

Independent Expert Panel

The Conduct of Sir Gavin Williamson MP

Presented to the House of Commons
pursuant to House of Commons Standing Order No. 150A

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The Independent Expert Panel

The Independent Expert Panel was established by resolution of the House of Commons on 23 June 2020. The Panel:

- Hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), and 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; and
- Hears appeals against decisions by the Committee on Standards in cases involving an allegation against an MP of a breach of the Code of Conduct for Members of Parliament.

Current membership

Mrs Lisa Ball
Monica Daley
Mrs Johanna Higgins
Sir Stephen Irwin (Chair)
Professor Clare McGlynn KC (Hon)
Miss Dale Simon
Sir Peter Thornton KC
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 Secretary to the Panel is Ian Bradshaw. The Deputy Secretary to the Panel is Chloe Freeman. The Secretary to the sub-panel in this case was Peter Stam.

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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 they have upheld a complaint in serious cases. These are cases involving an allegation of a breach of the Bullying and Harassment Policy for UK Parliament, or the Sexual Misconduct Policy for UK Parliament. It also hears appeals against decisions by the Committee on Standards from MPs who have been found to have breached the Code of Conduct for MPs.
- 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 decision of the Panel on an appeal following the decision by the Commissioner not to uphold a complaint under the Bullying and Harassment Policy against Sir Gavin Williamson MP, the Member for South Staffordshire.
- 1.4 The complainant, Wendy Morton MP, the Member for Aldridge-Brownhills was the Government Chief Whip at the time the alleged bullying and harassment took place in September and October 2022. In November 2022, she made three allegations to the ICGS about a series of messages Sir Gavin had sent her. The independent investigator appointed by the ICGS concluded that Sir Gavin was in breach of the Bullying & Harassment Policy.
- 1.5 The Commissioner, after reviewing the investigators work, set aside the findings and conducted his own review and assessment of the evidence. Having done so, the Commissioner concluded that Sir Gavin's behaviour "does not amount to either bullying or harassment". He therefore did not uphold the complaint.

- 1.6 After a short extension to the appeal deadline, the complainant submitted an appeal on 8 June 2023, arguing that the Commissioner’s conclusion that Allegation 1 did not amount to bullying was unreasonable.
- 1.7 I appointed the following sub-panel to consider the complainant’s appeal:
- Ms Monica Daley;
 - Miss Dale Simon (chair of the sub-panel); and
 - Sir Peter Thornton KC.
- 1.8 The sub-panel upheld the complainant’s appeal for the reasons set out in its decision in section 2 of this Report.
- 1.9 Allegation 1 related to text messages sent by Sir Gavin after he did not receive tickets to the funeral of Her Majesty Queen Elizabeth II, which he attributed to his having not supported the then Prime Minister in the recent leadership election. The exchange concluded with him saying “Well lets see how many more times you fuck us all over. There is a price for everything”.
- 1.10 The Commissioner concluded that Sir Gavin’s messages were “offensive and intimidating behaviour” and that the complainant had found them to be intimidating and threatening. However, he concluded that they did not amount to an abuse or misuse of power, and that the complainant’s perception of them as bullying was not reasonable. The Commissioner therefore concluded that two of the four limbs of the test as to whether behaviour constitutes bullying under the ICGS policy had not been met.
- 1.11 The sub-panel agreed with the complainant that the Commissioner’s decision was unreasonable. They concluded that the Sir Gavin’s messages were an abuse of power, finding “that that conclusion was in all the circumstances inevitable” as his conduct had gone beyond vigorous complaint or political disagreement to a threat to lever his power and authority as a former Chief Whip to undermine her personally as revenge for her (as he saw it) denying him a ticket to the funeral. The complainant’s perception that this was bullying was reasonable, and the Commissioner’s finding that instead the texts were an “unprofessional expression of anger” went “against the weight of the evidence and is not supported by any explanation.” The sub-panel therefore upheld the complaint.

- 1.12 The sub-panel therefore proceeded to determine the appropriate sanction, considering the aggravating and mitigating factors set out in paragraphs 3.16 to 3.19 of its decision, section 3 of this report, and the views of the complainant. It concluded that Sir Gavin should make an apology by way of a personal statement to the House and undergo training to avoid a repetition of similar behaviour and increase his awareness of the impact of bullying on others.
- 1.13 The published decision of the Panel on a complaint would usually maintain the anonymity of the complainant. However, that is impossible here. The position of the complainant as Chief Whip was central to the case. In any event, the facts of the case, including the texts of the messages in question, and the fact that the complainant had made a complaint to ICGS have already been widely reported.
- 1.14 I make this Report to the House pursuant to Standing Order No. 150A. All other information about this case, including the Investigator's report and the Commissioner's memorandum remains confidential.

Rt Hon Sir Stephen Irwin

4 September 2023

Appeal against the decision of the Commissioner

Decision of the sub-panel on appeal against the decision of the Commissioner

Ms Monica Daley, Miss Dale Simon (chair) and Sir Peter Thornton KC

Background

- 2.1 The complainant is a Member of Parliament and held the position of Government Chief Whip at the time of the allegation. The respondent has been the Member of Parliament for South Staffordshire since 6 May 2010.
- 2.2 The complainant submitted her complaint to the Independent Complaints and Grievance Scheme (ICGS) helpline on 8 November 2022 on the grounds that the respondent had breached the bullying and harassment policy. Following an initial assessment by an independent investigator appointed by the ICGS, a full assessment was begun on 23 January 2023. The independent investigator appointed by the ICGS submitted their draft full assessment report to the Parliamentary Commissioner for Standards (the Commissioner) on 29 March 2023.

The complaint

- 2.3 The complainant alleged that, in September and October 2022, the respondent pursued a course of conduct against the complainant through text messages and a phone call which included threatening, intimidating and undermining behaviour. The course of conduct comprised the following incidents (in the complainant's words):

Allegation 1

In a series of text messages on 13th and 14th September 2022 between the respondent and complainant, the respondent:

a. Attempted to put pressure on the complainant by criticising their decisions on the allocation of tickets for the Queen's funeral;

b. Included the following phrases:

i. 'Also don't forget I know how this works so don't puss me

about’;

ii. ‘It’s very clear how you are going to treat a number of us which is very stupid and you are showing fuck all interest in pulling things together. Don’t bother asking anything from me’;

iii. ‘Well let’s see how many more times you fuck us all over. There is a price for everything’;

iv. ‘You are using her death to punish people who are just supportive, absolutely disgusting.’

c. These phrases were:

i. Threatening;

ii. Intimidating;

iii. Undermining;

2.4 The complainant also alleged that Allegation 1 constituted harassment. Two further allegations of bullying and harassment were made, in relation to further texts and a telephone call on 17 October 2022. We do not need to reference these matters further as they were not upheld and there is no appeal against those findings.

2.5 This appeal is therefore restricted to the definition of bullying and its application to the facts of the case as derived from the evidence.

The Bullying and Harassment Policy

2.6 Parliament's Bullying & Harassment Policy (the Policy) defines bullying as:

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

2.4 Like harassment, bullying can take the form of physical, verbal and

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

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

Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language; [...]

The test for bullying applied

2.7 As is normal practice, in reaching his decision, the Commissioner applied the relevant parts of the Policy. His formulation to test the allegation of bullying reads:

a) Did [the respondent's] conduct involve offensive, intimidating, malicious or insulting behaviour?

b) Was an abuse or misuse of power involved in that behaviour?

c) Was [the complainant] left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened?

d) Was it reasonable for [the complainant] to have perceived [the respondent's] conduct as bullying?

For a finding of bullying to be safely made, I have to be satisfied that on the balance of probabilities the answer to all four of those questions is "yes".

2.8 We accept the Commissioner's formulation as correct.

The Commissioner's decision

2.9 The investigator concluded that the respondent was in breach of the Policy. However, the Commissioner decided that he was "not satisfied that the investigator's analysis was in line with the full definitions of bullying and harassment as laid out by the ICGS policy." He was also concerned that the

“allegations were worded in an unnecessarily complicated fashion, which may have affected the investigator's analysis of the conduct” and he felt that that “the investigator's analysis included speculation and assumption.”

2.10 The Commissioner concluded that he was:

... satisfied that the investigator was thorough in his investigation and that he was fair and impartial in his consideration of the evidence. However, I disagreed with his approach to the analysis of the evidence, and I am not satisfied that his judgement of this matter was in line with the full definitions in the Bullying & Harassment Policy. I have therefore set aside his report and applied my mind to the evidence before reaching my own independent conclusions.

2.11 The Commissioner concluded that the respondent's conduct did not amount to either bullying or harassment.

Grounds of appeal

2.12 After being granted an extension to the appeal deadline, the complainant submitted her appeal on 8 June 2023. The primary ground of appeal is that the Commissioner's conclusion that Allegation 1 did not amount to bullying was unreasonable. The appeal raises concerns specifically with the Commissioner's findings in respect of the second and fourth limbs (referred to as Test 2 and Test 4) of the Commissioner's formulation of the test for bullying.

Consideration of acceptance of grounds for appeal

2.13 The sub-panel met on the 15 June 2023 to determine whether to accept the grounds for appeal submitted by the respondent. The sub-panel decided that the evidence presented by the complainant in her appeal was sufficient to conclude that there were grounds for an appeal and that the test at this first stage of the appeal process had been met.

Consideration of the grounds of appeal

2.14 Having accepted the appeal, the sub-panel proceeded to consider the substantive matters raised. Before doing so, in line with paragraph 30 of the Guidance for the

parties on appeals, referrals and sanctions under the ICGS,¹ the sub-panel decided to disclose the complainant's appeal submission to the respondent and asked him to respond to the specific points raised in the appeal.

- 2.15 The sub-panel then met on 3 July 2023 to consider the substantive appeal and reach a conclusion on the merits. We read the entirety of the respondent's response to the appeal, which was received on the 28 June 2023 and considered his comments on the specific grounds of appeal. Although the complainant only raised concerns in respect of the Commissioner's findings regarding test 2 and test 4 of his bullying formulation, these tests are all essential elements of the bullying definition therefore we considered the Commissioner's decision in respect of each test in turn.

(Test 1) Did the respondent's conduct involve offensive, intimidating, malicious or insulting behaviour?

- 2.16 There is no dispute in this case that the respondent initiated the exchange of the following text messages with the complainant on the 13 September 2022:

R to C 15:59: "think very poor how PCs who arent favoured have been excluded from the funeral. Very poor and sends a very clear message"

C to R 16:01: "That is not the case..."

R to C 16:02: "Well certainly looks it which think is very shit and perception becomes reality."

R to C 16:03: "Also don't forget I know how this works so don't puss me about"

C to R 16:15: "As I said above – thats simply not the case The number of places allocated was extremely limited"

R to C 16:21: "its very clear how you are going to treat a number of us which is very stupid and you are showing fuck all interest in pulling things together. Don't bother asking anything from me"

R to C 16:22: "also this shows exactly how you have rigged it is is [sic] disgusting you are using her death to punish people who are just

¹ Independent Expert Panel, *Guidance for the parties on appeals, referrals and sanctions under the ICGS*, November 2022.

supportive, absolutely disgusting”

C to R 16:47: “..., again, this is not the case whatsoever”

R to C 17:01: “Well lets see how many more times you fuck us all over.

There is a price for everything”

2.17 The Commissioner concluded:

In my opinion, the messages sent by [the respondent] can be reasonably described as both rude and aggressive. I am satisfied that they reasonably qualify as both offensive and intimidating behaviour due to the use of obscenities and threats. I am therefore satisfied that the first limb of the test for bullying is met.

2.18 The respondent has never disputed the content of the messages but has always denied that they were bullying. In his response to the appeal, he expressed deep regret for the manner in which he aired his concerns and reiterated his belief that his behaviour was unprofessional but not bullying. His concerns arose, he said, from his perception that in the allocation of tickets for the Queen’s funeral those who were not seen to be supporters of Prime Minister Truss would be less favourably considered. He was one of those persons and was allocated a ticket for the lying-in-state but not the funeral.

2.19 We agree with the Commissioner’s finding that this first limb of the test for bullying is met. Although the exchange of texts occurred over a relatively short period of time, the messages were sent to the complainant without any previous communication. The content of the messages was clearly offensive and intimidating. They involved personal threats, directed at the complainant.

(Test 2) Was an abuse or misuse of power involved in that behaviour?

2.20 The Commissioner concluded that the respondent’s behaviour through the texts did not involve an abuse or misuse of power as paragraph 2.3 of the Policy requires:

[The respondent’s] messages include a threat about his future conduct as a backbench MP and his cooperation with the new government. It is my opinion that all threats involve a use of power. Although [the respondent] was a backbench MP at the time of the messages, I am not persuaded

that he had no power; he had the power to cooperate and support the government. However, I am not convinced that [the respondent's] threat of withdrawing that cooperation and support can be reasonably considered to be either an abuse or misuse of his power; as an elected representative, it was at [the respondent's] discretion whether to cooperate and support the government. I am therefore not satisfied that the second limb of the test for bullying is met.

- 2.21 The complainant asserts that the Commissioner's finding that this test was not satisfied, was unreasonable, for three reasons. Firstly, the Commissioner did not take into account the fact that the threat not to support the Government was delivered in such language and in such a tone as to render it either an abuse and/or a misuse of that power:

It was not a polite indication that Sir Gavin would withdraw his support in the future. It was a threat delivered in language that the Commissioner himself considered "rude and aggressive" and "offensive and intimidating". It involved repeated obscenities including the phrases "fuck all interest" and "fuck us all over".

- 2.22 Secondly, the Commissioner failed to take into account the precise nature of the respondent's threat:

He did not make that threat simply as a backbencher. Rather, Sir Gavin invoked his own previous experience as Chief Whip ("don't forget I know how this works" and "there is a price for everything") to threaten me with the loss of his support now I had occupied that role. Invoking his prior experience in this aggressive way clearly amounted to an abuse of his power as a former holder of that office. The Commissioner makes no reference to the meaning of these phrases, nor to the significance of Sir Gavin's former role as Chief Whip, although he was aware of it.

- 2.23 The Commissioner's view contrasted with the independent investigator who noted that the respondent had previously held senior positions and found that the phrase "don't forget I know how this works" implied that he was prepared to use that knowledge when threatening non-cooperation."

- 2.24 Thirdly, and in essence a repeat of the first point, the Commissioner failed to take into consideration the tone of the language and the obscenities used. He

accepted the respondent's evidence that he meant "push" rather than "puss" in the text timed at 16:03 without giving reasons for doing so, ignoring the Independent Investigator's record of the evidence that she had thought Sir Gavin meant "piss" rather than "puss". In our opinion the determination of whether the respondent meant "piss" or "push" rather than "puss" has no material bearing on whether or not the respondent's behaviour constituted an abuse or misuse of his power. In any event the Commissioner was entitled on the evidence before him to decide which explanation he preferred on the balance of probabilities.

2.25 In his response to the appeal the respondent maintains that his behaviour did not amount to an abuse or misuse of power. He states that leveraging one's experience and non-compliance are routine behaviours within political life. He also maintains that he had a lack of authority compared to the complainant at the time of the exchange. "While I had formerly held the position of Chief Whip, I was currently a backbencher, and my power was limited."

2.26 In our judgment, and with great respect to the Commissioner, we conclude that he was wrong in the circumstances of this case to find that there was no abuse or misuse of power and that Test 2 for bullying was not met. Our reasons follow.

2.27 Firstly, the definition of bullying in paragraph 2.3 of the Policy is widely expressed. It begins:

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

2.28 The behaviour in this case undoubtedly fell within the list above. The Commissioner described it as "rude and aggressive ... offensive and intimidating". We agree. The complainant felt it as such. The respondent is not trying to deny it. Behaviour of this nature, as found proved both by the investigator and the Commissioner, will almost invariably involve an abuse or misuse of power. We find that to be the case here.

2.29 Secondly, the definition of bullying in paragraph 2.3 goes further:

Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or

intimidation.

2.30 In this case, the respondent was clearly seeking to coerce or control or dominate the complainant through intimidation. There is no doubt that the texts were intimidating. The Commissioner said so: “I am satisfied that they [the messages] reasonably qualify as both offensive and intimidating behaviour due to the use of obscenities and threats.” The Commissioner added that “all threats involve a use of power”.

2.31 The complainant found them to be “threatening and intimidating”. She felt the respondent was “trying to get one over on me”. Her evidence was accepted.

2.32 We believe that the Commissioner was right when he said, in effect, that an MP’s threat to withdraw cooperation and support for the Government would not necessarily amount to the improper exercise of his discretion as a backbench MP. Undoubtedly, relations between MPs operate in many ways, in terms of mutual pressure, with levers of flattery, offers of cooperation, threats, deals and compromises to resolve conflict.

2.33 As the Independent Expert Panel (the Panel) acknowledged in allowing the appeal of John Nicolson MP (at paragraph 2.39), albeit in the context of opposing party MPs, whereas the present appeal concerns two MPs in the same party:

It is a commonplace that political discourse, and in particular political opposition, can involve behaviour which, in a different context, would be regarded (at least) as offensive or insulting, and sometimes intimidating, without constituting an abuse or misuse of power. Opposition attacks and government counterattacks are commonly of that nature, in the Chamber of the House of Commons and beyond. Whether such an adversarial tradition is always effective, or always impresses the public, is perhaps neither here nor there.²

The Panel added (at paragraph 2.40):

It must be taken as read, when interpreting the Bullying and Harassment Policy for the UK Parliament, that Parliament did not intend to impede or prevent legitimate political debate, including vigorous opposition.

² Independent Expert Panel, *The Conduct of John Nicolson MP*, (HC, 2022-23, 1561), 20 June 2023.

- 2.34 We repeat these words because they reflect some aspects of the reality of political life which fall short of unacceptable behaviour. We must, therefore, interpret the Policy on the basis that Parliament did not intend to impede or prevent legitimate political debate or discussion, whether by MPs in the same or opposing parties.
- 2.35 In our view, however, the respondent's conduct in this case went beyond what is acceptable. It went beyond "legitimate political debate". It went beyond vigorous complaint. The respondent's words in the texts were not only "rude and aggressive ... offensive and intimidating", as the Commissioner rightly found, they were in the nature of a very personal attack on the complainant by way of threat. In the clearest terms, he was going to make her position difficult and frustrate her role as the newly appointed Chief Whip, all as revenge for his perception that she had denied him (and others) a ticket to the Queen's funeral because he was not a Prime Minister Truss supporter. This was not just a party matter or a simple political difference. It was direct action by way of threat to her personally. And that is clearly how she felt it.
- 2.36 The investigator found the texts to be an "abuse or misuse of power". We find that that conclusion was in all the circumstances inevitable. We cite the last text at 17:01 as sufficient illustration: "Well lets see how many more times you fuck as all over. **There is a price for everything**" [our emphasis].
- 2.37 Thirdly, as set out above we have shown that the Policy does not necessarily require the respondent to be in a position of authority over the complainant. In this case, however, he may well have been. Undoubtedly, the respondent was an MP in a position of some influence. He was a well-known backbench MP who had been a former Cabinet Minister and, notably in this context, a former Chief Whip. One of his texts referred to this: "Also don't forget I know how this works so don't puss me about". There is certainly evidence from the texts that he was trying to pull rank, and the complainant, being only recently appointed to her post perceived them as such.
- 2.38 This could therefore be seen as the respondent exercising power from a position of strength and authority. But in our view, it is not necessary to weigh precisely in the balance who carried greater authority at the time of Allegation 1. The respondent undoubtedly was in a position to wield power as an MP. All MPs should exercise their power and status as elected representatives responsibly

and with integrity. MPs are expected to be held to a high standard of conduct. When they fall short of that conduct, the trust and confidence in Parliament and its Members are undermined. This was not the routine behaviour of political life, as the respondent asserts. It was bullying. The way in which the respondent exercised his power in the wording of the texts was a clear abuse and misuse of power.

- 2.39 For these reasons, we conclude that the Commissioner's finding that the texts were not an abuse or misuse of power was unreasonable.

(Test 3) Was the complainant left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened?

- 2.40 The Commissioner accepted the complainant's evidence that she found the respondent's messages to be intimidating and threatening and concluded on the balance of probabilities that this limb of the bullying test was met.

- 2.41 The complainant told the investigator that she found the messages to be intimidating and threatening. She said in evidence that she "felt incredibly intimidated." She described how the receipt of the first and subsequent messages made her feel:

[...] that exchange of text messages - just came completely, completely out of the blue, unprovoked. I had no sense of this was somebody who was aggrieved about the issue. It had never been raised with me. It just was fired through to me[...]. And I remember looking at it and thinking Oh, my goodness, how on earth am I going to respond to this?

But I think also, I also felt at the time about the next one – message - that this was somebody who was really angry, but it felt like he was trying to drop me in it.

It was starting to make me feel somewhat [...] he was trying to push me around. 'Don't forget, I know how this works.' This was about a man who had been a Chief. I'd been the Chief Whip for two weeks. This was somebody who had been a Chief Whip for a long time. So it started to feel a bit like a power, a sense of power over me. "I know how this works"

"It's very clear how you are going to treat a number of us which is very stupid and you are showing fuck all interest in pulling things together. Don't

bother asking anything from me". So again, this starts to then continue to feel quite threatening, quite intimidating. Because the job of the Whips' office is to get the business of the House through [...]

- 2.42 We agree with the decision of the Commissioner, having found in his consideration of the first limb of this test that the messages were objectively offensive and intimidating. The complainant's account of how the messages made her feel is clearly credible.

(Test 4) Was it reasonable for the complainant to have perceived the respondent's conduct as bullying?

- 2.43 The commissioner concluded that this limb of the test was not met. He concluded that:

"Although [the complainant] may have perceived [the respondent's] conduct as bullying, I am not convinced that perception was reasonable. Although his messages were rude and aggressive, and contained a threat about his future support for the Government, on the balance of probabilities, I think it would have been more reasonable for [the complainant] to have perceived [the respondent's] conduct as an unprofessional expression of anger at not being allocated a ticket for the Queen's state funeral".

- 2.44 The complainant asserts that the Commissioner's finding that this test was not satisfied was unreasonable for two main reasons. Firstly, the Commissioner gave no reasons for rejecting her perception that the messages were bullying. He simply preferred his own characterisation that the respondent's conduct was an "unprofessional expression of anger". This conclusion was inconsistent with the Commissioner's finding that the respondent's conduct was "intimidating and threatening".

- 2.45 Secondly, the complainant contrasts the finding of the Commissioner in respect of test 4 with the decision of the independent investigator. She asserts that the investigator considered that it was the tone of the respondent's texts that persuaded him that her reaction was reasonable and that the respondent's actions therefore amounted to bullying. The Commissioner gave no comparable explanation for his conclusion and the independent investigator's conclusion is to be preferred.

- 2.46 In the respondent's response to the appeal, he states that he strongly agrees with the Commissioner's findings. He asserts that the Commissioner was entitled to conclude that the complainant's perception of the texts as bullying was not reasonable; and that the Commissioner was right to "differentiate and distinguish between bullying and harassment and unprofessional conduct, especially when considered in the context of two brief text exchanges between a Chief Whip and a backbench MP during a time of heightened political tension."
- 2.47 In our opinion it was entirely reasonable for the complainant to have perceived the messages that she received as intimidating and threatening. They were offensive and intimidating, the aggression and level of intimidation in the messages escalated concluding with the words "There is a price to pay for everything", and the respondent threatened to make their future working relationship difficult by withholding his support for her in her newly appointed role as Chief Whip. By contrast, the complainant's responses were moderate, restrained and in no sense confrontational.
- 2.48 We do not agree with the Commissioner's finding that it would have been more reasonable for the complainant to have perceived the respondent's conduct as an unprofessional expression of anger at not being allocated a ticket for the Queen's funeral. This finding goes against the weight of the evidence and is not supported by any explanation. Having applied Test 1 of the bullying test objectively, the Commissioner had rightly accepted that the messages were rude aggressive, offensive, threatening and intimidating. As a result, the only reasonable conclusion in all the circumstances was for the Commissioner to conclude that the complainant's perception was both genuinely held and reasonable.
- 2.49 In the light of our findings on Allegation 1 in respect of tests 2 and 4 that the Commissioner's findings were unreasonable, we conclude that the complainant's appeal should be allowed. The investigator's finding that bullying was proved should therefore stand. The respondent was in breach of the Bullying and Harassment Policy for UK Parliament.
- 2.50 The question of sanction for this breach will be considered separately.
- 2.51 We are aware that some details about this complaint are already in the public domain, however, the parties to this complaint are reminded that they must keep the decision of the sub-panel strictly confidential.

Decision on sanction

Decision of the sub-panel on determining sanction

Ms Monica Daley, Miss Dale Simon (chair) and Sir Peter Thornton KC

Background

- 3.1 The complainant is a Member of Parliament and held the position of Government Chief Whip at the time of the allegation. The respondent has been the Member of Parliament for South Staffordshire since 6 May 2010.
- 3.2 The complainant submitted her complaint to the ICGS helpline on 8 November 2022 on the grounds that the respondent had breached the Bullying and Harassment Policy for the UK Parliament (the Policy). Following an initial assessment by an independent investigator appointed by the Independent Complaints and Grievance Scheme (ICGS), a full assessment was begun on 23 January 2023. The independent investigator appointed by the ICGS submitted their full assessment report to the Parliamentary Commissioner for Standards (the Commissioner) on 29 March 2023.

The complaint

- 3.3 The complainant alleged that, in September and October 2022, the respondent pursued a course of conduct against the complainant through text messages and a phone call which included threatening, intimidating and undermining behaviour. The course of conduct included the following incidents (in the complainant's words):

Allegation 1

In a series of text messages on 13th and 14th September 2022 between the respondent and complainant, the respondent:

a. Attempted to put pressure on the complainant by criticising their decisions on the allocation of tickets for the Queen's funeral;

b. Included the following phrases:

i. 'Also don't forget I know how this works so don't puss me about';

ii. 'It's very clear how you are going to treat a number of us which is very stupid and you are showing fuck all interest in pulling things together. Don't bother asking anything from me';

iii. 'Well let's see how many more times you fuck us all over. There is a

price for everything’;

iv. ‘You are using her death to punish people who are just supportive, absolutely disgusting.’

c. These phrases were:

i. Threatening;

ii. Intimidating;

iii. Undermining;

3.4 The text messages are set out in detail in our Decision on Appeal.

3.5 Two further allegations of bullying and harassment were made, by the complainant in relation to further texts and a telephone call made by the respondent on 17 October 2022. The allegations were not upheld or appealed against; therefore, they are not referenced further.

The Commissioner’s decision

3.6 The investigator concluded that in respect of Allegation 1 the respondent was in breach of the Policy. However, the Commissioner decided that he was “not satisfied that the investigator’s analysis was in line with the full definitions of bullying and harassment as laid out by the ICGS policy.” He was also concerned that the “allegations were worded in an unnecessarily complicated fashion, which may have affected the investigator’s analysis of the conduct” and he felt that that “the investigator’s analysis included speculation and assumption.”

3.7 The Commissioner stated that he was:

[...] satisfied that the investigator was thorough in his investigation and that he was fair and impartial in his consideration of the evidence. However, I disagreed with his approach to the analysis of the evidence, and I am not satisfied that his judgement of this matter was in line with the full definitions in the Bullying & Harassment Policy. I have therefore set aside his report and applied my mind to the evidence before reaching my own independent conclusions.

3.8 The Commissioner concluded that the respondent’s conduct did not amount to either bullying or harassment.

Appeal against the Commissioner's decision

- 3.9 The complainant appealed the Commissioner's decision. The primary ground of appeal was that the Commissioner's conclusion that Allegation 1 did not amount to bullying was unreasonable.
- 3.10 The sub-panel concluded, for the reasons detailed in the appeal decision, that the Commissioner's findings were unreasonable and consequently upheld the complainant's appeal.
- 3.11 The sub-panel therefore considered sanction on the basis that the investigator's finding of bullying was proved and that the respondent was in breach of the Policy.

Consideration of sanction

- 3.12 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. The respondent submitted written submissions and requested an oral hearing which occurred on the 24 July 2023.
- 3.13 In considering the appropriate sanction we have kept in mind the Panel's Guiding Principles set out in Section A of its published guidance, 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.
- 3.14 We carefully considered the investigation report and 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.
- 3.15 The complainant's submission expressed the impact of the respondent's actions on her. In summary, she stated that she was left feeling unnerved, fearful of the consequences of her exchange with the respondent and

concerned about the impact on her ability to carry out her Parliamentary duties.

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

- *Abuse of power and authority*- The complainant had been in post as Chief Whip for less than two weeks when the text messages which form the basis of this complaint were received. The respondent was at the time a well-known backbench MP who was a former Cabinet Minister and a former Chief Whip. He used his personal power to seek to coerce, intimidate and pull rank on the complainant. Further as an MP the respondent was undoubtedly in a position to wield power. All MPs should exercise their power and status as elected representatives responsibly and with integrity. MPs are expected to be held to a high standard of conduct. We concluded that the respondent's behaviour was not the routine behaviour of political life, it was bullying. The way in which the respondent exercised his power in the wording of the texts was a clear abuse and misuse of power.
- *Specific targeting of the complainant*- The text messages were unprovoked, the complainant described them as "coming out of the blue"; they were specifically targeted at the complainant and contained threats to her personally. The texts were offensive and intimidating, the aggression and level of intimidation in the messages escalated concluding with the words "*There is a price to pay for everything*", and the respondent threatened to make their future working relationship difficult by withholding his support for her in her newly appointed role as Chief Whip.

3.17 We are aware that many of the details of this case have, regrettably, found their way into the public domain and that this case has received significant media coverage. The complainant and respondent both deny responsibility for the breaches of confidentiality that have occurred. Therefore, having considered the information presented to us by the respondent and the complainant in their written submissions we concluded that it would be disproportionate to investigate the source of the breaches given the circumstances that give rise to this complaint and the nature of the allegation. We were also of the opinion that the outcome of any such investigation was unlikely to resolve the issue or have a significant impact on the sanction decision. Therefore, we have not taken account of the breaches of confidentiality in determining the appropriate sanction in this case.

3.18 Breaches of confidentiality are normally considered to be significant aggravating factors. Complainants may be deterred from making valid complaints, MPs may be subjected to spurious or inaccurate reporting of unproven allegations and the reputation of Parliament generally can be undermined if unproven allegations are publicised, by feeding a growing cynical belief about the conduct and behaviour of politicians.

3.19 We considered that the following mitigating factors were relevant to this case:

- *Acknowledgement of the breach and/or self-knowledge*- Although the respondent maintained throughout the investigation and appeal process that his conduct did not amount to bullying, he acknowledged throughout that he sent the text messages, that he was wrong to have used the offensive language contained in them and that he had acted unprofessionally. He also expressed an intention not to repeat similar behaviour in the future.
- *Genuine remorse*- The respondent sent a handwritten apology to the complainant on the 8 November 2022 when he became aware that the complainant had made a formal complaint. He also expressed remorse for his actions in his written and oral submissions, on sanction, to the sub-panel. We were of the opinion, however, that the respondent's insight into the impact of his actions on the complainant and the reputation of Parliament more generally was still developing, as his written and oral submissions focused primarily on the impact of his actions on himself and his family, rather than on the impact that his behaviour undoubtedly had on the complainant.
- *Steps taken to address his behaviour*- The respondent informed the sub-panel in his written and oral submissions that he has sought guidance on how to better manage the issues that lead him to behave in the way that he did on 13 and 14 September 2022. However, he did not provide specific details of the steps taken or what he had learned. In his written submission he simply stated that he hoped that the lessons he has learned from seeking help will have a long-term impact on his behaviour, and he did not provide any further detail in his oral submissions or in response to questions by the sub-panel.
- *Physical or mental ill-health or other personal trauma*- The sub-panel accepted the respondent's submissions in respect of his personal trauma and the significant detrimental impact that the media interest in this complaint has had on him and his family. The respondent was keen to emphasise that stepping

down from Government as Minister without Portfolio when the allegations came to light (and in a particularly difficult year in politics), had taken its toll on him personally. We were not convinced, however, that the respondent fully accepted that his bullying behaviour led to the complaint being made and that he was ultimately responsible for the negative impact that followed.

Analysis

- 3.20 All breaches of the Policy are serious. This case involves bullying behaviour expressed in a series of text messages sent by the respondent to the complainant on two consecutive days in September 2022.
- 3.21 The respondent and the complainant are both MPs, therefore in concluding that the respondent had bullied the complainant and thereby breached the Policy, the sub-panel acknowledged the particular context in which MPs operate and the need to interpret the Policy on the basis that Parliament does not intend to impede or prevent legitimate political debate or discussion, whether by MPs in the same or opposing parties. However, we concluded (as set out in our Decision on Appeal) that:
- [...] the respondent's conduct in this case went beyond what is acceptable. It went beyond 'legitimate political debate'. It went beyond vigorous complaint. The respondent's words in the texts were not only 'rude and aggressive [...] offensive and intimidating', as the Commissioner rightly found, they were in the nature of a very personal attack on the complainant by way of threat. In the clearest terms, he was going to make her position difficult and frustrate her role as the newly appointed Chief Whip, all as revenge for his perception that she had denied him (and others) a ticket to the Queen's funeral because he was not a Prime Minister Truss supporter. This was not just a party matter or a simple political difference. It was direct action by way of threat to her personally. And that is clearly how she felt it.*
- 3.22 The complainant, to her credit, responded calmly and professionally to the offensive and intimidating texts that she received from the respondent. Furthermore, she has acted with commendable moderation in not seeking an outcome that might be seen as a punitive sanction such as suspension from the House. In her submission on sanction, she questioned the extent of the respondent's insight into the impact of his behaviour on her but suggested that

the appropriate sanction in this case would be an apology on the floor of the House, a requirement to attend behavioural training and a formal reprimand by means of a published report.

- 3.23 In his oral submissions to the sub-panel, the respondent indicated that he would accept and willingly comply with any sanctions imposed by the sub-panel, including the sanctions requested by the complainant.
- 3.24 In determining the appropriate sanction in this case, we had regard to the fact that the respondent's bullying behaviour occurred over a short period of time (two days), that the messages were limited to seven texts, and that there has been no repetition of the behaviour complained of. We took account of the respondent's remorse, his developing insight into the effect of his actions on the complainant and his personal mitigation. We also had regard to the expressed wishes of the complainant and the need for sanctions where possible to incorporate positive steps to improve the culture and behaviour of MPs, staff and the wider community.

Conclusion

- 3.25 Although we considered carefully the sanction of suspension from the House, in the end we concluded that suspension is not required in this case. We determine that the Respondent should make a full and unreserved apology on the floor of the House by means of a personal statement. With the leave of the Speaker, the text of that apology should be agreed in advance by the Chair of the Panel. Any respondent giving such an apology must at no stage and in no way undermine or weaken the terms of the apology. To do so would be a further breach of their obligations, and such breach will be enforced.
- 3.26 We also determine that the respondent should undertake appropriate behaviour training to prevent a repetition of similar behaviour and to increase his awareness of the impact of bullying behaviour on others. The training should include courses specifically designed to manage anger in the workplace, raise awareness of bullying behaviour and the impact of this type of behaviour on others. The respondent must propose and agree a programme of training with the Chair of the Panel within 28 days of the publication of this decision.