November	EMMS	Allegation 7: Ostracism from staff team

	Date unknown	EMMS	Allegation 6: Phone call from Trainbearer
<b>2011</b>	4 March	EMMS	EMMS' last day in Speaker's Office
	20 June		House of Common's Commission adopts Respect policy
	28 July	EMMS & SINCLAIR	Mail on Sunday report on EMMS leaving Speaker's Office. SINCLAIR writes to EMMS to sympathise.
	1 October	LISVANE	LISVANE appointed Clerk of the House
<b>2012</b>	February	LISVANE	Allegation 1: Drinks with PoW clashes with dinner with Committee chairs
	5 July	LISVANE	Allegation 2: Meeting re: PAC
	6 July	LISVANE	Allegation 3: Daily conference
	12 July	LISVANE	Allegation 4: Dispute over complaint about MP
	11 September	LISVANE	Allegation 5: Argument over increasing diversity
	13 September	LISVANE	Allegation 6: 'No good as Chief Executive'
<b>2013</b>	26 October	LISVANE	Allegation 7: Dispute over honours committee
	15 May	LISVANE	Allegation 8: Selection of amendments to the Queen's Speech
	17 July	LISVANE	Allegation 9: Speaker's Steering Group on Diversity
	2 September	LISVANE	Allegation 10: Support to Burmese Parliament
<b>2014</b>	3 September	LISVANE	Allegation 11: Follow up to allegation 10
	11 January	LISVANE	Allegation 12: Criticism at daily conference with Deputy Speakers
	20 January	LISVANE	Allegation 13: Commission paper on zero hours contracts
	27 January	LISVANE	Allegation 14: Meeting on security issues
	3 February	LISVANE	Allegation 15: BBC report on bullying of MPs staff
	11 February	LISVANE	Allegation 16: Meeting re: immigration checks
	10 March	LISVANE	Allegation 17: Comments about recent "tick box" appointment and a female clerk
	20 March	LISVANE	Allegation 18: Comments on a female clerk and when LISVANE would resign.
	30 April	LISVANE	LISVANE's retirement announced.
31 August	LISVANE	LISVANE retires	
<b>2017</b>	16 November		Leader of the House confirms creation of a working group on an 'Independent Complaints and Grievance Policy' (ICGP)

<b>2018</b>	28 February		House approves creation of an ICGS in principle and authorises work to develop the scheme.
	8 March	EMMS	EMMS named by Newsnight as having been bullied by BERCOW. Emms evidence is that she did not co-operate with story, or any other naming her.
	19 March		House of Commons Commission agrees that an inquiry into the bullying and harassment of House staff should be commissioned. Dame Laura Cox QC was appointed to lead it on 23 April.
	2 May	SINCLAIR	SINCLAIR interview with <i>Newsnight</i>
	19 July		House approves ICGP delivery report, implementing decision of 28 February, including Bullying and Harassment policy
	15 October		Dame Laura Cox's report published.
<b>2019</b>	17 July		House agrees to update Bullying & Harassment policy, to allow complaints about conduct prior to June 2017 under the ICGS
	October		ICGS starts accepting 'non-recent complaints'.
	4 November		BERCOW retires as Speaker
	November	LISVANE	LISVANE contacts PCS to request meeting to discuss potential complaint. PCS refuses and advises him to contact ICGS.
	'before end of year'	SINCLAIR	Makes initial contact with ICGS about making a complaint.
<b>2020</b>	January	SINCLAIR	SINCLAIR writes to Chair of House of Lords Appointments Commission to inform them he intends to make a complaint to ICGS re: BERCOW in response to reports he is being nominated for peerage
	January	SINCLAIR & LISVANE	LISVANE emails SINCLAIR about whether he is making a complaint.
	January	SINCLAIR	SINCLAIR confirms to journalists he intends to make a complaint.
	January	SINCLAIR	SINCLAIR emailed by LEAKEY, confirms he intends to make a complaint.
	22 January	LISVANE	LISVANE makes complaint to ICGS helpline.
	23 January	LISVANE	LISVANE confirms to the <i>Times</i> that he has made a complaint against BERCOW. Reported as being in response to BERCOW being nominated for peerage.

2020	27-29 January	LISVANE & EMMS	EMMS emails LISVANE following the press reports he has made a complaint, in which she was mentioned. Lisvane shares extract from his complaint.
	January	EMMS	EMMS contacts LEAKEY to request contact details of potential witness. LEAKEY encourages her to make complaint.
	4 February	LISVANE	LISVANE releases media statement in response to criticisms of him by BERCOW. Quoted in Times article on 5 February.
	5 February		LEAKEY makes complaint to ICGS helpline.
	6 February		BERCOW publishes memoir <i>Unspeakable</i> .
	6 February	LISVANE	<i>Daily Telegraph</i> article reports aspects of LISVANE's complaint (allegations 17 & 18). LISVANE reported not to have commented.
	11 February	SINCLAIR	SINCLAIR makes complaint to ICGS helpline.
	12 February	EMMS	EMMS makes complaint.
	12 February	LISVANE & SINCLAIR	LISVANE emails SINCLAIR to ask if he intends to make complaint.
	17 February		BERCOW reported to have told <i>Guardian</i> event to promote book that complainants are 'snobs and bigots'.
	10 March	EMMS	EMMS initial meeting with investigator. Signs confidentiality statement.
	12 March	LISVANE	LISVANE first meeting with investigator. Signs ICGS confidentiality statement.
	13 March	EMMS & LISVANE	EMMS emails LISVANE re: concerns about investigatory process.
	15 March	EMMS & LISVANE	EMMS emails LISVANE re: <i>Sunday Mail</i> report on Seb Whale's biography of BERCOW <i>John Bercow: Call to Order</i> that focussed on his conduct towards her. BERCOW contends EMMS is the likely source.
	16 March	LISVANE	Second meeting with investigator.
	10 April	SINCLAIR	SINCLAIR signs ICGS confidentiality statement.
	7 May	EMMS	Initial conversation between investigator and BERCOW.
11 May	LISVANE	Initial conversation between investigator and BERCOW.	

<b>2020</b>	11 May	SINCLAIR	Investigator initial phone call with BERCOW.
	19 May	EMMS	Investigator interviews EMMS.
	21 May	LISVANE	BERCOW submits written response to complaint.
	22 May	EMMS	Investigator interviews EMMS.
	27 May	LISVANE	Investigator interviews LISVANE.
	1 June	SINCLAIR	BERCOW submits written response to complaint.
	4 June	SINCLAIR	Investigator interviews SINCLAIR.
	9 June	SINCLAIR	Investigator interviews SINCLAIR.
	22 June	LISVANE	Investigator interview with LISVANE.
	17 July	EMMS	Investigator interview with BERCOW.
	28 July	SINCLAIR	Investigator interview with SINCLAIR.
	31 July	LISVANE	Investigator interview with BERCOW.
	14 August	LISVANE	Investigator interview with BERCOW.
	28 August	SINCLAIR	Investigator interview with BERCOW.
	9 September	EMMS	Investigator interview with EMMS.
	15 September	SINCLAIR	Investigator interview with SINCLAIR.
	23 September	SINCLAIR	Investigator interview with SINCLAIR.
	19 October	LISVANE	Investigator interview with LISVANE.
	20 November	EMMS	Final investigator's report sent to Commissioner.
24 November	LISVANE	Investigator interview with LISVANE.	
<b>2021</b>	20 April	SINCLAIR	Final investigator's report submitted to Commissioner.
	28 April		House adopts current versions of ICGS policies.
	6 July	EMMS	Referred to the Panel by the Commissioner.
	September	LISVANE	Final investigator's report submitted to Commissioner.
	23 September	SINCLAIR	Referred to the Panel by the Commissioner.
	1 November	LISVANE	Referred to the Panel by the Commissioner.
	16 December		Sub-panel issues decision on preliminary point.
<b>2022</b>	16 January		BERCOW interview with <i>Sunday Times</i> published plus interviews with BBC and LBC. LISVANE quoted in <i>Times</i> saying he is disappointed at breach of confidentiality.

<b>2022</b>	19 January		Oral hearing with BERCOW on appeals against Commissioner's decision.
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## Decision on sanction

**Decision on sanction following referral by the Parliamentary Commissioner for Standards as follows:**

- **Case 1871: Memorandum of decision 6 July 2021 – complainant Katharine Emms**
- **Case 1875: Memorandum of decision 23 September 2021 – complainant Angus Sinclair**
- **Case 1840: Memorandum of decision 1 November 2021 – complainant Lord Lisvane, KCB DL (formerly Sir Robert Rogers).**

**Decision of sub-panel dated 28 February 2022**

**Sub- panel members: Mrs Lisa Ball, Rt Hon Sir Stephen Irwin (chair), Sir Peter Thornton**

3.1 We now turn to the question of appropriate sanction. We have received submissions from the complainants summarising the impact on them of the respondent’s behaviour and considering what should be the appropriate sanction. The complainants were able to refer to the published guidance of the IEP, at paragraphs 52 to 64, and in particular to the aggravating and mitigating factors there set out.<sup>1</sup> We are not able to publish the submissions from the complainants, which contain highly confidential material. However, we were able to summarise those submissions for the respondent in the following terms:

“The Sub-Panel has received submissions on impact and on sanction from all three complainants. In each case, the submissions contain material which is highly confidential and cannot be disclosed. We summarise the content which can be disclosed as follows.

All three complainants emphasise the serious and sustained nature of the bullying, consistent with the findings upheld by the Sub-Panel’s report. The conduct was the more serious because of the pre-eminent and powerful

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<sup>1</sup> Independent Expert Panel, [Appeals, referrals and sanctions: Guidance for the parties](#), Version 2, October 2021.

position of the Respondent. The complainants also note the Respondent's denials, lack of any remorse and repeated publicity in breach of the confidentiality of the process. The complainants suggest there are many aggravating factors and no mitigation.

The impact on all three can be described as very significant: severe at the time and enduring.

The Sub-Panel was already fully alive to the extensive detail in this case and will form our own view of the significance of the various factors affecting sanction.”

- 3.2 We have also received a short submission from the respondent. He is aware, from the interviews with the complainants and the other material generated by the investigations, of much of the detail of the impact of his behaviour as described by the complainants.
- 3.3 The respondent does not accept the findings we have made and does not acknowledge the impact of his behaviour. In our view he has little or no insight into the way he behaved or its consequences. He has sought to minimise the outcome for these complainants.
- 3.4 We reject the submissions of the respondent on impact. We accept the considerable and lasting impact as described by the complainants.
- 3.5 We have given close consideration to all of the aggravating and mitigating factors indicated in our published guidance, and their relevance to this case.
- 3.6 We conclude that there was a marked abuse of power and authority on the part of the respondent. We conclude that he targeted these three complainants specifically and bullied them. We do not conclude that his conduct was motivated by any protected characteristics of the complainants, but it was motivated, at least in the cases of Mr Sinclair and Lord Lisvane, by a rooted and prejudiced hostility to those who he perceived to be well-educated members of the establishment. We conclude that the respondent did breach his obligation of confidentiality during the currency of these complaints: something which he himself acknowledges.

- This aggravating factor is not displaced by the fact that there was publicity as to the substance of the issues between himself and the complainants before the complaints were made, and therefore before the obligation of confidentiality arose. We do not conclude that the respondent withheld, concealed or failed to volunteer relevant evidence (see paragraph 55(k) of the Guidance), but he did lie repeatedly. Finally, it is of cardinal importance here that this conduct was repeated and sustained.
- 3.7 We have considered all of the mitigating factors set out in paragraph 56 of the Guidance. In our view none of them apply. We do recognise as a relevant factor, although of lesser importance when set against the facts of this case, that the investigations and the subsequent process have imposed a real strain on the respondent. No doubt there have also been significant repercussions for his immediate family.
- 3.8 We conclude that the appropriate sanction here is a formal reprimand by means of a published report. It is appropriate in this case that the full report on the appeal should be published. Our detailed conclusions speak for themselves.
- 3.9 It is for historians to judge whether the respondent was a successful reforming Speaker of the House of Commons. However, there was no need to act as a bully in order to achieve that aim. A great office can be filled forcefully and effectively without descending to such behaviour.
- 3.10 The findings of the Parliamentary Commissioner for Standards, which we have upheld, show that the respondent has been a serial bully. Like many bullies, he had those whom he favoured and those whom he made victims. These three complainants were victims.
- 3.11 His evidence in the investigations, the findings of the Commissioner, and his submissions to us, show also that the respondent has been a serial liar.
- 3.12 His behaviour fell very far below that which the public has a right to expect from any Member of Parliament.
- 3.13 The respondent's conduct was so serious that, had he still been a Member of Parliament, we would have determined that he should be expelled by resolution of the House. As it is, we recommend that he should never be

permitted a pass to the Parliamentary estate.