

# **Independent Expert Panel**

# The Conduct of Mr Liam Byrne MP

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pursuant to House of Commons Standing Order No. 150A

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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.

### **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](http://www.parliament.uk).

### **Publication**

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## Report by the Chair of the Panel

- 1.1 The Independent Expert Panel (the 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 (the Bullying and Harassment Policy), 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 a complaint under the Bullying and Harassment Policy she had upheld against the respondent, Rt Hon Liam Byrne MP, the Member for Birmingham Hodge Hill.
- 1.4 The complainant Mr David Barker, who has agreed to be named in this report, was a staff member in the respondent's constituency office. He made seven allegations of bullying against Mr Byrne. Following an investigation by an independent investigator, the Commissioner upheld a single allegation; that Mr Byrne had ostracized the complainant between 20 March and the end of July 2020, including disabling the complainant's Parliamentary email account for a period. The ostracization followed a dispute between Mr Byrne and the complainant at the former's constituency office, that had led him to send the complainant home. The Commissioner concluded that Mr Byrne's behaviour was "was malicious behaviour that involved a significant misuse of power" in the context of the complainant's ill health and the first Covid-19 pandemic lockdown.

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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 respondent did not appeal the Commissioner's decision. The complainant appealed her decision not to uphold two of his other allegations. I appointed the following sub-panel to consider the complainant's appeal and then to determine the sanction to be imposed:

- Ms Monica Daley
- Miss Dale Simon (Chair)
- Dr Matthew Vickers

1.6 The sub-panel did not uphold the complainant's appeal for the reasons set out in its decision of 31 January, section 2 of this report. It therefore determined sanction on 11 April, based on the Commissioner's original decision. The sub-panel's full decision and reasoning is set out in section 3 of this report.

1.7 Having considered the Commissioner's memorandum, the independent investigator's report and associated evidence, and the submissions made by both the complainant and Mr Byrne the sub-panel concluded that:

*This case involves a serious breach of the Bullying and Harassment Policy which arose from the respondent abusing his position of power and ostracizing the complainant, who was his employee, by ceasing personal contact with him for several months and denying him access to his Parliamentary IT account. The impact of this behaviour was compounded by the fact that it occurred during the first period of lockdown when the complainant was physically separated from work colleagues, uncertain of his future work status and had undergone a period of ill health.*

1.8 The respondent's decision not to engage with the complainant following what he perceived to be acts of misconduct was not, as he argued, a reasonable HR strategy. It was bullying. He should, as he now accepts, have tackled any alleged misconduct through a proper disciplinary process not by ostracizing the complainant.

1.9 The sub-panel accepted that Mr Byrne had demonstrated genuine remorse. However, they were not convinced that he fully understood the extent of his wrongdoing as he implied that his lack of understanding of the term "ostracization" within the Bullying and Harassment Policy, and the

complainant's behaviour, somehow excused his actions. The sub-panel recognised Mr Byrne's willingness to put in place steps to address his behaviour through training and the action he had already taken and planned to take to address weaknesses in his management of his team. They also took into account Mr Byrne's representations on his mental health, both the impact of these issues at the time that the misconduct occurred and the considerable impact of the lengthy investigation process on his current wellbeing.

- 1.10 The sub-panel concluded that Mr Byrne should make a written apology to the complainant and undertake training and other actions to address the causes of his behaviour and the weaknesses in the management of his office. However, this was not sufficient sanction to address the seriousness of this case. They therefore also recommended that he be suspended from the service of the House for two sitting days. Mr Byrne has accepted the sub-panel's decision.
- 1.11 I make this report to the House pursuant to Standing Order No. 150(A)(5)(d) as the sub-panel has recommended a sanction only the House can impose. All other information about this case, including the investigator's report, the Commissioner's memorandum, and the identity of any witnesses, except as referred to in this report remains confidential.

**Sir Stephen Irwin**

**28 April 2022**

# Appeal against the decision of the Commissioner

## Appeal by the complainant against the decisions of the Parliamentary Commissioner for Standards

### Decision of sub-panel dated 31 January 2022

### Sub-panel members: Ms Monica Daley, Miss Dale Simon (Chair), and Dr Matthew Vickers

#### Background

- 2.1 The complainant was a regular volunteer within his local party and in March 2019 had assisted the respondent's constituency office with a constituency matter. The complainant was then employed by the respondent as an administrative officer in his constituency office in April 2019, initially for two days per week. This was increased to four days per week in May 2019 and further extended to five days per week in April 2020. Throughout this period the complainant was employed under a rolling contract that was renewed approximately bi-monthly, until his contract came to an end on 31 July 2020. On the 10 July 2020 the complainant made a complaint via the Independent Complaints and Grievance Scheme ("the scheme") helpline. The complaint alleged that the complainant had been bullied by the respondent in breach of Parliament's Bullying and Harassment Policy. He made seven specific allegations, which were clustered under two headings and referred to by the independent investigator as allegations 1a to 1d, and 2a to 2c.

#### The Investigator's and Commissioner's findings

- 2.2 On 14 October 2021 the independent investigator reported in a Formal Assessment Report, that in their opinion there was sufficient evidence to uphold three of the seven alleged incidents (1d, 2a and 2b) and made an overall recommendation to uphold the complaint of bullying.
- 2.3 The Commissioner agreed in part with the investigator's report and concluded that the respondent's actions constituted a breach of both

Parliament's Bullying and Harassment Policy and Behaviour Code. She concluded that there was an overlap between allegations 1d, 2a and 2b and decided that it would be fairer to address all the issues of contact between the complainant and respondent between 20 March and the end of July 2020 under allegation 2a only [see paragraphs 3.3 to 3.5 for more detail]. This changed allegation 1d and made allegation 2b redundant. The parties were notified of the Commissioner's decision to uphold the complaint in a letter dated 17 November 2021.

## The Appeal

2.4 The complainant now appeals to the Independent Expert Panel (the Panel) against the Commissioner's decision not to uphold allegations 1a and 1c. Those allegations were:

*1a) That on an unspecified date in February 2020 Mr Byrne's behaviour changed and his working patterns became inconsistent while his expectations of the complainant were raised exponentially in terms of hours the complainant was required to work. Given that the complainant was on a part time contract (between 2-4 days per week), the complainant stated he was expected to work by Mr Byrne for no pay in fear of losing his employment. The complainant states he was expected to work every day Mr Byrne did and to the point of exhaustion, this was flagged to Mr Byrne on numerous occasions but no action or change in expectation was forthcoming. The complainant states he was being required to work between 12 -14 hours per day with only one day off per week.*

*1c) That Mr Byrne used 'Gaslighting' techniques towards the complainant during this period which made him doubt himself and question his abilities and worth.<sup>1</sup> The complainant found this out from colleagues and felt manipulated, abused and undervalued by Mr Byrne. Examples of this include Mr Byrne speaking to colleagues unnecessarily*

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<sup>1</sup> The investigator and Commissioner adopted the following definition of Gaslighting "an insidious form of manipulation and psychological control. Victims of gaslighting are deliberately and systematically fed false information that leads them to question what they know to be true, often about themselves. They may end up doubting their memory, their perception, and even their sanity. Over time, a gaslighter's manipulations can grow more complex and potent, making it increasingly difficult for the victim to see the truth'. It can occur in personal and professional relationships." <https://www.psychologytoday.com/gb/basics/gaslighting>

*about the complainant and his inabilities, calling him ‘insubordinate and unresponsive’.*

- 2.5 The appeal has been managed in accordance with the Bullying and Harassment Policy and Procedure agreed by the House on 28 April 2021,<sup>2</sup> and sections A and C of the Panel’s *Appeals, referrals and sanctions: Guidance for the parties*.<sup>3</sup>
- 2.6 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 bullying. The Panel operates in accordance with the principles of fairness, transparency, natural justice and proportionality. Decisions on cases are made by nominated sub-panels.
- 2.7 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.
- 2.8 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.
- 2.9 As the nominated sub-panel for this case, we have considered carefully the Formal Assessment Report, the Commissioner’s decision letter and memorandum, and the evidence of the investigation.
- 2.10 We have at the forefront of our minds the UK Parliament Harassment and Bullying Policy, 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.

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<sup>2</sup> UK Parliament, [Bullying and Harassment Policy for UK Parliament: Edition 2021](#), and [Bullying and Harassment Procedure for UK Parliament: Edition 2021](#).

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

## Grounds for Appeal

- 2.11 The complainant submitted his appeal on 11 December 2021 and submitted supplementary information following a request from the sub-panel on 22 December. He argued that:

*[...] the Commissioner's decision was unreasonable in respect of allegations 1a and 1c. This stems from a misunderstanding that work on Mr Byrne's mayoral campaign was unconnected to my Parliamentary role. The truth is there was never any distinction.*

- 2.12 The complainant also offered to provide fresh evidence not provided to the investigator and Commissioner to support this point. He argued that it had not been offered during the investigation because he had not realised that the question of whether his work on the mayoral campaign was connected to his Parliamentary role would arise.

## Consideration of Acceptance of the Grounds for Appeal

- 2.13 On 12 January 2022 the sub-panel met to determine whether to accept the grounds for appeal submitted by the complainant. We concluded that the complainant had adequately expressed his grounds and the basis of the appeal against the decision of the Commissioner, and therefore agreed to consider it. The appeal raised the issue of whether the Commissioner had construed the Bullying and Harassment policy too narrowly in regard to defining Parliamentary activities, leading her to make an unreasonable decision.
- 2.14 We decided not to consider the fresh evidence because in our view it did not have a real prospect of affecting the outcome of the appeal given the evidence already available to the sub-panel.

## Consideration of the Grounds for Appeal

- 2.15 On 24 January 2022 the sub-panel convened to determine the ground for appeal in this case. We considered the Commissioner's decision in relation to each allegation in turn.

### *Allegation 1a*

- 2.16 In her memorandum the Commissioner stated (para 24):

*As I have noted above, the complainant worked both for Mr Byrne in a parliamentary role and volunteered to assist Mr Byrne in a non-parliamentary role. I am mindful that the scope of Parliament's Bullying & Harassment Policy is restricted, at paragraph [4.1], to conduct that is connected to parliamentary activities only:*

*“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.”*

*I therefore have not considered conduct and evidence that is connected to non-parliamentary activities.*

- 2.17 We concluded that the Commissioner correctly applied the provisions of the policy to the circumstances of this case. The Commissioner concluded that the complainant's additional work pressures and time commitment in early 2020 were most likely connected to the respondent's non-Parliamentary campaign activities. She identified poor management practice in the way that the working patterns and workloads of Parliamentary staff members who were also working on the campaign were managed but found that this “general office disorganisation” did not amount to bullying.
- 2.18 We recognise that MPs and their staff wear “multiple hats” in respect of their Parliamentary, constituency and party activities, and that the inherent imbalance of power between MPs and junior members of staff could make it difficult to maintain the distinction between these activities in practice. Given this, the policy requires the Commissioner to reach her decision on the basis of the facts that she found proved in this case. A sub-panel's role is not to substitute its judgement for that of the Commissioner. We decided that the Commissioner's decision not to uphold allegation 1a was one that she could reasonably make based on her interpretation of the policy and the facts that she found proved. Accordingly, we did not uphold this ground of appeal.

#### *Allegation 1c*

- 2.19 The Commissioner concluded that in her opinion there was insufficient reliable evidence to support this allegation or to conclude on the balance of probabilities that the respondent's conduct involved “offensive, intimidating,

malicious or insulting behaviour” or that the respondent’s conduct involved “an abuse or misuse of power”. We found no evidence to suggest that consideration of any distinction between the work undertaken by the complainant in respect of the respondent’s mayoral campaign and his Parliamentary role, was a determining or relevant factor in respect of the Commissioner’s decision. Therefore, this ground of appeal is also not upheld.

## **Decision**

2.20 We considered each aspect of the complainant’s grounds of appeal carefully. We found no evidence to support a finding that the Commissioner’s decision was unreasonable. Therefore, this appeal is not upheld.

# Decision on sanction

## Decision on sanction following referral by the Parliamentary Commissioner for Standards

### Decision of sub-panel dated 11 April 2022

#### Sub- panel members: Ms Monica Daley, Miss Dale Simon (Chair), and Dr Matthew Vickers

#### Background

3.1 The complainant was a regular volunteer within his local party and in March 2019 had assisted the respondent's constituency office with a constituency matter. The complainant was then employed by the respondent as an administrative officer in his constituency office in April 2019, initially for two days per week. This was increased to four days per week in May 2019 and further extended to five days per week in April 2020. Throughout this period the complainant was employed under a rolling contract that was renewed approximately bi-monthly, until his contract came to an end on 31 July 2020. On the 10 July 2020 the complainant made a complaint via the Independent Complaints and Grievance Scheme (the ICGS) helpline. The complaint alleged that the complainant had been bullied by the respondent in breach of Parliament's Bullying and Harassment Policy. He made seven specific allegations, which were clustered under two headings and referred to by the independent investigator as allegations 1a to 1d, and 2a to 2c.

#### The Commissioner's decision

3.2 On 14 October 2021 the independent investigator reported in a Formal Assessment Report, that in her opinion there was sufficient evidence to uphold three of the seven alleged incidents (1d, 2a and 2b) and made an overall recommendation to uphold the complaint of bullying.

3.3 The allegations the investigator recommended upholding were:

*Allegation 1d - It is alleged that between 3rd June and July 2020 (when the complainant's contract was not renewed by Mr Byrne) inappropriate behaviour intensified in terms of a period of silence between the two*

*parties only being broken by Mr Byrne when he contacted the complainant out of the blue stating he had received 'serious complaints' about him. The complainant alleges he was then locked out of his work social media accounts without notification and his passwords were voided, disabling the complainant's Parliamentary email account, meaning even though he was still technically employed he could not work or access items such as his final payslip. The complainant was then informed by another member of staff (not Mr Byrne, his employer) that his contract was not to be renewed at the end of July. On the 9th June 2020 the complainant also found out that an attempt had been made at the instigation of Mr Byrne, to wipe the work mobile telephone he had in his possession, remotely of its content including stakeholder details.*

*Allegation 2a - It is alleged by the complainant that between the 20th March 2020 and the beginning of June 2020 the complainant was not spoken to by Mr Byrne (his line manager and employer) except for a couple of occasions by text message. This upset the complainant and he felt ostracised by Mr Byrne. During this period the complainant continued to work for the respondent remotely and fulfil his obligations. Mr Byrne would reply to other messages from other staff members but not the complainant. Due to the platform being used (WhatsApp) the complainant could see he was further being ignored and ostracised, being in essence isolated from the team.*

*Allegation 2b - After 4 weeks of being allegedly ignored by the respondent the complainant began to suffer medical/wellbeing issues and during this period developed Covid-19 symptoms, this was conveyed to Mr Byrne who did not check on his welfare needs or his well-being. During this period the complainant's contract was still only being extended on a bi-monthly basis by Mr Byrne and the lack of communication meant he was fearful for his future employment constantly. It is alleged that during this period that the complainant was only being paid half his salary, the reason for this is unclear and he alleges that this greatly added to his stress and anxiety.*

- 3.4 The period covered by these allegations followed a dispute on 20 March 2020 between the complainant and the respondent at the latter's

constituency office that led to the respondent sending the complainant home. This was subject to a separate allegation of bullying (1b) that was not upheld.

### **Commissioner's decisions on the allegations**

- 3.5 The Commissioner, in her memorandum of 16 November 2021, agreed in part with the investigator's recommendations. She decided that given the overlaps between the three allegations it would be fairer and avoid "double counting", to treat the aspects of allegations 1d and 2b she upheld (summarised below) as part of allegation 2a. She therefore amended allegation 2a to cover "all the contact between the complainant and Mr Byrne for the period 20 March 2020 to 31 July 2020".
- 3.6 With respect to allegation 1d, the Commissioner found that the decision to remove the complainant's access to the respondent's social media accounts and to "wipe" the work mobile phone, which was being used for the respondent's mayoral campaign, were within the range of reasonable management action given they were "discretionary work tools" provided by the respondent; the complainant's contract was ending; and the respondent had concerns (well-founded or not) that the complainant might abuse his access to them. However, she decided that the complainant's access to his Parliamentary IT account was a contractual right not provided at the discretion of the respondent, therefore the decision to disable access would have prevented him working and had a "punitive" effect on the complainant in denying him access to his final payslips. This was "disproportionate and amounted to malicious behaviour", especially in the context of allegation 2a.
- 3.7 In relation to allegation 2b, the Commissioner concluded that questions about the complainant's correct rate of pay were not within the scope of the ICGS policy. As noted above the rest of the allegation was treated as part of allegation 2a.
- 3.8 In respect of allegation 2a (as amended) the respondent argued that he was not the complainant's line manager during this period, and therefore not responsible for keeping in touch with him after he had been sent home on 20 March until the end of his contract, but the Commissioner concluded that this "account was not convincing". She decided instead that the respondent's conduct amounted to "ostracization and was malicious

behaviour that involved a significant misuse of power". She further found:

*[...] this conduct to be a significant breach of the Policy as, firstly, the period encompassed two episodes of ill-health suffered by the complainant; periods when he would have been particularly vulnerable, especially due to the lockdown constraints in place, and in need of support and assistance from Mr Byrne, his employer. Secondly, the complainant's contract was expiring in this period, and without any communication from Mr Byrne, his employer, he was left with no opportunity to discuss the possibility of a further extension nor any certainty about his future; this was a significant misuse of power.*

### **Commissioner's conclusions**

- 3.9 For the reasons above the Commissioner upheld allegation 2a, as amended, and therefore found that the respondent had breached the Bullying and Harassment Policy.
- 3.10 In terms of aggravating and mitigating factors she concluded that the respondent's conduct was a particularly serious breach of the policy given the complainant's vulnerable state for at least part of the period in question. She also highlighted "the significant power disparity between the parties, with the complainant being reliant on short-term contract extensions that were granted at Mr Byrne's discretion as the complainant's employer." The respondent's conduct was "a misuse of that power and was done so in full sight of the complainant's colleagues." She considered this to be a significant aggravating factor.
- 3.11 The Commissioner also concluded that the respondent had not co-operated satisfactorily with the investigation through failing to respond to the investigator and submitting further evidence directly to the Commissioner after the investigation had been completed without any explanation as to why it had not been provided earlier. This failure to co-operate had delayed the complainant receiving an outcome to their complaint. The Commissioner found that this was a further serious aggravating factor.
- 3.12 The Commissioner could not identify any mitigating factors.
- 3.13 The Commissioner concluded that the breach of the policy was sufficiently

serious to exceed her powers to impose sanction, and therefore referred it to the Independent Expert Panel on 16 November 2021.

### **Appeals against the Commissioner's decisions**

- 3.14 The respondent did not appeal the Commissioner's decision to uphold the complaint.
- 3.15 The complainant appealed the Commissioner's decisions not to uphold allegations 1a and 1c. We considered the complainant's appeal but did not uphold it for the reasons set out in our decision of 31 January 2022 [section 2 of this report].
- 3.16 The sub-panel therefore considered sanction based on the allegations that the Commissioner upheld and the facts that she found proved.

### **Further investigations**

- 3.17 Following its decision on the complainant's appeal the sub-panel invited the complainant and respondent to make submissions to inform its decision on sanction in the normal way.<sup>1</sup>
- 3.18 In his submission the complainant alleged that the respondent had victimised and/or retaliated against him for making the complaint since July 2020, up until January 2022. If proved, victimisation and/or retaliation against a complainant or a witness by a respondent would be a very serious aggravating factor. We therefore requested further, specific, information about the nature of the complainant's allegations. Having considered this further information we decided on 11 February 2022 to use our power under Standing Order No. 150B(4) to ask the Commissioner to undertake further investigations into one of the allegations.
- 3.19 The sub-panel considered the information gathered by the Commissioner and concluded that there was insufficient evidence to support the allegations of victimisation/retaliation made by the complainant. Therefore, this issue was disregarded and was not considered as part of the sub-panel's determinations on sanction.

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<sup>1</sup> Independent Expert Panel, *Appeals, referrals and sanctions: Guidance for the parties*, Version 2, October 2021, paras 42-51.

## Consideration of sanction

- 3.20 In line with the Panel's published guidance, we asked the respondent to provide a reflective statement for consideration by the sub-panel and offered him the opportunity of addressing us in an oral hearing.<sup>2</sup> The respondent requested an oral hearing, which occurred on 6 April 2022.
- 3.21 In considering the appropriate sanction we have kept in mind the Panel's Guiding Principles set out in Section A of its published guidance,<sup>3</sup> and applied the further principles that:
- (1) the sanction should reflect the impact of the conduct on the complainant;
  - (2) the sanction should reflect the nature and extent of the misconduct proved; and,
  - (3) where possible, the approach to sanction should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community.<sup>4</sup>
- 3.22 We carefully considered the investigation report and the decision of the Commissioner, all the relevant circumstances of the case, all relevant aggravating and mitigating factors, the view of the complainant, the reflective statement submitted by the respondent and the respondent's oral submissions.
- 3.23 The complainant's submission expressed the impact of the respondent's actions which included feeling humiliated in front of his colleagues and marginalised as a result of being deliberately alienated by the respondent. The complainant also outlined the hurt and distress that he suffered as a result of being blocked from his Parliamentary email and IPSA access, which meant that he could not view his payslips to check he was receiving all the pay he was entitled to, which made it impossible for him to rest at that time.

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<sup>2</sup> Independent Expert Panel, *Appeals, referrals and sanctions: Guidance for the parties*, Version 2, October 2021, in particular Section D.

<sup>3</sup> *Ibid*, paras 1-4.

<sup>4</sup> *Ibid*, para 52.

3.24 We considered that the following aggravating factors were relevant to this case:

- *Abuse of power and authority-* We agreed with the Commissioner that there was a significant power disparity between the respondent and the complainant, due to the complainant being reliant on short-term contract extensions that were granted at the respondent's discretion; and that the respondent's conduct was "a misuse of that power and was done in the full sight of the complainant's colleagues".
- The ostracization of the complainant by the respondent included ignoring messages from the complainant in the team WhatsApp group chat, which was noticeable to the complainant and his colleagues given the respondent and complainant had previously communicated regularly. We agree with the Commissioner that this was deliberate, and continued over a period of time. The respondent was clear in his written reflections and his oral submissions to us that, following what he considered to be two acts of serious misconduct by the complainant, he formed a very negative opinion of his character, believed that he should be dismissed for gross misconduct, and decided not to engage with him personally. The respondent sought to present his actions as a reasonable HR strategy in response to this incident. We disagree. It was bullying. He should, as he now accepts, have tackled any misconduct through a proper disciplinary process not by ostracizing the complainant.
- The ostracization of the complainant occurred during the first period of lockdown when the complainant was physically separated from colleagues and when WhatsApp had become an especially important form of communication. It was also a period during which the complainant was uncertain about his future work status and underwent a period of ill health. Given these circumstances the complainant was entitled to support and contact from his employer. We considered the respondent's decision to withhold contact and support in the circumstances of this case to be a significant aggravating factor.

3.25 Breaches of confidentiality are normally considered to be significant aggravating factors. We were aware that some confidential details about this case have found their way into the public domain. We have been unable to determine who was responsible.

- 3.26 We were also aware that the respondent accepted during the course of the investigation and during his oral submissions to us that he shared access to the investigation papers with a member of his staff in order to assist him with the preparation of his case. Respondents should be aware of the very real risk of further disclosure within their office and ensure that appropriate steps are taken to maintain confidentiality. Respondents are accountable for any breaches of confidentiality by or from their office, and this would be a serious aggravating factor.
- 3.27 We considered the Commissioner's conclusion that the respondent's failure to co-operate fully during periods of the investigation and his decision to submit additional evidence in hard copy rather than electronically was a significant aggravating factor because his behaviour had delayed the outcome for the complainant. However, we balanced this view against the concerns about the investigation process expressed by both the complainant and respondent. There were clearly delays in the investigation process, however our view was that they were not as a result of a deliberate strategy by the respondent. We therefore disagreed with the Commissioner that this was a significant aggravating factor in this case.
- 3.28 We considered that the following mitigating factors were relevant to this case:
- *Genuine remorse*- The respondent has expressed remorse and has reflected on why it was wrong to exclude the complainant. He has expressed a willingness to apologise to the complainant for his actions and the hurt and distress they caused him. We accepted his explanation for not offering an apology to the complainant earlier, because he was concerned about its possible impact on other ongoing processes. However, we were not convinced that he fully understood the extent of his wrongdoing as he implied that his lack of understanding of the term "ostracization" within the Bullying and Harassment Policy, and the complainant's behaviour, somehow excused his actions. We were therefore only able to give limited weight to this mitigating factor.
  - *Steps taken to address the behaviour*- The respondent indicated that he would be willing to undertake appropriate training, and informed us that he had overhauled the contract structure of all members of his team to ensure that they have clear line management. He has also informed us that he began

discussions with a consultant with a view to undertaking an audit of his office culture and make recommendations on how to continue to improve the management of his team. However, the respondent indicated that he had not proceeded with the work with the consultant due to delays in the investigation process. Therefore, we were not satisfied that the respondent has yet taken sufficient steps to prevent the repetition of the type of behaviour which is at the root of the misconduct in this case. Consequently, we could not attribute full weight to this mitigating factor.

- *Physical or mental ill health or other mental trauma-* We noted the respondent's candid representations to us in respect of his wellbeing. We accepted the likely impact of these issues at the time that the misconduct occurred and the considerable impact of the lengthy investigation process on his current wellbeing. We considered that this was a mitigating factor.

## Decision

- 3.29 This case involves a serious breach of the Bullying and Harassment Policy which arose from the respondent abusing his position of power and ostracizing the complainant, who was his employee, by ceasing personal contact with him for several months and denying him access to his Parliamentary IT account. The impact of this behaviour was compounded by the fact that it occurred during the first period of lockdown when the complainant was physically separated from work colleagues, uncertain of his future work status, and had undergone a period of ill health.
- 3.30 In his submission the complainant stated that the respondent had not apologised to him and argued that the respondent had not taken steps to address the causes of his behaviour. We agreed that the respondent should apologise and undertake training and other actions to address the causes of his behaviour and weaknesses in the management of his office.
- 3.31 The respondent has expressed a willingness to apologise and undertake training. However, given the aggravating factors we concluded that an apology coupled with a requirement to undertake training was not a sufficient sanction to address the seriousness of this case. We determined that the circumstances of this case warranted a period of suspension from the House.

- 3.32 In determining the appropriate length of suspension, we took account of the respondent's remorse, his developing insight into the effect of his actions on the complainant, his desire to ensure that such actions would not be repeated, and his personal mitigation and wellbeing.

## **Conclusion**

- 3.33 We recommend that the respondent is suspended from the service of the House for two sitting days; on the condition that he also make a written apology to the complainant and undertake appropriate management training.
- 3.34 The text of the written apology must be agreed by the Chair of the Panel prior to it being sent. The respondent must not subsequently undermine it through his statements or actions.
- 3.35 The respondent should also provide within a reasonable time to the Chair of the Panel evidence of the management changes he has put in place within his office and his personal training plan, and that they will satisfactorily address the issues that have been identified by this case.