

The Independent Expert Panel

The Conduct of Mr Rob Roberts MP

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

Ordered by the House of Commons
to be printed 25 May 2021

HC 245
Published on 25 May 2021
by authority of the House of Commons

The Independent Expert Panel

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

Current membership

Mrs Lisa Ball
Monica Daley
Mrs Johanna Higgins
Rt Hon Sir Stephen Irwin (Chair)
Professor Clare McGlynn
Miss Dale Simon
Sir Peter Thornton
Dr Matthew Vickers

Powers

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

Publication

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Report by the Chair of the Panel

- 1.1 The Independent Expert Panel was established by the House of Commons on 23 June 2020;¹ its members were appointed on 25 November.² The Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament’s sexual misconduct policy or the bullying and harassment policy, under the Independent Complaints and Grievance Scheme.³
- 1.2 The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality. We understand the seriousness of, and the harm caused by, bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 1.3 This is a report of decisions of the Panel on appeal and sanction made following a referral from the Parliamentary Commissioner for Standards. The Commissioner found that the Responder, Mr Rob Roberts MP, the Member for Delyn, had acted in breach of Parliament’s sexual misconduct policy. He appealed the Commissioner’s decision.
- 1.4 On 19 January 2021 I appointed a sub-panel of three members to hear the appeal. The members of the sub-panel were:
 - Professor Clare McGlynn QC (Hons)
 - Miss Dale Simon (chair)
 - Dr Matthew Vickers
- 1.5 The appeals were made prior to appointment of the members of the Panel on 25 November 2020. The appeal was therefore managed in accordance with

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

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

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

the framework established by the House of Commons Committee on Standards in its 2019 report, *The Committee's role in ICGS appeals*.⁴

- 1.6 On 22 February the sub-panel notified the parties of their decision to dismiss the Responder's appeal. They went on to determine the sanction to be imposed. They determined that Mr Roberts MP should be suspended from the service of the House for six weeks.
- 1.7 On 22 March the sub-panel reported their decisions to me as Chair of the Panel. Mr Roberts MP appealed the decision on sanction.
- 1.8 On 28 April I appointed a sub-panel of three members to hear the appeal against sanction. The members of the sub-panel were:
 - Monica Daley
 - Mrs Johanna Higgins
 - Rt Hon Sir Stephen Irwin (chair)
- 1.9 On 17 May, following an oral hearing, Mr Roberts MP was informed of the decision of the appeal sub-panel that his appeal was not successful. The full decision of the sub-panel was agreed on 20 May.
- 1.10 Under Standing Order No. 150A(5)(d) I am required to report to the House as the Panel has determined a sanction that can only be imposed by the House.
- 1.11 The process for a petition under the Recall of MPs Act 2015 is not triggered by a suspension imposed on the recommendation of the Panel. For a recall to be initiated, the sanction must be imposed on the recommendation of the Committee on Standards, or another Committee of the House of Commons concerned with standards of conduct. The Independent Expert Panel is not a Committee of the House of Commons.
- 1.12 The decisions of the sub-panels set out the background to the case, the process followed and the reasons for their decisions. The names of the

⁴ Committee on Standards, Sixth Report of Session 2017–19, [The Committee's role in ICGS appeals](#), HC 1976, para 13

Reporter, any witnesses referred to and their 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, remains confidential.

Rt Hon Sir Stephen Irwin
25 May 2021

Appeal against the decision of the Commissioner

Appeal by the Responder against the decision of the Parliamentary Commissioner for Standards dated 11 November 2020

Decision of the sub-panel dated 22 February 2021

Sub-panel members: Professor Clare McGlynn QC (Hons), Miss Dale Simon (chair), Dr Matthew Vickers

The complaint

- 2.1 On 12 June 2020 the Reporter made a complaint against the Responder of sexual misconduct while employed as a member of staff by the Responder. The Reporter alleged that during the brief period he worked for the Responder, the Responder made repeated and unwanted sexual advances towards him, using his position as his employer to place him under pressure to accede. The Responder also made inappropriate comments of a sexual nature and was overly intrusive about his personal life.
- 2.2 The Responder acknowledged that aspects of his behaviour towards the Reporter were inappropriate, and offered the Reporter an apology; however, the Responder rejected the categorisation of his conduct as "sexual", preferring the term "romantic". The Responder also denied making repeated advances. He asserted that his initial "approach" towards the Reporter was clumsy and therefore required a subsequent meeting so that he could articulate his thoughts and feelings in a more thoughtful and considered manner. His subsequent efforts to get the Reporter to go for a drink with him, including scheduling a meeting in the Reporter's work diary for drinks, amounted to no more than an attempt to reset their professional working relationship.

The Investigator's and Commissioner's findings

- 2.3 On 26 October 2020 the independent investigator (the Investigator) reported in a Formal Assessment Report that in his opinion there was sufficient evidence on the balance of probabilities to determine that sexual misconduct had occurred in this case.
- 2.4 In a letter dated 11 November 2020 the Parliamentary Commissioner for Standards (the Commissioner) wrote to the Responder informing him that she had upheld the complaints against him. The letter states: "I have read carefully [the Investigator's] full assessment report, enclosed, and reviewed the evidence he collated. I have also considered the comments that you submitted during the factual accuracy checking stage. I am satisfied that the allegations against you have been investigated fairly and thoroughly."

The appeal

- 2.5 The Responder now appeals to the Independent Expert Panel (the Panel) against the Commissioner's decision. Since the Appeal was submitted prior to appointment of the Panel, it has been managed in accordance with the framework established by the House of Commons Committee on Standards in its 2019 report, *The Committee's Role in ICGS Appeals*.¹
- 2.6 The Independent Expert Panel (IEP) 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.

¹ Committee on Standards, Sixth Report of Session 2017–19, [The Committee's role in ICGS appeals](#), HC 1976, para 13

- 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 in this case 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 Parliament's 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 for appeal

- 2.11 On 2 December 2020 the Responder submitted his grounds for appeal along with a basis of appeal details document. Three grounds were raised:

Ground (1) The procedure was materially flawed, in that the Investigator/Commissioner had applied the wrong interpretation to the facts of the case. Specifically, the charge of "sexual misconduct" had been made on the basis of an assumption as to the meaning that lay behind certain events.

Ground (2) The procedure was materially flawed because the interpretation of the facts of the case was influenced by "malicious allegations and innuendo" that were not investigated.

Ground (3) The Responder was not afforded the opportunity to defend his character personally or call others to defend his character.

Consideration of acceptance of grounds for appeal

- 2.12 On the 28 January 2021 the sub-panel met to determine whether to accept the grounds for appeal submitted by the Responder. We concluded that **Ground 1** (The procedure was materially flawed, in that the Investigator/Commissioner has applied the wrong interpretation to the facts of the case. Specifically, the charge of “sexual misconduct” had been made on the basis of an assumption as to the meaning that lay behind certain events) and **Ground 2** (The procedure was materially flawed because the interpretation of the facts of the case was influenced by “malicious allegations and innuendo” that were not investigated) were capable of amounting to a procedural flaw within the meaning of the ICGS appeals framework if found to be substantiated. We therefore accepted these grounds for Appeal and notified the Responder and Reporter of our decision by letter on 1 February 2021.
- 2.13 We determined that **Ground 3** (The Responder was not afforded the opportunity to defend his character personally or call others to defend his character) had no merit because evidence as to character is not a relevant consideration during the formal assessment of the facts; therefore failure to collect such evidence cannot amount to a procedural flaw or give rise to substantial new evidence. We also noted that the Responder had been provided with an opportunity to provide his account of the matters complained of by the Reporter and to comment on the Formal Assessment Report. The Responder gave a full account of his motivation, and the evidence bundle contains a character reference from a colleague of the Responder.
- 2.14 In addition to the grounds for appeal raised by the Responder, we also considered the following concerns raised by the Responder in his appeal submission and the basis of appeal details document:
- a. That the sequence in which the Reporter and the Responder were interviewed favoured the Reporter, in that the Reporter was interviewed immediately after the Responder, therefore much of “the depth of feeling of my testimony” and the nuance would have been lost. [The Reporter] “had over 50 days of being prevalent in the thoughts of the investigator

whereas I had a total of a few hours. I believe that this will have had significant impact on the conclusion to uphold the complaint.”

b. That he “shouldn’t be punished further because [the Reporter] initially accepted a formal apology then subsequently changed his mind”.

2.15 We determined that the sequencing of witnesses has no bearing on the assessment of the content of the evidence provided, and that a reporter has the right to instigate the formal complaints process irrespective of whether they were initially inclined to deal with their concerns informally. Therefore, we concluded that these concerns did not amount to valid grounds for appeal.

Consideration of grounds for appeal

2.16 On 12 February 2021 we convened to determine the accepted grounds for appeal in this case. We considered each ground carefully in turn.

Ground (1)

The Responder argued that the procedure was materially flawed, in that the Investigator/Commissioner had applied the wrong interpretation to the facts of the case. Specifically, the charge of “sexual misconduct” had been made on the basis of an assumption as to the meaning that lay behind certain events.

2.17 The role of the investigator is to assess the weight of the evidence collated during the investigation process and determine on the balance of probabilities which account is supported by the evidence and whether the Sexual Misconduct Policy has been breached. In this case we noted that there was very little dispute on the facts of the case, and that the Responder and Reporter both invited the Investigator to interview AB who affirmed the undisputed facts.

2.18 The conduct which forms the subject of this complaint occurred during a very short period of time while the Reporter was employed by the Responder. Within days of commencing work together, the Responder asked the Reporter

invasive questions about his personal life. During a work-related constituency visit, approximately a week later, the Responder asked more invasive questions, and while alone in a car on the way back from the visit the Responder told the Reporter that he found him "attractive" and "alluring". The Reporter indicated that he did not have similar feelings towards the Responder.

- 2.19 Within days of returning from the visit the Responder met with AB; during the meeting the Responder informed AB that he had feelings for the Reporter and that he intended to express his feelings to the Reporter again. AB strongly advised the Responder not to pursue a relationship with an employee. The day after the meeting with AB the Responder scheduled a 1-2-1 meeting with the Reporter during which he repeated that he had feelings for the Reporter and invited him to dinner. The Reporter declined the dinner invitation and informed the Responder that he wished to keep their relationship professional. Following this 1-2-1 meeting the Responder invited the Reporter to meet with him for drinks on several occasions on consecutive days; all invitations were declined by the Reporter. During this period the Responder also sent the Reporter a work-related message signed with an "x". A few days after the 1-2-1 meeting the Reporter informed the Responder that he was too unwell to come to work.
- 2.20 The Responder maintains throughout his evidence and comments on the evidence that his motive for his conduct was "romantic" as opposed to sexual and that although some of his behaviour was inappropriate it did not amount to a breach of the Sexual Misconduct Policy.
- 2.21 The Investigator stated "As to [the Responder's] character: I would stress that while both parties have given their own view as to his motives and intent, my consideration as to whether he failed to comply with the Policy is predicated solely on [the Responder's] undisputed actions. Something can still be considered sexual harassment even if the alleged harasser did not mean for it to be".

2.22 The Sexual Misconduct Policy (paragraph 5.2) gives as examples of sexual misconduct:

- Asking personal questions about sexual or social life or offering unwanted personal information about own activities
- Enquiring about sexual history, fantasies or preferences
- Repeatedly propositioning someone

2.23 The Policy states that these behaviours may constitute sexual misconduct if they occur inappropriately or without explicit full and freely given consent.

2.24 We found no evidence to suggest that the Investigator or the Commissioner had drawn their conclusion on the issue of "sexual misconduct" from any factor other than the facts accepted by the Responder and the Reporter and an appropriate application of the Sexual Misconduct Policy. Therefore, this ground for appeal is dismissed.

Ground (2)

The Responder argued that the procedure was materially flawed because the interpretation of the facts of the case was influenced by "malicious allegations and innuendo" that were not investigated.

2.25 The Formal Assessment Report details the existence of media reports regarding the Responder. The Investigator states that he does not believe that his knowledge of these reports "has had an impact on the integrity of this investigation or affected my recommendations".

2.26 We found no evidence to suggest that the Investigator or the Commissioner considered other allegations as part of their consideration of this complaint. We were also satisfied that the conclusions on the evidence contained in the Formal Assessment Report were based on an appropriate consideration of the agreed facts in this case and the provisions of the Sexual Misconduct Policy. Therefore, this ground for appeal is dismissed.

Decision

2.27 We have considered each of the Responder's grounds for appeal carefully. We found no evidence to support a finding that the investigation process followed by the Investigator or the Commissioner was procedurally flawed. Therefore, this appeal is dismissed.

Decision on sanction

Referral by the Parliamentary Commissioner for Standards dated 22 December 2020

Decision of the sub-panel dated 22 March 2021

Sub-panel members: Professor Clare McGlynn QC (Hons), Miss Dale Simon (chair), Dr Matthew Vickers

The complaint

- 3.1 On 12 June 2020 the Reporter made a complaint against the Responder of sexual misconduct while employed as a member of staff by the Responder. The Reporter alleged that during the brief period he worked for the Responder, the Responder made repeated and unwanted sexual advances towards him, using his position as his employer to place him under pressure to accede. The Responder also made inappropriate comments of a sexual nature and was overly intrusive about his personal life.
- 3.2 The Responder acknowledged that aspects of his behaviour towards the Reporter were inappropriate, and offered the Reporter an apology; however, the Responder rejected the categorisation of his conduct as “sexual”, preferring the term “romantic”. The Responder also denied making repeated advances. He asserted that his initial “approach” towards the Reporter was clumsy and therefore required a subsequent meeting so that he could articulate his thoughts and feelings in a more thoughtful and considered manner. His subsequent efforts to get the Reporter to go for a drink with him, including scheduling a meeting in the Reporter’s work diary for drinks, amounted to no more than an attempt to reset their professional working relationship.

The Commissioner’s findings

- 3.3 The investigation was initiated through the Independent Complaints and Grievance Scheme (ICGS) and, in accordance with the scheme, it was

investigated by an independent external investigator (the Investigator). At the end of the investigation the Investigator submitted a Formal Assessment Report to the Parliamentary Commissioner for Standards (the Commissioner) recommending that the complaint should be upheld because the Responder had made repeated, unwelcome sexual advances towards the Reporter while he was the Reporter's employer and despite the Reporter's clear attempts to rebuff him.

- 3.4 The Commissioner accepted the Investigator's recommendation, after careful consideration, and found that the Responder had acted in breach of Parliament's Sexual Misconduct Policy¹ and Behaviour Code.²
- 3.5 The Commissioner did not accept the Responder's description of his behaviour towards the Reporter as "romantic". She instead agreed with the Investigator's conclusion that a person's actions can be considered sexual harassment even if the alleged harasser did not intend them to be and that as such the Responder's conduct could reasonably be viewed as a series of sexual advances.
- 3.6 The Commissioner also concluded that the Responder had made inappropriate comments of a sexual nature that were overly intrusive about the Reporter's personal life. The Responder accepted that he made 'jokes' of a sexual nature and was inquisitive about the Reporter's personal life but claimed that this was in an attempt to create a relaxed atmosphere in the office and to build a friendship with a new member of staff. The Commissioner agreed with the Investigator's rationale that conduct and comments the Reporter may have found amusing and been comfortable with at the time, were seen in a new light once the Responder had made it clear that he was attracted to the Reporter.
- 3.7 The Sexual Misconduct Policy (paragraph 2.1) states that sexual misconduct is unacceptable in all circumstances and that abuse of power can be an aggravating factor. The Commissioner concluded that the Responder's abuse of

¹ UK Parliament, [Independent Complaints and Grievance Scheme Sexual Misconduct Policy and Procedure](#), published July 2018, updated October 2019

² UK Parliament, [Behaviour Code](#)

power/authority and his lack of insight in respect to his conduct and his understanding of appropriate boundaries in the workplace were aggravating factors in this case.

- 3.8 The Commissioner found that the disparity of power between the Responder as employer and the Reporter as employee intensified once the Reporter realised that his employer found him physically attractive and that the Responder used his advantaged position as an employer to continue pursuing the Reporter during work hours, in a work setting, and scheduling social events in the Reporter's working calendar.
- 3.9 The Commissioner also gave consideration to the following matters. Firstly, the significant personal challenges that the Responder was experiencing during the period of the complaint, the fact that he had sought professional advice and support and his apology for some aspects of his behaviour which he accepted were inappropriate. Secondly, that the Reporter's period of employment with the Responder lasted for approximately three weeks, and that the employment ended as a result of the Responder's conduct and inability to assess or comprehend the consequences of his behaviour towards the Reporter. The Reporter felt he had no alternative but to leave the employment abruptly and suddenly.
- 3.10 Having considered the Responder's behaviour carefully, and taking into account the aggravating factors, the Commissioner deemed it appropriate to refer this case to the Independent Expert Panel (the Panel) for sanction because in her opinion breaches of the Sexual Misconduct Policy would not normally be suitable for her powers of sanction under Standing Order No. 150 unless it was the reporter's wish to resolve the matter without referral to the Panel. She was also of the opinion that the breaches in this case were serious and had been repeated despite the clear advice that was given to the Responder that "any further pursuance of a relationship with the Reporter would be highly inappropriate."
- 3.11 The Commissioner also found it concerning that although the Responder accepted that some aspects of his behaviour were inappropriate and offered

the Reporter an apology, “his overall statements to the independent external investigator show a lack of insight and appreciation of the seriousness of his conduct and that he continues to deny that he may have engaged the Policy by repeatedly propositioning the Reporter.”

3.12 The Commissioner referred the case to the Panel on 22 December 2020

IEP process

3.13 Part D of the *IEP guidance on Appeals, referrals and sanction* (February 2021) (the IEP guidance)³ provides that where the Commissioner has referred a case to the Panel for determination of sanction and one or both parties appeals, we will conclude the appeal before going on to consider the referral.

3.14 The Commissioner notified the Responder of her decision to uphold the complaint against him on the 11 November 2020 and the Responder submitted a letter of appeal against the decision of the Investigator and the Commissioner to the Panel on 2 December 2020. As the appeal was submitted prior to appointment of the Panel, it was managed in accordance with the framework established by the House of Commons Committee on Standards in its 2019 report, *The Committee’s Role in ICGS Appeals*.⁴

3.15 The Responder asserted in his grounds of appeal that the investigation process followed by the Investigator and the Commissioner was materially flawed in that they had applied the wrong interpretation to the facts of the case by concluding that his behaviour amounted to “sexual misconduct”; and he asserted that their decisions had been influenced by matters that had been reported about him in social media and had not been investigated. We found no evidence to support the Responder’s assertions or a finding that the

³ The Independent Expert Panel, [Appeals, referrals and sanctions: guidance for the parties](#), (February 2021)

⁴ Committee on Standards, Sixth Report of Session 2017–19, [The Committee’s role in ICGS appeals](#), HC 1976, para 13

investigation process followed by the Investigator or the Commissioner was procedurally flawed. Therefore, the appeal was dismissed.

- 3.16 The Responder was notified of the outcome of his appeal on 23 February 2021 and was requested to prepare a reflective statement for consideration by the sub-panel before sanction was determined. The Responder was also offered the opportunity to make a written and/or oral statement on sanction. The Responder submitted a written reflective statement and elected to make oral submissions to the sub-panel on sanction.

Determination of sanction

- 3.17 We convened virtually on 19 March 2021 to hear the Responder's oral submissions and to determine the appropriate sanction in this case.
- 3.18 In setting the appropriate sanction, we followed the principles set out in Part A of the IEP guidance and applied three further principles:
- a) the sanction should reflect the impact of the conduct on the Reporter
 - b) the sanction should reflect the nature and extent of the misconduct proved
 - c) 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
- 3.19 We carefully considered the findings of the investigation and the decision of the Commissioner, all the relevant circumstances of the case, all relevant aggravating and mitigating factors, the views of the Reporter, the reflective statement submitted by the Responder, and his oral submissions.
- 3.20 We agreed with the Commissioner's conclusions on the evidence and with her assessment that the breaches in this case were serious in nature and had been repeated despite the Responder having received advice that pursuing a relationship with an employee was inappropriate.

3.21 We determined that the Responder's sexual misconduct caused serious harm to the wellbeing of the Reporter and eventually led him to seek alternative employment with another MP.

3.22 When the Responder was asked during the oral submission hearing to describe the impact that his behaviour had on the Reporter he stated that it had been "devastating".

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

a. *Abuse of power or authority* – We determined that the Responder's abuse of his position as an employer was a significant aggravating factor in this case. The Responder subjected the Reporter, who was a new employee, to persistent sexual harassment within the first three weeks of his employment. We also agreed with the conclusion of the Commissioner that the disparity of power, between the Responder as employer and the Reporter as employee, intensified once the Reporter realised that his employer found him attractive and that the Responder used his advantaged position as an employer to continue pursuing the Reporter during work hours, in a work setting and scheduling social events in the Reporter's working calendar.

b. *Vulnerabilities of the complainant/reporter, particularly those which were or should have been known to the respondent/responder* – The Responder was fully aware that the Reporter was in a vulnerable emotional state when he first propositioned him. The Responder described his actions as "romantic" but "clumsy" during the investigation and appeal process. However, in his oral submissions he stated that his biggest source of shame was that he wasn't the friend that he should have been: "at a time when I should have been offering support, empathy, and understanding, I instead made a proposition." He continued, "the Reporter needed support and ended up with being propositioned. It was just wrong."

c. *Failing to respond to relevant warnings or concerns expressed to the Responder by others* – The Responder continued to proposition the

Reporter after he had been rebuffed and after he had been advised, in relation to this specific Reporter, by a third party that pursuing a relationship with an employee was inappropriate. The Responder had also attended the Valuing Everyone training during the first few days of becoming an MP, and stated in his reflective statement that he was “aware of hearing various stories about things that had ‘gone on’ with staff in the past around Westminster and that liaisons with them should be avoided.” However, he also stated that “we were told so much within those first couple of weeks that much of it was either not taken in at all, or was lacking any context by which to relate it to reality.” We accepted that new MPs are provided with a lot of information when they take up office, but we considered it highly unlikely that the Responder was totally unaware, before becoming an MP, that it was inappropriate to pursue sexual relationships with your direct employees.

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

- a. *Physical or mental ill health or other mental trauma* – We accepted that the Responder was going through several challenges and significant changes in his personal life when he breached the Sexual Misconduct Policy. We have taken this into account in assessing the Responder’s understanding of his actions at the time and subsequently. Nonetheless, we were of the opinion that these challenges do not excuse his sexual misconduct towards the Reporter.
- b. *Genuine remorse* – The Responder apologised to the Reporter and expressed remorse for the “upset” that his actions caused. The Responder also expressed a willingness in his reflective statement and oral submission to apologise to the Reporter again. The Responder stated that he “completely accepts responsibility for what happened”. However, we shared the Commissioner’s concern that the Responder’s “overall statements to the independent external investigator show a lack of insight and appreciation of the seriousness of his conduct.” We also took account of the fact that the Responder maintained in his reflective statement that the “upset” caused to the Reporter was due to an “unfortunate

misunderstanding” of the Responder’s true intentions and also stated that the “friendly relationship that [he] had tried to foster” had been “inadvertently” torn down. Consequently, we concluded that although the Responder expressed remorse in this case, and accepted responsibility for his actions, we remain concerned that he does not yet fully understand the significance of his behaviour or the full nature and extent of his wrongdoing.

- c. *Steps taken to address behaviour* – We took into account the fact that the Responder attended the Valuing Everyone training for a second time on a 1-2-1 basis; that he had undergone 25 counselling sessions “to better understand my new self”; and that he will be undertaking behavioural insight training. However, we were concerned that the Responder’s insight into his behaviour still appeared to be limited, evidenced by his reference to “misunderstandings” and by his suggestion that his words and actions to the Reporter were “taken out of context”. Consequently, we felt that while the Responder has taken important steps towards addressing his behaviour, this has so far had a limited effect on his understanding of why his behaviour towards the Reporter amounted to sexual misconduct.

Sanction decision

- 3.25 This case involves a serious and persistent breach of the Sexual Misconduct Policy, with several aggravating factors. The impact of the misconduct on the Reporter has been significant, including him having to leave his employment. While the Responder has already taken positive steps aimed at improving his behaviour, he has demonstrated limited insight into the nature of his misconduct.
- 3.26 Although we concluded that there were some mitigating factors in this case, they were significantly outweighed by the aggravating factors. We therefore agreed with the Commissioner’s assessment that her powers of sanction under Standing Order No. 150 are insufficient in all the circumstances of this case, and concluded that a period of suspension was appropriate to reflect the

impact of the misconduct on the Reporter and the nature and extent of the misconduct proved.

3.27 When determining the appropriate length of suspension, we were mindful that this is one of the first cases that has been referred to the Panel to determine sanction, and as such there are as yet no precedents to follow. We considered the circumstances where suspensions have been ordered in non-ICGS cases. We also noted that Dame Laura Cox DBE stated in her independent inquiry report, *The Bullying and Harassment of House of Commons Staff*, which led to the establishment of the Panel, that unacceptable behaviour by some "inflicts damage on everyone and undermines the legitimacy and authority of the House of Commons. Parliament is diminished."⁵

3.28 In reaching our decision on sanction we also had regard to the Sexual Misconduct Policy (paragraph 2) which states that Parliament has a zero tolerance approach to sexual misconduct; that all behaviour constituting sexual misconduct is a breach of the Behaviour Code; and that all reports of sexual misconduct will be taken seriously. The Behaviour Code states that "Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions."

Conclusion

3.29 We recommend that the Responder is suspended from the service of the House for six weeks. This sanction reflects our view that the sexual misconduct found proved in this case amounts to a serious breach of the Behaviour Code which has significantly impacted the wellbeing of the Reporter and has the propensity to undermine the legitimacy and authority of the House of Commons.

⁵ Dame Laura Cox DBE, [The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report](#), 15 October 2018, p 4

Appeal against the decision on sanction

Appeal by the Responder against the decision on sanction of the sub-panel dated 22 March 2021

Decision of the appeal sub-panel dated 20 May 2021

Sub-panel members: Monica Daley, Mrs Johanna Higgins, Rt Hon Sir Stephen Irwin (chair)

Background to the appeal

- 4.1 On 12 June 2020 the Reporter made a complaint against the Responder of sexual misconduct whilst employed as a member of staff by the Responder. The allegation was that during a brief period of employment, the Responder made repeated unwanted sexual advances towards him and placed him under pressure to accede. It was also alleged that the Responder made inappropriate sexual comments to him and was overly intrusive about his personal life.
- 4.2 The Responder essentially acknowledged the facts as alleged, acknowledged that aspects of his behaviour were inappropriate and offered an apology. An apology was given prior to the formal complaint. This took place in the (Conservative) Chief Whip's Office on 11 March 2020. However, the matter proceeded to a formal complaint.
- 4.3 The matter was investigated in accordance with the Independent Complaints and Grievance Scheme (ICGS) and a report was furnished to the Parliamentary Commissioner for Standards (the Commissioner). The Commissioner accepted the recommendation of the Investigator and concluded that the Responder had acted in breach of Parliament's Sexual Misconduct Policy and Behaviour Code.
- 4.4 The Commissioner concluded that the matters were so serious that the case should be referred for sanction to the Independent Expert Panel (IEP).

- 4.5 The Commissioner informed the Responder of her decision on 11 November 2020. On 2 December 2020, the Responder appealed the decision on the facts and appealed the referral. The appeal on the facts was dismissed, that decision being notified to the Responder on 23 February 2021. No further appeal was available from that decision. At that stage, the Responder was requested to prepare a reflective statement for consideration by the IEP before sanction was determined. He submitted a reflective statement of eight pages.
- 4.6 On 19 March 2021 the sub-panel of the IEP convened virtually to consider the material, to hear the oral submissions of the Responder, and to determine the sanction. The sub-panel decision was promulgated three days later, on 22 March 2021. The determination of the sub-panel was that the Responder should be suspended from the service of the House for a period of six weeks. The Responder was notified of the decision on 29 March. The current appeal before us is a challenge to that decision.

The decision under challenge

- 4.7 It is not necessary here to recapitulate the whole decision of the sub-panel below. The reasons and decision were set out in full. The sub-panel concluded that the case constituted a serious and persistent breach of the Sexual Misconduct Policy, attended by several aggravating factors. The impact on the Reporter was great. Despite some positive steps aimed at improving his behaviour, the sub-panel concluded that the Responder had limited insight into the nature of his misconduct. The mitigating factors present were significantly outweighed by the aggravating factors. The sub-panel agreed that the Commissioner's powers of sanction were insufficient. They concluded that a period of suspension was appropriate, and determined the sanction as indicated above.

The basis of the appeal against sanction

- 4.8 On the last day of the time limit for appeal (28 April 2021), the Responder lodged an appeal document. He did so after taking legal advice.

- 4.9 The grounds for appeal can be summarised as follows. It was said that the decision of the sub-panel “was unreasonable or disproportionate” because inadequate weight was given to the mitigating factors rehearsed in the reflective statement, or indeed found by the sub-panel. Further, no assessment of the financial impact of the suspension had been made, or was possible, since no information as to means and expenditure had been placed before the sub-panel. The Responder accepted that such “information was available and could have been presented before the sub-panel made its decision [but] it was never asked for. Neither was it ever indicated that the sanction could/would involve such significant financial hardship.”
- 4.10 Further, the Responder challenged the conclusion of the sub-panel that he did “not yet fully understand the significance of his behaviour or the full nature and extent of his wrongdoing” and asserted that he did so fully understand the significance and implications of his actions. The Responder submitted that: “I was in a position where I should have identified [the Reporter’s] vulnerability and taken steps to provide assistance, support and guidance. Instead, I unintentionally exploited that vulnerability.” The Responder described himself as “someone who considers them [sic] to be very self-aware”. Whilst the Responder noted that the sub-panel had acknowledged he had taken “steps ... to address behaviour”, he rejected their conclusion that such steps had had a “limited effect on my understanding”. The Responder had undertaken more than 20 weeks of personal counselling with a psychotherapist, an additional one-to-one session in Valuing Everyone training, additional safeguarding training and more than 12 hours of behavioural examination and training.
- 4.11 The Responder complained of the time which had elapsed since the episodes complained of. A significant part of the delay arose from the fact that the history of this case encapsulates the time from June 2020, when the Standards Committee ceased dealing with these cases, through to the early part of 2021, when the newly constituted IEP began addressing individual cases. He emphasised that he had apologised in March 2020, and that the Reporter “initially was content” with that apology. He stated that he “was left for four and a half months with the legitimate expectation that matters had been

resolved. The impact upon me when I discovered that my previously-accepted apology had not ended matters, was extremely distressing.” He submits that the sub-panel should have taken that into account as a material mitigating factor. In addition, the Responder relies on the fact that he assisted the Reporter to find alternative employment with another MP.

- 4.12 The Responder submits that his loss of income due to a six-week suspension would amount to a total of £5,274. He submitted a schedule of his income and outgoings. He did not suggest, either in his written submissions or in his oral evidence, that such a loss of income would place him in significant financial difficulties. (In the event, in the course of his oral evidence to us he did not mention financial difficulties.)
- 4.13 The Responder explained that he was going through a divorce “obviously as a result of these events and of my decision to come out as gay.” He emphasised the impact of the publicity attendant upon any suspension, including the impact upon his family. We noted the implication that his family had not anticipated or been informed of such a possible outcome. The Responder went on to submit that he had been apprised of no “table of sanctions according to transgression levels”. Following from that he rounded off his written submissions by suggesting that had proper weight been given to the mitigating factors advanced, the sanction would have been significantly reduced; as a corollary, without those mitigating factors the sanction would have been greater. In his concluding paragraph he submitted that the “sanction was determined without important and necessary information as to means and consequences” which he was not required to provide. It was clear that his main emphasis was on the argument that the sanction imposed did not fully reflect the mitigation he advanced.
- 4.14 In his oral presentation to us, the Responder laid emphasis on his apology in March 2020, his understanding that that had put an end to matters, and his efforts to find the Reporter another job. He suggested that the formal complaint by the Reporter was the consequence of a “malicious and considered campaign to do with other matters, on social media”, which had led the Reporter to conclude that the apology had been insincere. There seems to be

no factual basis for this suggestion. The implication of this line of argument was that it was in some measure improper or inappropriate for the formal complaint to have been laid.

- 4.15 The Responder sought to emphasise the steps he had taken towards rehabilitation.
- 4.16 When questioned, the Responder acknowledged the fact that he had voted for the resolution which established the IEP, enshrining the process by which sanction was referred to the IEP by the Commissioner when her powers were thought to be insufficient. However, the Responder had not drawn the conclusion that he might be liable to suspension, as a result of the referral in his case.
- 4.17 When asked about the distinction he advanced below, between a "romantic" and "sexual" approach by him to the Reporter, the Responder explained that he was not legally trained, was not experienced in politics at the time of his election, and was (in effect) unprepared for the pressures he met on election. What he had meant by describing his feelings as "romantic", was that he enjoyed the company of the Reporter, enjoyed spending time with him, that the Reporter would often join him in a bar or other public setting and that he had appreciated "getting to know each other". The Responder described his own approach as "gentle and polite", but acknowledged that it could have been in fact construed as "sexual". However, he said the prospect of a physical relationship was not "a driving factor".
- 4.18 Under further questioning, the Responder agreed that the Reporter had told him a number of confidential matters. He (the Responder) should have understood the vulnerability of the Reporter, but instead he "inadvertently exploited that vulnerability". He went on to say that the Reporter "needed friendship and support when what he got was a proposition". He described this as being an impulse of "temporary insanity". He was not predatory but rather was a "good and kind person". Nor was he devious or manipulative. Rather, he said that he "saw something that wasn't there, which I wanted to grab with

both hands.” He accepted that he had exploited his position with the Reporter, because his “subconscious was in charge”.

- 4.19 The Responder went on to emphasise that he was now “in a better place”, having established a happy and settled relationship with someone else.
- 4.20 In the course of the hearing, it was pointed out to the Responder that his reflective statement, long as it was, dealt overwhelmingly with his feelings and his situation, and only very briefly with the impact on the Reporter. He was obviously nonplussed by the question. Essentially, his response was that he had not understood what was being asked of him. In our view this was a telling response, underscoring the degree of self-absorption still prevalent in the Responder. Following this questioning, the Responder did describe his own observation of the Reporter when seeing him around the Palace of Westminster in the period after the Reporter moved to another MP’s office. The Responder confirmed from his own observation that the impact on the Reporter was “devastating.”

The criticisms of the sub-panel below: our conclusions

- 4.21 An appeal from a decision of a sub-panel on sanction is not a rehearing from scratch. It is important that this should be properly understood. In the absence of credible fresh evidence, which could not reasonably have been presented before the sub-panel below made its decision, and which has a real prospect of affecting the outcome, and in the absence of some exceptional factor giving rise to a compelling reason that an appeal should be heard or allowed, an appeal can only succeed where it is established that the decision challenged was unreasonable or disproportionate. This is a critical distinction from a simple rehearing. It is important because, if it were otherwise, there would in almost every case be an incentive to appeal on the basis that the appeal sub-panel might just take a different view, and perhaps simply to postpone the imposition of a sanction. The decision of a first sub-panel would likely become a mere staging post on the way to a second sub-panel.

- 4.22 The fresh evidence advanced in the written submission, demonstrating the loss of income consequent upon the suspension, was available and could have been advanced below. The Responder readily conceded that. As we have noted, he did not mention the financial implications of suspension in the course of his oral submissions. We accept that the loss of income will occur and may cause a degree of difficulty and we have weighed up his interest in losing his income. However this factor cannot in our view weigh heavily given the facts of this case. We reject any appeal on that ground.
- 4.23 As the sub-panel below pointed out in paragraph 3.18 of their decision, there are three specific principles which the IEP will apply in setting an appropriate sanction. They are set out in Part D of the IEP guidance.¹ They are:
- a) the sanction should reflect the impact of the conduct on the Reporter
 - b) the sanction should reflect the nature and extent of the misconduct proved
 - c) 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.
- 4.24 The first two principles are plain in their meaning. The third may have different outcomes in different cases. Where a Responder has demonstrated a real understanding of what went wrong leading to the relevant misconduct, then this principle will likely encourage a sub-panel to look to requirements of training, undertakings as to future conduct, assurances as to improved procedures and suchlike. By contrast, where a Responder has demonstrated no insight, or a limited understanding, of what has transpired, then this principle is likely to indicate a rather more severe sanction, so as to emphasise the importance of proper conduct. The IEP will look to distinguish between mere assertions of understanding and a genuine appreciation of what has happened. Experience suggests that such attitudes are not binary, but lie along a spectrum.

¹ The Independent Expert Panel, [Appeals, referrals and sanctions: guidance for the parties](#), (February 2021)

- 4.25 There can be no doubt that the impact of the conduct in this case on the Reporter was severe. His life has been permanently altered and he has lost the professional future to which he was fully committed, and for which the Responder agrees, he was very well qualified. We see no basis for concluding that the sub-panel below misunderstood or misapplied this principle in any way.
- 4.26 The misconduct demonstrated here was also significant. It is evident that the Responder was in a very powerful position as an employer in relation to the Reporter. In the context of that relationship the energy with which the Responder pursued his proposition to the Reporter was considerable and was clearly very difficult for the Reporter to navigate. There was of course no physical assault of any kind and so far as we are aware no direct threats or implied threats of retribution, if the Reporter did not comply. We bear all that in mind, as did the sub-panel below. However, as the sub-panel below observed, there was a specific aggravating factor here, in that the Responder “continued to proposition the Reporter after he had been rebuffed, and after he had been advised, in relation to this specific Reporter, by a third part that pursuing a relationship with an employee was inappropriate.” (Paragraph 3.23c of the decision below.)
- 4.27 In paragraphs 3.23 and 3.24 of their decision, they enumerated the aggravating and mitigating factors relevant to the case. We do not intend to repeat them. It is sufficient to say that we consider they identified the important factors under both heads, and gave them appropriate weight. We reject the criticism that they were unreasonable or disproportionate when considering the mitigating factors, and in particular as to the amount of retraining undertaken by the Responder.
- 4.28 As set out above, we gave the Responder the opportunity to present his appeal to us in person. We do not consider that the points made by the Responder during the hearing show that the decision of the sub-panel below was wrong. In particular we take the view that the sub-panel below were fully justified in concluding that: “... the Responder’s insight into his behaviour still appeared to be limited, evidenced by his reference to ‘misunderstandings’ and by his

suggestion that his words and actions to the Reporter were 'taken out of context'. Consequently, we felt that while the Responder has taken important steps towards addressing his behaviour, this has so far had a limited effect on his understanding of why his behaviour towards the Reporter amounted to sexual misconduct."

- 4.29 The sub-panel below were also correct in considering the significance of behaviour in breach of ICGS policies for the reputation of Parliament, as emphasised by Dame Laura Cox DBE in her independent inquiry report. They were also correct in attending to the formulation by Parliament in paragraph 2 of the Sexual Misconduct Policy, where it is stated that Parliament has a "zero tolerance" approach to sexual misconduct. Those important reference points do not of course point to any unreasonable or disproportionate sanction. However, they do underpin the need for an approach to setting sanctions which will mark the importance of proper standards of behaviour.
- 4.30 For these reasons, this appeal is dismissed. Our conclusion is that the determination of six weeks suspension from the service of the House was proper and proportionate, and is sustained.