

The Independent Expert Panel

The Conduct of Mr Mike Hill

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The Independent Expert Panel

The Independent Expert Panel was established by the House of Commons on 23 June 2020; its members were appointed on 25 November. The Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament's Sexual Misconduct Policy or the Bullying and Harassment Policy, under the Independent Complaints and Grievance Scheme.

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Mrs Lisa Ball
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Sir Stephen Irwin (Chair)
Professor Clare McGlynn
Miss Dale Simon
Sir Peter Thornton
Dr Matthew Vickers

Powers

The Panel's powers are set out in House of Commons Standing Orders Nos 150A to 150D. These are available on the internet via www.parliament.uk.

Publication

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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;¹ its members were appointed on 25 November.² The Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament’s Sexual Misconduct Policy or the Bullying and Harassment Policy, under the Independent Complaints and Grievance Scheme.³
- 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 decisions of the Panel on appeal and sanction made following a referral from the Parliamentary Commissioner for Standards. The Commissioner found that the Responder, Mr Mike Hill, formerly the Member for Hartlepool, had acted in breach of Parliament’s Sexual Misconduct Policy in respect of one of the Reporter’s three allegations. Both the Responder and the Reporter appealed this decision.
- 1.4 On 19 January 2021 I appointed a sub-panel of three members to determine the appeals. The members of the sub-panel were:
 - Mrs Lisa Ball
 - Professor Clare McGlynn QC (Hons)
 - Sir Peter Thornton (chair)

¹ HC Deb, 23 June 2020, [col 1244](#) [Commons Chamber]

² HC Deb, 25 November 2020, col [887](#) [Commons Chamber]

³ Independent Complaints and Grievance Scheme: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/>

- 1.5 The appeals were made prior to appointment of the members of the Panel on 25 November 2020. The appeal was therefore managed in accordance with the framework established by the House of Commons Committee on Standards in its 2019 report, *The Committee's role in ICGS appeals*.⁴
- 1.6 On 5 March 2021 the sub-panel notified the parties of their decision to allow part of the Reporter's appeal and to reject the Responder's appeal. They went on to consider the sanction to be imposed.
- 1.7 On 16 March Mr Hill resigned from the House.⁵ The sub-panel took a very serious view of his conduct, and had he remained a Member of Parliament, a significant sanction would have been under consideration. In the light of his resignation however, the sub-panel concluded that no available sanction met the facts of this case and the specific circumstances of the Responder. They therefore did not impose or recommend a sanction.
- 1.8 The decisions of the sub-panel set out the background to the case, the process followed and the reasons for their decisions.
- 1.9 The names and identifying details of the Reporter and any witnesses referred to have been redacted. In addition, some details of the case set out in the full decision of the sub-panel on appeal have been summarised. All other material in the case, including the investigator's report and the Commissioner's decision and memorandum except as referred to in the decision, remains confidential.
- 1.10 Despite the requirements of confidentiality placed on both the Reporter and the Responder during the ICGS process, allegations of sexual harassment and victimisation have previously been made public through the press and social media channels. I consider that it is correct to publish this decision given both the serious nature of Mr Hill's breach of the Sexual Misconduct Policy and the degree of publicity that has already taken place.

⁴ Committee on Standards, Sixth Report of Session 2017–19, *The Committee's role in ICGS appeals*, HC 1976, para 13

⁵ Votes and Proceedings, [16 March 2021](#)

1.11 Publication of this report was deferred due to ongoing Employment Tribunal proceedings.

Sir Stephen Irwin
20 May 2021

Appeal against the decision of the Commissioner

Appeals by the Reporter and the Responder against the decision of the Parliamentary Commissioner for Standards dated 21 October 2020

Summary of the decision of the sub-panel dated 4 March 2021

Sub-panel members: Mrs Lisa Ball, Professor Clare McGlynn QC (Hons), Sir Peter Thornton QC (chair)

2.1 This is a summary of the decision of the sub-panel on appeal from the Commissioner. The full decision has been sent to the parties. It remains confidential. The full decision contains considerable detail, including verbatim evidence which underpinned the findings of the sub-panel. In this report some of the detail is summarised or introduced by reference, in part to protect the anonymity of the Reporter and of witnesses.

The complaint

2.2 The Reporter made a complaint under the Independent Complaints and Grievance Scheme of the House of Commons. The Reporter alleged breaches of Parliament's Sexual Misconduct Policy, namely –

- (1) the Responder had subjected her to behaviour amounting to sexual misconduct in shared private accommodation,
- (2) the Responder had subjected her to behaviour amounting to sexual misconduct in his parliamentary office, and
- (3) the Responder had victimised and discriminated against her in the workplace because she had made the above allegations.

2.3 The Responder denied all the allegations.

The findings of the investigator and the Commissioner

- 2.4 On 30 July 2020 the independent investigator recommended in a Formal Assessment Report that the allegation at (1) above should be upheld, but those at (2) and (3) should not be upheld.
- 2.5 On 21 October 2020 the Parliamentary Commissioner for Standards (the Commissioner) accepted the three recommendations of the investigator concluding that there had been a breach by the Responder of the Sexual Misconduct Policy in respect of Allegation (1), but not in respect of Allegations (2) and (3).

The appeals

- 2.6 The Responder appealed to the Panel against the Commissioner's decision on Allegation (1).
- 2.7 The Reporter appealed to the Panel against the Commissioner's decision on Allegations (2) and (3).
- 2.8 The Panel does not re-investigate the allegations during an appeal, nor does it take fresh decisions on the basis of the investigation. The role of the Panel in an appeal is to review the decisions taken by the Commissioner.
- 2.9 Appeals to the Panel are a two-stage process:
- (1) acceptance that there are grounds for appeal, and
 - (2) where there are such grounds, the appeal itself.
- 2.10 On 25 January 2021 we accepted that there were grounds of appeal to consider and on 8 February 2021 also accepted that we would consider two new sources of evidence. These were (i) the transcripts of ten conversations covertly recorded by the Reporter; and (ii) the further statement of witness AB. Both parties had the opportunity to comment on these documents.

Allegation (1)

The nature of the allegation

- 2.11 The Reporter alleged sexual misconduct by the Responder on two occasions. At the time the Reporter was employed by the Responder in his parliamentary office. The Responder was also her *de facto* landlord. They were sharing temporary accommodation in London. She alleged that he got into her bed late at night when she was asleep, made physical contact with her and attempted to touch her in a sexual way without her consent.
- 2.12 The investigator found this conduct proved. He concluded that the Responder was in breach of the Sexual Misconduct Policy because on these two occasions he had made 'uncalled-for and unwelcome physical contact with the Reporter and that he initiated a sexual act without consent'.

The context of the allegation

- 2.13 It is necessary to put Allegation (1) into context. The relationship between the Responder and the Reporter was unusual and complex. It had started before the Responder was first elected to the House of Commons in June 2017. After his election he offered her well-paid employment in his parliamentary office without any recruitment process or competition. She considered him to be a trusted friend.
- 2.14 This offer of a job was coupled with the offer of subsidised accommodation (contrary to IPSA rules) in a flat in London. The Responder had moved into this flat after his election. They later came to share it. Before her arrival in London, the Responder sent her texts claiming that he wanted to have a permanent relationship with her. He was sexually attracted to her (one text stated, 'I also crave your body') and hoped they would marry. He was a married man with a family in his constituency.

- 2.15 The Reporter wanted no sexual relationship, just friendship. She made that clear to him. But he persuaded her to come to London anyway. She was keen to take up employment with the Responder. She moved into the Responder's one-bedroom flat with an agreement that she should sleep in the bed and he on the couch. It was unsuitable accommodation in a number of respects. The opportunity for the Responder to try and fulfil his wishes for a more intimate relationship was obvious. The Reporter understood this to be a temporary arrangement.
- 2.16 It is in the context of this relationship that the misconduct in Allegation (1) in the flat and the misconduct in Allegation (2) in the parliamentary office is said to have occurred. The Reporter was at all material times employed by the Responder.

The Responder's grounds of appeal

- 2.17 **Ground 1.** – *The investigation was procedurally flawed because the Reporter 'controlled the narrative'. In particular, the Reporter decided which texts to disclose to the investigator and which conversations to record covertly. She was always in control and not vulnerable.*

Texts

- 2.18 The texts which the Reporter disclosed to the investigator were undoubtedly selective. But that was inevitable. A complete set of texts over a long period of time would have been unmanageable as evidence and would have served no particular purpose. We have read the texts carefully and are not persuaded that they are a manipulated selection, likely to create a false picture. Besides, the Responder admits that he sent them; he was embarrassed, he said, by their content. In his grounds of appeal he asserts that the texts are taken out of context, but he did not challenge their accuracy or suggest that key texts had been left out.

2.19 The texts are certainly revealing, and not in the Responder's favour. They demonstrate the strengths of his hopes and wishes for a sexual relationship with the Reporter in the one-bedroom flat in London. In our view, the texts are an important part of the evidence. Their disclosure has not flawed the investigatory process. On the contrary, the texts have helped it.

Covert recordings

2.20 There came a time when the Reporter started recording conversations between the Reporter and the Responder, occasionally with others present. The Responder did not know that he was being recorded (nor did the others).

2.21 Both the Reporter and the Responder invited us to look at the transcripts of the recordings. Both rely upon them. The Responder asserts that they show that the Reporter is 'dictating the narrative of dialogue with the Responder throughout'; she is not a vulnerable woman; and there is an absence of complaints about the sexual conduct alleged. The Reporter asserts that the recordings are 'strong evidence' that she was 'sexually harassed and sexually assaulted'.

2.22 Any covert recording of a trusted friend (or former trusted friend) should be approached with special caution. It is a deliberate deceit. It may well have been designed to ensnare the Responder. We have therefore scrutinised the covert recordings in detail, in context and while reminding ourselves that the Responder was unaware that he was being recorded. There are 10 transcripts, some around 100 pages long. Our conclusion is that read as a whole and in the working context they are reasonably informative. In our view they do not read like deliberate entrapment. At no time does it appear that the Reporter has set up a question or series of questions in order to catch the Responder out. Indeed, as we have stated, he relies on the transcripts as much as she does.

2.23 By the time of the recordings, the relationship between the Responder and the Reporter had moved on. The working relationship was not going well. The transcripts reveal many disputes between the Reporter and the Responder about employment issues, although it should be noted that there is, despite

this, a continuing apparent closeness in the personal relationship, even where there are rows.

2.24 We are not persuaded that the Reporter is 'dictating the narrative', in the sense of falsely controlling or manipulating any aspect of the investigation. Nor do the transcripts show that she is not 'vulnerable'. The Reporter was from an early stage in their relationship very much dependent upon the Responder. He had brought her to London, for employment and subsidised accommodation. He was her employer and a trusted friend. He knew she was dependent on him.

2.25 The Responder has claimed in his grounds of appeal that there is an absence of complaints in the recordings about the sexual conduct alleged. On the contrary, we find that there is certainly some relevant evidence about both Allegation (1) and Allegation (2). The Reporter contrasted the Responder's behaviour with previous employment, where she was not subjected to this kind of attention and behaviour. She emphasised her vulnerability, and made it clear that the Responder took advantage of that and of her reliance on him. The Responder apologised, although asserting that he had not pressed her after her rejection of that kind of attention. He asked for her forgiveness.

2.26 We are for these reasons not persuaded that Ground (1) is made out.

2.27 **Ground 2.** – *The Reporter made no contemporary complaint and failed to confront the Responder with the allegation. There was no 'contemporaneous corroborative evidence'. Her complaint was much later and was timed to coincide with the difficulties she was facing at work. Her behaviour at work and at home was atypical of a victim of sexual misconduct. For these reasons her credibility is undermined.*

2.28 It is true that the Reporter's complaint to the Independent Complaints and Grievance Scheme was not made until many months had passed since the alleged sexual misconduct. Nor is there any independent evidence that she confronted the Responder with this allegation until the covertly recorded conversation at a later date.

- 2.29 These are certainly relevant factors which need to be considered, but with caution. It is now well understood that there is no such thing as 'typical' or 'normal' behaviour in response to sexual misconduct. Behaviour by reporters of sexual harassment or misconduct will vary. There may, for example, be a delay in the report. There may not be. Delayed reporting may be a factor which should be considered in the totality of the evidence, but no assumption should be made about it. 'Delay' does not necessarily mean that the report is untrue or that the reporter's credibility is undermined as a result. Reporters react in different ways. There is no typical response. It is therefore common for there to be delays, even long delays (sometimes years), in reporting misconduct.
- 2.30 It is also now known that there may commonly be other responses. There may be continuation of apparently normal behaviour in relationships and daily work. There may be continuing contact by a reporter who is in some kind of a relationship with the responder, whether sexual or not, whether an employer/employee relationship or one involving trust or not.
- 2.31 To some observers this may seem surprising, but it is known that survival strategies of victims vary. Where the relationship is long-standing, responding by confrontation or early reporting is less likely; non-assertive responses are common. Any assumption that a reporter will, if the complaint is true, cease contact with the responder, even friendly contact, is false.
- 2.32 The Responder in his grounds of appeal has asserted that the Reporter's credibility was undermined because there was no contemporaneous complaint of wrongdoing. Delayed reporting may be a factor which should be considered in the totality of the evidence, but it would be wrong to make any assumption about it.
- 2.33 We accept that the timing of the Reporter's original complaint coincided broadly with difficulties she was facing at work. That could mean that the complaint was false and she made it out of revenge. Or it could mean the opposite: the complaint was true and she made it because she was concerned about her position at work and her accommodation. It may also be that it was only by this time that she felt able to raise the matter formally, having previously taken

the commonly held view that to report such conduct might be 'career ending'. Further, Parliament's Independent Complaints and Grievance Scheme was only introduced in July 2018 and so there was no contemporaneous mechanism for reporting sexual misconduct. In themselves, any of these explanations may be possible. But we do not accept the Responder's assertion that because her complaint was late and timed with difficulties at work, that it must be false.

2.34 The Responder also claims that the Reporter's behaviour was 'an atypical response'. He relies upon the investigator's report which states:

"We also note that ... the reporter was fighting to continue to live with the respondent ... and be managed by him; in our experience this is *an atypical response* to a perpetrator from a person who has been repeatedly sexually assaulted." [our emphasis added]

2.35 In our view the investigator was wrong to suggest that the Reporter's response was 'atypical'. Setting aside the use of the investigator's words 'fighting to continue', which are perhaps rather stronger than the totality of the evidence suggests, there is a serious flaw in the investigator's approach. As we have stated above, there is no such thing as 'typical' or 'normal' behaviour. The Responder is not therefore able to rely upon this passage. (We shall return to the investigator's approach to this kind of evidence under Allegation (2).)

2.36 Finally under Ground 2, the Responder asserts that there was 'no contemporaneous corroborative evidence'. We do not agree. There is ample support for the Reporter's complaint of Allegation (1), both at the time and subsequently.

2.37 The context and opportunity for misconduct was of the Responder's own making. At a time when the Responder knew the Reporter was vulnerable and had become dependent upon him as a trusted friend, he brought her into an unacceptable arrangement in the one-bedroom flat.

2.38 Furthermore, in an early interview with the investigator he admitted that he did get into bed with her once and may have done so twice. Only later did he say that he remembered just the once and, later still, he 'strongly' denied that there was a second time. Witness CD reported that he told them that he had

done so twice. The Responder gave different reasons to explain his behaviour: he was cold or had a bad back. He did not mention either reason when challenged by the Reporter in the transcript. In other evidence, he claimed that he had the Reporter's consent to the behaviour, but did not recall what he had said or she had said. The investigator found him to be rather vague on consent and was not persuaded by his account.

- 2.39 At the very least the Responder showed a remarkable lack of judgment as an employer in his accommodation arrangements. More damningly, he concealed them from both his wife and his staff, only revealing them to the latter following a very lengthy period of concealment. The Reporter claims that on one train journey back to the constituency, the Responder asked her to walk on ahead when they got to the local station, so that his wife who was meeting him would not see her. She claims he later apologised for that.
- 2.40 All in all, there was a strong case against the Responder on Allegation (1). We see no merit in this ground of appeal. None of the Responder's assertions leads us to the conclusion that the Reporter's credibility was undermined. Far from it: it remained in good standing.
- 2.41 **Ground 3.** – *The findings of the investigator and Commissioner are inconsistent because they found for the Reporter on Allegation (1) and against the Reporter on Allegation (2).*
- 2.42 In view of our conclusion on Allegation (2), see below, there is no inconsistency. In any event, the findings, as they then stood, indicated that there was more supporting evidence on Allegation (1) than on Allegation (2), which was correct.
- 2.43 **Ground 4.** – *By making this complaint, the Reporter was seeking to build a criminal case and an Employment Tribunal case against the Responder. She undermined her own credibility by placing matters in the public domain.*
- 2.44 We find no merit in these points. The first is no more than speculative and therefore of no value. The second, if correct, has not undermined her credibility. It is true that there have been some unfortunate breaches of

confidentiality in this case through public comment, perhaps on both sides. But we do not find it necessary to make any finding or further comment about it.

2.45 **Ground 5.** – *The CV and experience of the investigator was not disclosed to the Responder. The investigator should have obtained psychiatric evidence about the Responder’s reliability.*

2.46 We find no merit in this ground. Neither point is relevant to our review of the Commissioner’s findings.

Conclusion

2.47 We therefore find nothing in the Responder’s grounds of appeal to overturn the investigator’s recommendations or the Commissioner’s decision on Allegation (1). They could have come to no other conclusion. We reject the Responder’s appeal. The complaint on Allegation (1) is upheld.

Allegation (2)

The nature of the allegation

2.48 The Reporter alleged that the Responder came up behind her on many occasions in his parliamentary office and touched her inappropriately.

2.49 The investigator found that the allegations were ‘not substantiated sufficiently by the evidence’. The Commissioner, although considering that the investigator’s recommendation was ‘the most finely balanced of the investigator’s recommendations’, agreed. The complaint was therefore not upheld.

The Reporter’s grounds of appeal

2.50 **Ground 1.** – *There was a procedural flaw in respect of Allegation (2) in that the investigator applied the wrong standard of proof for sexual misconduct*

under the Sexual Misconduct Policy, employing a higher standard of proof than on a balance of probabilities. The Commissioner failed to correct this error.

The standard of proof

2.51 There is no doubt, in our view, that the investigator fell into error on the standard of proof when considering Allegation (2). (No such error occurred in the investigator's consideration of Allegation (1).) We are satisfied that the investigator wrongly concluded (in considering Allegation (2)) that a higher standard of proof than normal was required in this particular case.

2.52 The investigator began correctly by stating that the standard of proof in cases where sexual misconduct is alleged is proof on the balance of probabilities:

"The standard of proof to be applied in this formal assessment, however, is not whether the reporter's account at interview is the most believable but whether, on the balance of probabilities, the conduct is more likely to have happened or not."

That could have been better expressed, particularly the reference to the Reporter's account being 'the most believable', but overall it applies the correct test.

2.53 Nevertheless, the investigator deviated from the correct test in the passage that followed:

"In making this assessment, we must bear in mind the seriousness of the allegations. We think that the allegations [Allegation (2)], if upheld, would amount to not only a serious breach of the Policy (that works to a civil probability test), but would likely be considered criminal sexual assault if proven in court (to the higher evidential standard). Even though our conclusions have no weight in legal proceedings, we are profoundly mindful of the consequences of our findings on both parties to this formal assessment. The evidence required for us to make a safe finding of fact needs to be very compelling."

2.54 It is our view that the investigator raised the standard of proof in this passage to a level which was higher than justified. He wrongly stated that the allegation needed to be proved with evidence which is 'very compelling'. 'Compelling' is a

strong word with connotations of proof which is conclusive, irrefutable or convincing. There is no such requirement in the balance of probabilities test. The investigator sought to explain in this passage that this 'very compelling' test had to be applied because of the 'seriousness of the allegations', which 'if upheld ... would likely be considered criminal sexual assault if proven in court'. This raised the standard of proof from the balance of probabilities to somewhere in the region of 'the higher evidential standard' of the criminal courts, namely being sure or beyond reasonable doubt.

2.55 This is an error for a number of reasons. First, it wrongly equated sexual misconduct under the Sexual Misconduct Policy with criminal offences. And this passage (at paragraph 2.53 above) is not the only passage in the investigator's report which did so. The investigator linked the sexual misconduct alleged with the definition by the Metropolitan Police of sexual assault, which is cited in full in the footnote. That is an error. Police definitions of sexual assault are not relevant in this disciplinary context.

2.56 The investigator's scrutiny should have been restricted to the scope of the Sexual Misconduct Policy and the definitions within it. The Policy makes it clear that the work of this disciplinary process is quite different from criminal proceedings (paragraph 3.3):

"However, using the language of sexual misconduct makes it clear that the Policy and Procedure for Parliament is separate from and additional to any court processes."

The Policy returns to this important distinction later (at paragraph 10.3):

"The nature and scope of the Policy and Procedure is fundamentally different from that of a criminal process. The Policy and Procedure is a disciplinary matter for the Parliamentary Community based upon an allegation that an individual has breached the Sexual Misconduct Policy and Procedure."

Any conflation of the disciplinary and the criminal processes, as by the investigator in this case, is, therefore, a serious error.

2.57 Second, and following on from the first reason, the investigator repeatedly uses the phrase 'sexual assault'. The phrase is used, for example, in the

investigator's final paragraph on Allegation (2), the 'outcome' paragraph. Admittedly, the Reporter had used 'sexual assault' in her complaint; it is ordinary language for what she was complaining of. Nevertheless, the phrase 'sexual assault' is more suited to the criminal process. The right phrase, under the Policy, is 'sexual misconduct' (see the Policy at paragraphs 2, 3.2, 3.3, 9.1).

2.58 Third, as we have already stated, the words 'very compelling' suggest a high, if not very high standard of proof, one which is higher than the balance of probabilities test.

2.59 Fourth, there is inconsistency between the standard of proof used for Allegation (1) (the correct balance of probabilities test), and the standard of proof used for Allegation (2) (the 'very compelling' evidence test). It is not entirely clear why the investigator has chosen to make this distinction and raise the threshold of proof for Allegation (2), particularly since Allegation (1) is arguably the more serious. Either way it produces a notable inconsistency.

2.60 The investigator would have been wiser to have applied the correct test with simple language, stating that Allegation (2) was not proved on the balance of probabilities: see Sexual Misconduct Procedure, paragraph 4.1.

2.61 This was an error on the part of the investigator, which was not corrected by the Commissioner. The Commissioner wrongly concluded in respect of Allegation (2):

"The investigators applied the correct standard of proof, differentiating between the questions of whether the reporter's account is credible and whether on the balance of probabilities the conduct was more likely to have happened than not."

2.62 We therefore conclude for the above reasons that there was a procedural flaw from this error.

The consequences of the error

2.63 What, then, are the consequences of this error on the standard of proof? What conclusion would the investigator have come to had the error been corrected?

The investigator concluded that Allegation (2) was 'not substantiated sufficiently by the evidence'. Would that conclusion have been different if the investigator had applied the correct standard of proof?

- 2.64 There are a number of factors which lead us to reconsider the investigator's conclusion.
- 2.65 First, the investigator came to a firm conclusion on the respective credibility of the parties. From extensive interviews, he assessed the credibility of the Reporter on this allegation as high and the credibility of the Responder as not high:

"We found the reporter's account of her experience of the respondent's behaviour and the impact on her both powerful and persuasive; indeed we found her oral account more convincing than that of the respondent who, we considered, was at times a vague and unreliable historian."

Further references to the Responder being 'very vague' and 'vague and at times obtuse' appear in his report.

- 2.66 This seemed to suggest, as a starting point at the very least, that on a balance of probabilities the Reporter was credible and her account accurate. In the right case, depending on all the circumstances, good credibility may alone be sufficient support for a Reporter's complaint, even where it is the Reporter's word against the Responder's. An investigator will always look for support for an allegation, but sometimes this may be difficult. Misconduct behind closed doors may sometimes take place without revealing clear independent evidence.
- 2.67 In this case, the investigator looked for support for the Reporter's evidence but concluded that there was a lack of independent witnesses or material evidence to support it. He therefore decided that 'witness credibility and indirect evidence' became more important. We do not disagree with this approach. It placed witness credibility in its proper place and outlined a sensible search for any 'indirect evidence'. We do, however, disagree (below) with the weight placed by the investigator upon some of the 'indirect evidence' which he considered. In our view, the investigator's search led him in the wrong direction. As a result, he was influenced by a number of factors which he

should not have taken into account. These factors were of a distinctly negative nature which did not support the complaint.

2.68 Second, one of these negative factors arose out of the apparent assumption by the investigator that, for Allegation (2) to be proved, it was necessary to show that the Responder was a 'sexual predator'. The investigator gave weight to reports from 'women who had worked with [the Responder] closely over two decades' that he was 'the diametric opposite of the habitual sexual predator depicted in the allegation'. The investigator also contrasted the Responder's conduct with the accounts of 'persistent, predatory and aggressive sexual misconduct' presented in Gemma White QC's report, which the investigator reported was not the 'description' given by these colleagues.

2.69 We are satisfied that the investigator fell into error. Not all cases of sexual misconduct involve sexual predators of the kind described above. This was certainly not such a case. It was never suggested that the Responder had preyed on a number of women or that his behaviour towards the Reporter was in the nature of a predator. Far from it. The allegations of sexual misconduct in this case, Allegations (1) and (2), arose out of the particular relationship between the parties over a period of years. This was a Responder in a complex relationship who was seeking a sexual relationship, which the Reporter did not want and had said so.

2.70 The investigator was therefore wrong to infer that it had not been shown that the Responder was a predator. He was wrong to go looking for predator conduct in the first place. He was wrong to take into account the opinion of these and other witnesses that the Responder was not the sort of man to commit sexual misconduct. Their opinion was in our view unhelpful if not irrelevant, particularly since they gave it at a time when the Responder was still concealing from them (and his wife) that he had been sharing accommodation with the Reporter, including their first flat which was a one-bedroom flat with one bed.

2.71 Third, and in a similar vein, the investigator was in our view also wrong to conclude that the Reporter's behaviour was 'an atypical response' when she

continued to share accommodation and work with the Responder. We have already considered this point under Allegation (1) at paragraphs 2.29-2.31. It was, in our view, a further error in the context of Allegation (2). The investigator was wrong to draw negative assumptions about typical or atypical behaviour. It was a further negative factor which the investigator was wrong to take into account.

- 2.72 It is clear to us that in finding that (a) there was evidence which pointed away from the Responder being a predator and (b) the Reporter's behaviour was atypical, the investigator had allowed himself to conclude that the credibility of the Reporter, which he had in the first place considered 'powerful and persuasive' and 'more convincing' than the Responder, was undermined. That was an error.
- 2.73 Fourth, another negative factor can be found in the evidence of witness CD who, to use the investigator's words, 'spoke of their shock and incredulity that [the Responder] would act in the manner alleged'. CD had had conversations with the Responder and made a statement for the investigation. In their statement, CD commented: 'Nothing that [the Responder] told me seemed to fit with the picture of somebody who was a sexual harasser.' They also stated: 'In particular I could not understand how someone who had, by her own account, been on the receiving end of sexual misconduct, could want to keep working with and reporting to the alleged perpetrator.' These are troubling assumptions. There is no typical 'sexual harasser', and, as we have emphasised above at paragraphs 2.29-2.31, it is now well understood that there is no such thing as typical or normal behaviour. The behaviour of perpetrators and victims will vary. In particular, there may well be continuation of apparently normal behaviour in relationships and daily work.
- 2.74 We consider that, as with the other witnesses referred to above, too much weight was given to CD's assessment of conduct by the Responder and the Reporter.
- 2.75 Further, CD's assessment of the Responder was inevitably flawed due to the circumscribed information given to them by the Responder. CD might have

taken a very different view had they read the sexual texts from the Responder sent to the Reporter shortly before she moved to London to take up her post. CD had accepted that the accommodation arrangements were all of the Reporter's making, whereas it is arguable that the opposite was true. The Responder had invited the Reporter to share his one-bedroom flat and had on his own account 'dragged his feet something rotten' when the Reporter tried to find something more suitable.

- 2.76 We therefore conclude that the investigator took into account matters which he should not have taken into account. He was clearly looking for supportive evidence of Allegation (2) but only found what he concluded to be negative evidence, against the Reporter.
- 2.77 Fifth, there were other indicators which were capable of being viewed positively, in the Reporter's favour, but the investigator did not take sufficient account of them. There was the evidence of witness EF, a Member of the House who knew the Reporter. They took the trouble to write a letter on the Reporter's behalf which she submitted to the investigator. In their letter EF wrote that the Reporter had 'confided in me ... that she was suffering sexual harassment by her employer [named]'. This is not the strongest of evidence, but the timing of this confidence suggests Allegation (2) rather than Allegation (1). EF felt sufficiently strongly about the Reporter's claim that they approached the Leader of the House about it. The investigator took no account of the evidence of EF. They were not interviewed and it appears only in a footnote.
- 2.78 In addition, as a further possible positive factor, there is the evidence that the Responder's office furniture was reorganised. There is no dispute that it was. The Reporter claims that the office was reconfigured so that the Responder had less opportunity to come up behind her by surprise and touch her inappropriately (as she alleges in her complaint). The Responder claims that the reconfiguration was to make room for a fridge and to enable the Reporter to see more easily who came in the door. The investigator notes that this evidence 'supports the Reporter's account' but also that there may be other reasons for the office changes.

- 2.79 Sixth, the investigator was deprived of the benefit of the covert recordings. At the time of the investigation, the Reporter was reluctant to disclose them to the Responder and the investigator was therefore right not to consider them. It was only later, and recently, that the transcripts have been disclosed to the Responder in the current Employment Tribunal proceedings and both parties now agree that the Panel may consider them.
- 2.80 There is undoubtedly some supportive evidence in those transcripts. Had the investigator had them before him he might have found evidence to bolster the complaint. One transcript is capable of providing support for Allegation (2). It is capable of amounting to an acknowledgment of misconduct by the Responder. We have summarised the transcripts at paragraph 2.25 above.
- 2.81 We have considered the further statement of AB, recently provided by the Responder, but find nothing in it to alter our decision on Allegation (2).
- 2.82 Looking at Allegation (2) in its totality, we are satisfied that the investigator would have found Allegation (2) proved, if –
- a) he had applied the correct standard of proof,
 - b) he had given more respect to his own findings on the credibility of the respective parties,
 - c) he had taken less account of irrelevant negative factors,
 - d) he had taken more account of positive factors, and
 - e) he had had access to the transcripts of the covert recordings (which are now available to the Panel).
- 2.83 We therefore conclude that the investigator's recommendation on Allegation (2) was procedurally flawed and that the Commissioner's decision on Allegation (2) was in all the circumstances unreasonable. We allow the Reporter's appeal.
- 2.84 In view of this finding, we need not consider any further grounds raised by the Reporter on Allegation (2).

Conclusion

2.85 For the reasons stated, we allow the Reporter's appeal on Allegation (2). The complaint on Allegation (2) is therefore upheld.

Allegation (3)

The nature of the allegation

2.86 The Reporter alleged that she was victimised and discriminated against under the Sexual Misconduct Policy by the Responder because she had complained about the Responder's sexual misconduct towards her. In particular she alleged that she was being wrongly forced out of her job and accommodation and threatened with alternative employment which was unreasonable.

The Reporter's ground of appeal

2.87 **Ground.** – *The investigator failed to follow the correct procedure in that he did not consider the full extent of the allegation. In particular, the investigator failed to consider sufficiently emails submitted by the Reporter which show the animosity of other staff towards her.*

2.88 We can take this shortly. The Reporter had been employed in the Responder's parliamentary office in London. There came a time when the Responder decided to bring in fresh staff and re-organise his offices in the House of Commons and in the constituency. All working roles were to be re-evaluated.

2.89 Following proposals for re-organisation, there was a dispute about line management. The Reporter had been line managed from the start by the Responder, but the arrival of another staff member put this in dispute.

2.90 A number of other employment issues arose. They included a pay-rise for the Reporter, where and when the Reporter worked, her time-keeping, her contact with the constituency and her working relationship with others.

- 2.91 A management report on the Reporter was prepared, suggesting five options. Two of them were redundancy or suspension pending 'formal investigation' about time-keeping. A further report was prepared two months later with two recommendations, both of which deleted the Reporter's parliamentary role in London and created an alternative, lesser paid, role in the constituency. The Responder agreed with this report, but delayed making a decision.
- 2.92 In the end, the Reporter's parliamentary security pass was cancelled and the Reporter was offered the fresh post in the constituency. By this time, the Reporter was off work, sick. She did not take up the offer and her employment was terminated.
- 2.93 There is much more detail in the evidence about the fraught working relationship between the Responder and the Reporter and its deterioration. Some of it may be considered in current Employment Tribunal proceedings brought by the Reporter. But that is a matter for the Employment Tribunal, not for us.
- 2.94 It is not our task to consider the rights and wrongs of the employment question, nor to decide whether there was any discrimination under the Equality Act 2010. Our sole task is to see whether the Commissioner was right to uphold the investigator's recommendation that Allegation (3) was not established. We believe that the Commissioner was right and acted reasonably in coming to that conclusion. The investigator had found that the evidence did not show that the behaviour of the Responder and his staff had amounted to victimisation as defined in the Sexual Misconduct Policy. The Commissioner upheld that conclusion. That was, in our view, a reasonable decision. We are satisfied that the investigator acted thoroughly in considering the full extent of the Reporter's allegations and all material disclosed, including emails.
- 2.95 In order for this allegation to have been proved, there would have had to have been evidence that another staff member was complicit in a plot led by the Responder to oust the Reporter from her post as revenge (victimisation) for her having complained about his sexual misconduct. Alternatively, that staff

member would at the very least have had to be the innocent agent in such a plot. We find no such evidence.

Conclusion

2.96 This ground of appeal by the Reporter is therefore rejected. The complaint on Allegation (3) is not established and the investigator and the Commissioner were right so to conclude.

Conclusions

2.97 We reject the Responder's appeal against the finding on Allegation (1) and uphold the decision of the Commissioner that the complaint is proved.

2.98 We allow the Reporter's appeal against the finding on Allegation (2) and conclude that the complaint is proved.

2.99 We reject the Reporter's appeal on Allegation (3) and concur with the Commissioner's finding that Allegation (3) is not proved.

2.100 The Commissioner has referred the sanction in this case to the Panel. The Panel will consider the question of sanction separately.

Decision on sanction

Referral by the Parliamentary Commissioner for Standards dated 29 October 2020

Decision of the sub-panel on sanction dated 30 March 2021

Sub-panel members: Mrs Lisa Ball, Professor Clare McGlynn QC (Hons), Sir Peter Thornton QC (chair)

Introduction

- 3.1 This is a referral from the Parliamentary Commissioner for Standards (the Commissioner) to the Independent Expert Panel (the Panel) for consideration of sanction.
- 3.2 The Reporter made a complaint under the Independent Complaints and Grievance Scheme (ICGS) of the House of Commons, alleging breaches of Parliament’s Sexual Misconduct Policy by the Responder, a Member of the House of Commons, namely –
- (1) the Responder had subjected her to behaviour amounting to sexual misconduct in shared private accommodation,
 - (2) the Responder had subjected her to behaviour amounting to sexual misconduct in his parliamentary office, and
 - (3) the Responder had victimised and discriminated against her in the workplace because she had made the above allegations.
- 3.3 The Responder denied all the allegations.
- 3.4 Having conducted an extensive investigation, the independent investigator recommended in his final Formal Assessment Report of 30 July 2020 that Allegation (1) should be upheld, but Allegations (2) and (3) should not be upheld.

- 3.5 In her letter to the parties of 21 October 2020 and her memorandum to the Panel of 29 October 2020, the Commissioner accepted each of the investigator's recommendations. She found that the Responder's conduct was a breach of Parliament's Sexual Misconduct Policy in respect of Allegation (1), but not Allegations (2) and (3).
- 3.6 The Commissioner decided that the Responder's breach of the Sexual Misconduct Policy in relation to Allegation (1) was so serious that she could not conclude the case under the aegis of Standing Order No. 150. She therefore submitted her memorandum to the Panel for consideration of sanction.
- 3.7 Standing Order No. 150 sets out the principal duties of the Parliamentary Commissioner for Standards. They include the duty, in respect of ICGS cases against Members, 'to refer such cases to the Independent Panel of Experts where a sanction beyond her powers is contemplated'. Standing Order No. 150A(3)(a) provides that it is a function of the Panel 'to determine the appropriate sanction in ICGS cases referred to it' by the Commissioner.

Appeals

- 3.8 Before sanction was considered by the Panel, both the Responder and Reporter appealed the Commissioner's findings to the Panel.
- 3.9 This sub-panel, on behalf of the Panel, reviewed the findings of the Commissioner. We concluded in our written Decision of 4 March 2021 that Allegations (1) and (2) should be upheld. They were both proved. In respect of Allegation (2) we therefore reversed the finding of the Commissioner. We found Allegation (3) not proved.
- 3.10 It is clear from our Decision that the sexual misconduct found proved in Allegations (1) and (2) was of a serious nature. The details of the conduct proved, our findings and reasons, are set out in full in the Decision.
- 3.11 The Decision was provided to the Responder on 5 March 2021.

Resignation

- 3.12 On 16 March 2021 the Responder resigned as a Member of the House of Commons with immediate effect.

Sanction

- 3.13 We now consider the question of sanction in this case. In doing so we note that our powers of sanction are extremely limited when a Responder is no longer a serving Member of the House: see the Panel's published document (February 2021), *Appeals, referrals and sanctions: Guidance for the parties*, at paragraph 51.
- 3.14 On 8 March 2021 the Responder was invited to express in writing his views on anything relevant to the matter of sanction, including any views he might have on the appropriate outcome. He was also asked to provide a reflective statement on his conduct as proved. He did not provide anything in writing, but requested an oral hearing (see below).
- 3.15 On 8 March 2021 the Reporter was also given the opportunity to express her views on anything relevant to the matter of sanction and to say, if she wished, how the breaches of the Sexual Misconduct Policy had affected her. The Reporter responded by letter on 17 March 2021 expressing the severe effects which the sexual misconduct had had upon her. They included, as she stated, a severe impact on her self-esteem, confidence, dignity and general well-being. An outline of the letter in the terms set out in this paragraph, although not the letter itself, was disclosed to the Responder at the oral hearing (see below).
- 3.16 On 25 March 2021 we held an oral hearing by way of Microsoft Teams in order to give the Responder the opportunity to address the question of sanction. The Responder's legal adviser was also present.
- 3.17 At the hearing, the Responder said that he was 'mortified' by the findings of the Panel's Decision. The whole process had affected his mental and physical health. He reflected that he had got himself 'into a stupid situation of my own

making'. But he continued to deny the allegations. There was no acknowledgment of sexual misconduct or the impact of it, and, therefore, no apology or regret for his actions towards the Reporter. There was nothing in the nature of a reflective statement on misconduct proved. He expressed remorse, but only for the circumstances in which he now found himself. He did, however, say that he had reflected upon the Decision. He recognised the seriousness of the findings against him and when asked if he had taken steps to address the behaviour found proved, he said, 'Yes, Sir. I resigned.'

3.18 In this particular case, following the Responder's decision to resign as a Member of the House of Commons, we conclude that no available sanction is appropriate. We therefore do not impose or recommend a sanction. Our powers in respect of former Members are in any event extremely limited. It is clear that no minor sanction could satisfactorily reflect the seriousness of the Responder's conduct. Had the Responder not resigned, we would have likely considered recommending the sanction of suspension from the House.

3.19 We have not recommended to the Speaker of the House that the Responder should be denied a former Member's pass to the parliamentary estate.