

The Independent Expert Panel

The Conduct of Mr Ross Thomson

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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 appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament's sexual misconduct policy or the bullying and harassment policy, under the Independent Complaints and Grievance Scheme.

Current membership

Mrs Lisa Ball
Monica Daley
Mrs Johanna Higgins
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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Panel staff

The current Secretary to the Panel is Emily Baldock.

Contacts

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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 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.²
- 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 a decision of the Panel on an appeal made following a decision of the Parliamentary Commissioner for Standards. The Commissioner found that the Responder, Mr Ross Thomson, formerly the Member for Aberdeen South, had not acted in breach of Parliament’s sexual misconduct policy. The Reporter appealed this decision.
- 1.4 On 19 January I appointed a sub-panel of three members to hear the appeal. The members of the sub-panel were:
 - Mrs Lisa Ball
 - Mrs Johanna Higgins
 - Sir Peter Thornton (chair)
- 1.5 The appeal was made prior to appointment of the members of the Panel on 25 November 2020. The appeal was therefore managed in accordance with the

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

² Independent Complaints and Grievance Scheme: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/>

framework established by the House of Commons Committee on Standards in its 2019 report, *The Committee's role in ICGS appeals*.³

- 1.6 On 29 January 2021 the sub-panel reported their decision to me as Chair of the Panel. The sub-panel dismissed the Reporter's appeal.
- 1.7 The decision of the sub-panel sets out the background to the appeal, the process followed and the reasons for their decision. The names of the Reporter, any witnesses referred to and other identifying details have been redacted. 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, remain confidential.
- 1.8 Despite the requirements of confidentiality placed on both the Reporter and the Responder, the allegations made have previously been made public through the press and social media channels. The decisions made by the Commissioner and the sub-panel mean that many of these allegations have not been established. I consider that it is correct to publish this decision given the degree of publicity that has already taken place.

Sir Stephen Irwin
23 February 2021

³ Committee on Standards, Sixth Report of Session 2017–19, [The Committee's role in ICGS appeals](#), HC 1976, para 13

Appeal against the decision of the Commissioner

Appeal by the Reporter against the decision of the Parliamentary Commissioner for Standards dated 27 October 2020

Decision of the sub-panel dated 29 January 2021

The complaint

- 2.1 On 19 March 2019 the Reporter made a complaint against the Responder of sexual misconduct in a bar of the House of Commons on the evening of 30 October 2018. The Reporter alleged that –
- (1) the Responder had leaned on him, invaded his personal space, engaged in personal touching for some minutes and stroked him, and
 - (2) in the most serious of the allegations, the Responder had repeatedly groped his backside and genitals and attempted to insert his hand down the Reporter’s trousers.
- 2.2 The Responder admitted that he was drunk but denied all the allegations.

The investigator’s and Commissioner’s findings

- 2.3 On 3 September 2020 the independent investigator reported in a Formal Assessment Report (FAR) that the allegations at (1) above were upheld, but those at (2) were not upheld. In respect of (2) the FAR concluded that the Reporter’s complaint had been raised maliciously.
- 2.4 The Parliamentary Commissioner for Standards (the Commissioner) reviewed those findings, as she does in all cases of this nature. On 27 October 2020 in a letter setting out her decision, and later on 14 January 2021 in a Memorandum explaining her decision more fully, the Commissioner concluded that there had

been no breach by the Responder of the Sexual Misconduct Policy and that the Reporter's complaint had not been malicious.

- 2.5 The Commissioner upheld the FAR findings that the groping allegations at paragraph 2.1 (2) above were not proved. The Commissioner also accepted the FAR findings that the Responder leaned on the Reporter and invaded his personal space by repeatedly putting his arms around him (but not that he had stroked him), but concluded that these actions were not proved to be of a 'sexual nature' and did not therefore breach the Sexual Misconduct Policy. The outcome was that all complaints of sexual misconduct were not upheld. In her decision letter to the Reporter of 27 October 2020, the Commissioner stated at paragraph 5:

*I have concluded that the evidence does not demonstrate that [the Responder's] conduct towards you was a breach of Parliament's sexual misconduct policy. I find [the Responder] **did not breach** the sexual misconduct policy in relation to all five elements of your complaint.*

[Commissioner's emphasis]

- 2.6 The Commissioner also rejected the FAR finding that the Reporter had raised his complaint maliciously. There is no appeal against this conclusion.

The appeal

- 2.7 The Reporter now appeals to the Independent Expert Panel (the Panel) against the Commissioner's decision.
- 2.8 The Independent Expert Panel was established by resolution of the House of Commons on 23 June 2020 to act as the independent appellate body on appeals from decisions of the Commissioner in cases brought under the Independent Complaints and Grievance Scheme, which includes cases of alleged sexual misconduct. The Panel operates in accordance with the principles of fairness, transparency, natural justice and proportionality. Decisions on cases are made by nominated sub-panels.

- 2.9 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.
- 2.10 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.
- 2.11 As the nominated sub-panel for this case, we have considered carefully the FAR, the Commissioner's decision letter and Memorandum, and the evidence of the two investigations.
- 2.12 We have at the forefront of our minds the UK Parliament Sexual Misconduct Policy and Procedure, the UK Parliament Behaviour Code and the House of Commons Code of Conduct, in addition to the relevant Standing Orders of the House of Commons.

Grounds of appeal

- 2.13 We are grateful for the Reporter's grounds of appeal (lodged on 11 November 2020). Five grounds are raised. We shall take each ground in turn.
- 2.14 **Ground (1)** *The procedure was materially flawed in that the quality of the independent investigation was 'unfair and inadequate'. The Reporter cites as examples that his statement to the Independent Sexual Misconduct Advisory Service helpline (ISMA Service) and his initial statement to the first investigator were not considered afresh by the second investigator. He also alleges unreasonable delay.*
- 2.15 We have looked closely at the two investigations. A second investigation was instigated by the Commissioner in July 2019 because she was not satisfied that the first investigation had been carried out to a sufficient standard. It is clear to us that the second investigation was particularly thorough and included consideration not only of the evidence from the first investigation but also

additional fresh interviews of the parties and witnesses. For example, the Reporter was interviewed a further two times, the Responder was interviewed a further three times, and there were a further 19 witness interviews in the second investigation. In addition, all interviewees, including the Reporter, were given the opportunity to review their further statements and propose amendments. In our view the Reporter had the benefit of a very thorough investigation and one in which every opportunity was given to allow him to express what he wished to say in furthering his complaint. The Commissioner rightly found that the investigative process was 'thorough and proportionate to the seriousness of the allegations' (paragraph 38 of the Commissioner's Memorandum).

- 2.16 Full statements made in calls to the ISMA helpline were not part of the investigation. The helpline, which was confidential, was there to give help and support to the caller and advise on possible options for further action, such as a formal complaint. Only the call handler's complaint disclosure form would have been passed on to the investigator.
- 2.17 In this case all the evidence gathered by the first investigator, including the Reporter's first interview statement, was passed on to the second investigator with the written consent of the Reporter and the Responder. It was considered by the second investigator on 26 July 2019.
- 2.18 Although there was some delay caused by the need for a second investigation, we find no procedural irregularity in this respect. The Commissioner was right, in her oversight role, to require a second investigation since she considered the first not to be up to standard. As we have already observed, her decision led to a doubly thorough investigation with fresh interviews (see paragraph 2.15 above). There was some inevitable delay, but we do not consider it unreasonable in all the circumstances.
- 2.19 For these reasons, we find no valid ground of appeal on Ground (1).
- 2.20 **Ground (2)** *The procedure was materially flawed because the (second) investigator failed to obtain a witness statement from XY, 'a key material witness'.*

- 2.21 We find no merit in this point and therefore no valid ground of appeal.
- 2.22 XY was not an eyewitness to the incident. XY was informed of the incident the next day by one of the eyewitnesses. XY did no more than receive a hearsay account from an eyewitness. It was clearly better for the eyewitness, rather than XY, to give the investigator an account of the witness's own observations. That is in fact what happened. The eyewitness was interviewed. XY's account would only have been second-hand. Further, XY's opinion that what the Reporter later described to her was 'sexual misconduct' is neither evidence of fact nor helpful opinion evidence. It would not have affected the investigator's inquiry. She was not, therefore, a 'material witness' who should have been interviewed.
- 2.23 **Ground (3)** *Fresh evidence should be called by the sub-panel, namely XY.*
- 2.24 For the reasons set out in paragraph 2.22 above, we do not feel that this evidence, if considered, would have been significant. It would not have been helpful for the purposes of this case. This ground is therefore not a valid ground of appeal.
- 2.25 **Ground (4)** *The Commissioner erred in law by requiring corroboration of the Reporter (in respect of touching by the Responder and groaning noises). In particular, the Reporter criticises and quotes from the Commissioner's decision [letter dated 27 October 2020] at paragraph 12 where she 'discounts' [the Reporter's word] the Reporter's evidence because 'this is not corroborated by any of the witnesses'.*
- 2.26 In our view, we do not find that the Commissioner erred in law or was otherwise incorrect in her approach. We do not take paragraph 12 as a whole, and in the wider context in her letter under the heading *Allegations*, to suggest that the evidence of a Reporter must always be corroborated. These are not civil or criminal proceedings, but disciplinary proceedings where a decision-maker will always be looking to see if there is support (or 'corroboration') for evidence of the Reporter, particularly in cases where it is the Reporter's word against the Responder's.

- 2.27 But each case will be different and will turn on its own facts. In some cases, such as this one, certain allegations were made which one might have expected in the context to have been seen or witnessed by one or more others present, particularly when, as here, they were in close proximity to the Reporter. An absence of supporting evidence, as in this case where close-by witnesses would have found it hard to miss some of the serious groping alleged (and there was no discussion about it afterwards that evening), may become telling. In other cases, the context will be such that a complaint can be upheld on the Reporter's word without supporting evidence.
- 2.28 In this case, the investigator and Commissioner were looking for evidence which would lend credence to the Reporter's account on the serious groping allegation. What they found was not just an absence of evidence to that effect, but contrary evidence from witnesses who were present. For example, neither Witness 1 nor Witness 2 saw or heard anything that they considered to be sexual. Witness 2 said that if there had been sexual groping as alleged, she/he would have seen it. Added to this is the first investigator's note from his interview with the Reporter which reads: '[the Reporter] said that, despite the close proximity to him of [the Responder] during the incident, there had been no verbal sexual remarks of any kind.' In the light of that evidence and the evidence as a whole, a finding that the proven misconduct was not of a 'sexual nature' was inevitable.
- 2.29 We find no fault in the approach taken by the Commissioner. Her review of all of the evidence, in its detail and in its context, was entirely reasonable. Ground (4) is not a valid ground of appeal.
- 2.30 **Ground (5)** *The Commissioner applied the wrong test for sexual misconduct. She failed to apply the Sexual Misconduct Policy correctly, by concluding that the actions of the Responder were not 'sexual in nature'.*
- 2.31 We do not conclude that the Commissioner applied the wrong test. She set out in her decision (a) the appropriate test, namely that all conduct under the Sexual Misconduct Policy must be proved on a balance of probabilities to be of a sexual nature, and (b) the inevitable conclusion (in our view) on the evidence

(see paragraph 2.28 above) that the Responder's conduct of leaning on the Reporter and invading his personal space, the only conduct found proved, was not proved to be of a sexual nature. On that basis, she rightly found that there had been no breach of the Sexual Misconduct Policy.

2.32 The Reporter is correct to list in his grounds of appeal that –

- uncalled-for physical contact, deliberate brushing past
- unwelcome and inappropriate touching, hugging [or kissing]

are relevant physical 'behaviours' under the Sexual Misconduct Policy. But he is wrong to suggest that they do not have to be of a sexual nature or that what should have been proved here was in fact conduct of a sexual nature. It is clear to us that 'behaviours' must be of a sexual nature. If that is not clear and obvious from the title of the policy itself, it is clear from the wording (also cited by the Reporter) which appears just before the list of relevant 'behaviours', namely 'The following behaviours may constitute sexual misconduct if they occur inappropriately or without explicit full and freely given consent.' It is also made clear in other passages in the policy. Paragraph 2.1 begins with the words: 'This Policy and Procedure relates specifically to sexual misconduct'. And paragraph 3.3, cited by the Commissioner in her Memorandum, also makes it abundantly clear that the conduct under this policy must always be of a sexual nature:

*Sexual misconduct incorporates a range of behaviours including sexual assault, sexual harassment, stalking, voyeurism **and any other conduct of a sexual nature** that is non-consensual or has the purpose or effect of intimidating, undermining, humiliating or coercing a person.*

[Commissioner's emphasis, at paragraph 66 of her Memorandum.]

2.33 The Reporter's complaint of misconduct was made under the Sexual Misconduct Policy. As the Reporter states in his grounds of appeal: 'My evidence is clearly that the inappropriate touching was of a sexual nature.' Once the Commissioner had identified the correct test, as we find she did, she went on to find, in some detail in paragraphs 61-68 of her Memorandum, that

the sexual element was not proved. We have already decided at paragraph 2.28 above that her conclusion on this point was both correct and inevitable.

2.34 She set out her reasoning in some detail at paragraphs 61-68 of her Memorandum. In our view she did so fully and sufficiently and was able to conclude that it was not proved on a balance of probabilities that the misconduct was sexual. That was not an unreasonable decision (or an 'irrational' decision, as alleged in the ground) and we see no reason to interfere with it.

2.35 Not surprisingly, the independent investigator had come to a similar finding of fact (at paragraph 8.10, FAR):

The Responder's behaviour on the night of the 30th October 2018 met the definition under the policy for 'unwelcome and inappropriate touching and hugging'. These were not driven by sexual motivations but by clumsy misinterpretations of the boundaries of others and by being intoxicated.

Decision

2.36 We have considered each of the Reporter's five grounds of appeal with some care. In our judgment there is no merit in any of the grounds. We therefore do not accept that there are any valid grounds for an appeal. For that reason, it is our decision that this appeal by the Reporter must be dismissed.