

**The Independent Expert Panel**

# The Conduct of Mr Daniel Kawczynski 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 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  
Ms Monica Daley  
Mrs Johanna Higgins  
Rt Hon Sir Stephen Irwin (Chair)  
Professor Clare McGlynn QC (Hons)  
Miss Dale Simon  
Sir Peter Thornton  
Dr Matthew Vickers

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

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### **Panel staff**

The current Secretary to the Panel is Emily Baldock.

### **Contacts**

All correspondence should be addressed to the Secretary to the Panel. The Panel's email address is [independentexpertpanel@parliament.uk](mailto:independentexpertpanel@parliament.uk).

# Contents

Report by the Chair of the Panel	3
Decision on sanction	6
Appeal against the decision on sanction	14

# Report by the Chair of the Panel

- 1.1 The Independent Expert Panel was established by the House of Commons on 23 June 2020;<sup>1</sup> its members were appointed on 25 November.<sup>2</sup> 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.<sup>3</sup>
- 1.2 The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality. We understand the seriousness of, and the harm caused by, bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 1.3 This is a report of a decision of the Panel on sanction made following a referral from the Parliamentary Commissioner for Standards. The Commissioner found that the Respondent, Mr Daniel Kawczynski MP, the Member for Shrewsbury and Atcham, had acted in breach of Parliament’s Bullying and Harassment Policy.
- 1.4 On 27 April 2020 the Respondent had been unable to attend a virtual meeting of a Parliamentary committee as a result of technical difficulties that the two Complainants and other staff had not been able to resolve on the day. He was repeatedly rude, aggressive and impatient with the Complainants and other staff before, during and after the meeting; he made critical and untruthful comments on a WhatsApp group shared with other Committee members; he threatened formal complaint.

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

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

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

- 1.5 The Commissioner determined that the Respondent had acted in an intimidatory and threatening manner towards the Complainants and abused his power as a Member of Parliament by behaving in this manner and by making exaggerated and malicious claims regarding the poor performance of the Complainants. He did not appeal the Commissioner's decision.
- 1.6 On 3 February 2021 I appointed a sub-panel of three members to determine the sanction to be imposed. The members of the sub-panel were:
- Mrs Johanna Higgins
  - Miss Dale Simon (chair)
  - Dr Matthew Vickers
- 1.7 On 30 March the sub-panel reported their decision to me as Chair of the Panel. The sub-panel determined that the Respondent should make an apology on the floor of the House by means of a personal statement. He appealed that decision.
- 1.8 On 5 April I appointed a sub-panel of three members to hear the appeal against sanction. The members of the sub-panel were:
- Mrs Lisa Ball
  - Rt Hon Sir Stephen Irwin (chair)
  - Professor Clare McGlynn QC (Hons)
- 1.9 The Respondent was informed of the decision of the appeal sub-panel that his appeal was not successful on 7 June. We concluded that the determination of a requirement to make a public apology on the floor of the House was proper and proportionate.
- 1.10 The decisions of the sub-panels set out the background to the case, the processes followed and the reasons for their decisions.

1.11 I make this report to the House to provide context for the personal statement to be made by Mr Kawczynski. The names of the Complainants, 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**  
**14 June 2021**

# Decision on sanction

## **Referral by the Parliamentary Commissioner for Standards dated 2 February 2021**

### **Decision of the sub-panel dated 30 March 2021**

**Sub-panel members: Mrs Johanna Higgins, Miss Dale Simon (chair), Dr Matthew Vickers**

### **The complaint**

- 2.1 On 29 April 2020 the Complainants, who were both members of Committee staff, submitted a collective complaint alleging that the Respondent's behaviour before, during, and after a meeting of a Parliamentary committee ("the Committee") on 27 April 2020, breached Parliament's Bullying and Harassment Policy. The first Complainant (C1) complained about the way in which the Respondent conducted himself during several phone calls and in WhatsApp messages he sent on the Committee WhatsApp group. C1 stated that despite his significant experience of working in the highly charged atmosphere of Parliament, he began to feel intimidated whenever the Respondent would call. The second Complainant (C2) complained about the way that the Respondent behaved during several phone calls on C2's personal number, about the Respondent's intimidating behaviour when he physically attended the virtual meeting room and the Respondent's comments about C2's competence on the Committee's WhatsApp group. C2 stated that the Respondent's conduct directly towards him and via comments to others left him feeling anxious, upset, harassed and intimidated.
- 2.2 The Respondent does not deny acting as alleged; he was unable to attend the virtual meeting of the Committee due to technical issues, and accepts that on several occasions during 27 April 2020, he let the two Complainants and others know of his dissatisfaction with them. He also acknowledged that his frustration, along with more longstanding personal issues may have had a detrimental impact on the way in which he behaved on 27 April 2020.

## The Commissioner's findings

- 2.3 The investigation of the complaint 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). The Investigator concluded that the Respondent's behaviour on 27 April 2020 breached Parliament's Behaviour Code but did not meet the threshold of bullying and harassment.
- 2.4 The Commissioner did not accept the recommendation of the Investigator and concluded that the Respondent's accepted behaviour did breach the Bullying and Harassment Policy attached to Parliament's Behaviour Code. She determined that the Respondent had acted in an intimidatory and threatening manner towards the Complainants on a number of occasions on 27 April 2020 and abused his power as a Member of Parliament by behaving in this manner and by making exaggerated and malicious claims regarding the poor performance of the Complainants.
- 2.5 The Commissioner found the following matters to be aggravating factors regarding the severity of the Respondent's breach of the Bullying and Harassment Policy:
- a) *The Respondent's significant abuses of power* – The Commissioner determined that the Respondent had abused his power on several occasions during 27 April 2020 and that his abuse of power was a significant aggravating factor.
  - b) *The Respondent's behaviour towards other Parliamentary colleagues* – The Commissioner determined that the evidence collected by the Investigator showed that the Respondent's behaviour towards other Parliamentary colleagues breached Parliament's Behaviour Code on several further occasions. She concluded that this was a significant aggravating factor as it showed an embedded lack of respect for the Code and the culture that Parliament is striving to achieve.

- c) *The lack of insight shown by the Respondent* – The Commissioner found that, on several occasions during his two interviews with the Investigator, the Respondent showed a worrying lack of insight and contrition in relation to the appropriateness and impact of his behaviour. The Respondent described his behaviour towards the Complainants as having been “perfectly reasonable” and commented that the Complainants have a “completely different narrative and understanding as to what is acceptable and what is not acceptable in the workplace.” The Commissioner concluded that these comments demonstrated a lack of understanding and respect for the Behaviour Code, an inability to consider the perspective of others, and an indifference to the culture that Parliament is striving to achieve.
- d) *The lack of contrition shown by the Respondent* – The Commissioner also concluded that the Respondent’s comments in interview showed a lack of contrition. The Commissioner was concerned that the Respondent had stood by the comments that he made in the Committee’s WhatsApp group, and had stated that he wouldn’t change what he had written if he had the time again. The Commissioner concluded that his comments demonstrated a continuing lack of insight into the impact of his conduct and a failure, or unwillingness, to reflect on how his behaviour fell short of the values expressed in Parliament’s Behaviour Code. The Commissioner further concluded that the Respondent did not demonstrate any understanding when interviewed as to why his phone calls with the Complainants’ manager on 27 April 2020, which involved an attempt to make a meritless complaint about C2, were inappropriate.
- e) *Making the phone calls on the evening of 27 April 2020 to the Complainants’ manager whilst under the influence of alcohol* – The Commissioner concluded that the Respondent’s behaviour was grossly unprofessional and a significant breach of Parliament’s Behaviour Code.

2.6 The Commissioner found the following factors to be mitigating factors:

- a) *The Respondent’s apology of 4 May 2020* – The Respondent apologised for “any behaviour lacking in traditional patience and good manners towards

your teams” after he received a letter from two senior members of the Parliamentary community challenging his behaviour on 27 April 2020.

b) *The Respondent’s subsequent attendance at Parliament’s Valuing Everyone training.*

c) *Having received no previous or subsequent ICGS complaints about the Respondent’s conduct.*

2.7 The Commissioner concluded that the breaches of the Bullying and Harassment Policy in this case were so serious that she could not conclude the matter under the powers given to her by the House through Standing Order No. 150. She therefore referred this case to the Independent Expert Panel on 2 February 2021 to consider an appropriate sanction for the Respondent’s conduct.

## **Determination of sanction**

2.8 We asked the Respondent to prepare a reflective statement for consideration by the sub-panel before sanction was determined and offered him the opportunity to make a written and/or oral statement on sanction. The Respondent submitted a written reflective statement as requested and elected to make oral submissions to the sub-panel on sanction.

2.9 We convened virtually on 25 March 2021 to hear the Respondent’s oral submissions on sanction and to determine the appropriate sanction in this case.

2.10 In determining the appropriate sanction, we followed the principles set out in Part A of the Panel’s guidance on sanctions<sup>1</sup> and applied three further principles:

a) The sanction should reflect the impact of the conduct on the complainant.

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

- 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.

2.11 We carefully considered the investigation report and the decision of the Commissioner, all the relevant circumstances of the case, all relevant aggravating and mitigating factors, the views of the Complainants, the reflective statement submitted by the Respondent, written correspondence to the Panel and the Respondent's oral submissions.

2.12 We consider that the following aggravating factors are relevant to this case:

- a) *Abuse of power or authority* – We agree with the finding of the Commissioner that the Respondent abused his power as a Member of Parliament when he acted in a threatening and intimidating manner towards the Complainants and by making exaggerated and malicious claims regarding the poor performance of the Complainants.
- b) *Breaches of the Behaviour Code in respect of other members of the Parliamentary community on the same day* – The Respondent was rude to junior Digital Service and technical staff who attended his office in an attempt to resolve his IT issues. We agree with the Commissioner that the Respondent's inappropriate behaviour towards other members of the Parliamentary community suggested an embedded lack of respect for the Code and the culture that Parliament is striving to achieve.
- c) *Lack of insight and contrition* – We note the Commissioner's conclusion about the lack of insight and contrition demonstrated by the Respondent during the investigation process. We determine that the Respondent has demonstrated an increased level of contrition during the latter stages of the complaints process through his written apologies to the Complainants, in his letter to the Panel Chair, in his reflective statement and during his oral submissions when he apologised unreservedly for inappropriate behaviour

and the impact that it had had on the Complainants. In respect to the issue of insight, we note that the Respondent has taken steps to better understand his personal drivers and the impact of his behaviour on others; however, we conclude that although his insight is developing, it is still quite limited.

2.13 We consider that the following mitigating factors are relevant to this case:

- a) *Genuine remorse* – We agree with the Commissioner’s identification of the Respondent’s apology of 4 May 2020 as a mitigating factor. The Respondent was challenged about his inappropriate behaviour towards members of staff by two senior managers. His apology stated:

“Just to follow up have thought about the letter long and hard. I understand and respect your concerns outlined. I apologise for any behaviour lacking in traditional patience and good manners towards your teams.

“Hope you can accept my apology and pass on.”

This apology was not passed on to the Complainants who had already lodged their complaints by this time. The Respondent subsequently apologised to both Complainants in writing and expressed remorse in correspondence to the sub-panel in his reflective statement and oral submissions. When asked why his apology to the Complainants was not sent before the Commissioner announced her decision to uphold the complaints earlier this year, the Respondent explained that he felt that he had been vindicated by the Investigator and it was only after receiving the Commissioner’s decision that he realised how wrong his behaviour had been. The apology of 4 May 2020 did not expressly accept any wrongdoing by the Respondent. Consequently, we conclude that some concerns remain as to the sincerity of the apologies given to date.

- b) *Steps taken to address behaviour* – We agree with the Commissioner’s identification of the Respondent’s subsequent attendance at Parliament’s Valuing Everyone training as a mitigating factor. The Respondent also stated in his reflective statement and oral submissions that he has

undertaken emotional intelligence training in order to better understand the impact of his actions on others. However, when asked directly to explain how his actions had impacted on the Complainants, the Respondent struggled to find an appropriate response. He eventually stated that the incident must have been very “unpleasant” for the Complainants. He also stated that he could see that for the Complainants to have taken the process to this degree they must have felt “very upset and aggrieved by his behaviour” and that he was “very upset and apologetic about that.” We therefore conclude that although the Respondent has taken steps to address his behaviour, the impact of the steps taken is currently still quite limited.

c) *Physical or mental ill health or other mental trauma* – We accept that the Respondent was experiencing a high level of stress in his personal and professional life when he breached the Bullying and Harassment Policy. During his oral submissions, he stressed the importance of the work of the Committee to his constituents and the personal abuse that he and staff in his constituency office were experiencing in addition to the general upheaval and increased workload because of the pandemic. We also take account of the personal trauma that he experienced in his earlier life and the likely impact of such experiences on his behaviour.

2.14 We take account of the impact of the Respondent’s behaviour on the Complainants, as described in the impact statements submitted by the Complainants, and their views on appropriate sanction. Both Complainants were clear that their primary concern was not punishment but an outcome that would help to improve the culture of Parliament and the behaviour of Members.

### **Sanction decision**

2.15 This case involves a serious breach of the Bullying and Harassment Policy which arose from a series of inappropriate interactions between the Respondent, the Complainants and other members of the Parliamentary community on 27 April 2020. The country had recently entered the first period

of lockdown, and there were considerable pressures on MPs and Parliamentary staff alike to adjust quickly to a new virtual way of working. The Respondent had been unable to take part fully in a committee meeting and as such he was entitled to express his dissatisfaction to the committee staff; however, he failed to appreciate the challenges that the committee staff were experiencing and abused his power by persistently demanding, in a threatening and intimidating manner, that the Complainants fix a problem that they had no control over, and by making exaggerated and malicious comments about their competence.

- 2.16 The Respondent accepts that his conduct which forms the subject of these complaints was wrong; he is taking steps to improve his understanding of the impact of his actions on others and has commenced a project which will result in a book on emotional intelligence. Consequently, we are of the opinion that the likelihood of the Respondent repeating the type of behaviour that led to this complaint has been significantly reduced.
- 2.17 We note that the Respondent has apologised for his behaviour previously; however, we have concerns about the sincerity of those apologies, given the Respondent's limited insight into the nature of his misconduct at the time when the apologies were made. We therefore conclude that an apology to the House would address our remaining concerns, help to improve the culture and behaviour of Members, staff and the wider Parliamentary community and accord with the wishes of the Complainants.

## **Conclusion**

- 2.18 We determine that the Respondent should make an apology on the floor of the House by means of a personal statement. With the leave of Mr Speaker, the text of that apology should be agreed in advance by the Chair of the Panel.

# Appeal against the decision on sanction

**Appeal by the Responder against the decision on sanction of the sub-panel dated 30 March 2021**

**Decision of the appeal sub-panel dated 7 June 2021**

**Sub-panel members: Mrs Lisa Ball, Rt Hon Sir Stephen Irwin (chair), Professor Clare McGlynn QC (Hons)**

## Background to the appeal

3.1 On 29 April 2020 the Complainants made a complaint against the Respondent of breaches of Parliament’s Bullying and Harassment Policy. The allegation was that before, during and after a virtual meeting of a Parliamentary committee on 27 April 2020, the Respondent acted in a threatening, aggressive and intimidating way towards the Complainants, and towards other Parliamentary staff. These events took place soon after the “lock-down” occasioned by the Covid-19 pandemic. Extensive preparations had been made for the virtual meeting, although of course such arrangements were much less familiar at that time. The Respondent considered that a virtual meeting should not take place and he tried, but failed, to persuade the Committee Chair to abandon the meeting. For irrelevant technical reasons, on the day in question the Respondent found himself unable to join the virtual meeting. As a result, he made repeated complaints to the Complainants and to other support staff who were trying to help him. It is agreed that he did not shout or swear, but the force and aggression he displayed were found to constitute bullying. It is not necessary to repeat all the detail, but it may be helpful to give some flavour of the Respondent’s behaviour.

3.2 From early in the morning of 27 April 2020, the Respondent contacted the second complainant (C2) on his private mobile phone. He did so repeatedly during the day. He was repeatedly aggressive, rude and impatient in these phone calls. He used extreme, although not profane, language: “this is a

scandal, an outrage, this cannot be happening”; “this is a farce”; “you are useless”. He described himself as “absolutely appalled”. He threatened formal complaint. He also stated that he wished to lodge a formal complaint about the Committee Chair. He threatened to resign from the Committee. In reference to C2 he described him as a member of “the snowflake generation.” Essential to understanding the story is that no one of these responses stimulated complaint or led to the finding that the conduct of the Respondent constituted a breach of the relevant policy. It was the vehemence and repetition of the Respondent’s statements which did so.

- 3.3 Later in the sequence of events, the Respondent expressed his criticisms with equal force on the WhatsApp group which had been formed to assist committee business. This must have been intended and did have the effect of denigrating Parliamentary staff, and in particular C2, to all the Committee members and many other staff. Part of the investigation report reads:

“C1 [the first Complainant] also told me that if R’s [the Respondent’s] discourteous behaviour had been limited to the various phone calls referenced above then he might have been inclined to have ‘written it off as someone having a bad day’. The WhatsApp messages, which would have been read by all Committee members and the staff that support them, were untruthful and an egregious way of trying to resolve his dissatisfaction.”

- 3.4 As we have indicated, the Respondent’s anger was directed at other staff than the two complainants, in particular at technical staff who were attempting to assist. Although no complaint was made by these staff members, this evidence is supportive of the complaints, indicating as it does the behaviour of the Respondent at the time. Here too his conduct was unbridled. As it was expressed in another part of the investigation report:

[A senior manager in the Digital Service] stated that:

- R [the Respondent] was rude to a member of his staff when they called him to offer help.
- R tried to call him just after 9am (while he was in a meeting); when he could not get through R sent him two chasing emails (09:13 and 09:56) and left two voice messages (09:54 and 09:56) all asking him to call R urgently.

- When he did call R back, R 'ranted' at him: "What the hell are you playing at?" and "I've turned this bloody computer upside down trying to get it to work" and "When this thing is over, I am going to get you to come to my office because this is just not right."
- At 10:27 R emailed him once and called him twice demanding that he be called back. When R was called back, five minutes later, he 'continued to rant' at how "this is all wrong – all of the equipment and infrastructure is just wrong – and you will come to my office when this is over." When R complained about the PDS support team he was told they were working very hard to support members in this new way of working. R responded: "we're all working hard – I am talking about working effectively."
- R demanded the name of his line manager so he could complain about him. R then called him back to complain that he could not get through to his line manager and asked him to make sure his line manager called R back.
- R emailed again at 11:57 asking him to call him urgently. When he called, R said he still needed to speak to his line manager to make a complaint. R then said "this was completely unacceptable", before asking four times, "How do you get away with it?" R said that if he treated his constituents in the way he had treated R, "he would have been out of a job within a month."

3.5 It is also clear that as this day proceeded, the Respondent consumed a significant amount of alcohol.

3.6 The Respondent essentially acknowledged the facts as alleged, although as we shall see, his attitude to and understanding of his own behaviour has in our view been at best ambiguous.

3.7 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 facts as found by the Investigator, but differed in her interpretation and conclusion. She concluded that the Respondent had acted in breach of Parliament's Bullying and Harassment Policy and Behaviour Code. The

Commissioner considered that the Respondent had acted in an intimidating and threatening manner, had abused his power as a Member of Parliament, and had made exaggerated and malicious claims as to the performance of the Complainants.

3.8 The Commissioner also concluded that the matters were so serious that the case should be referred for sanction to the Independent Expert Panel (IEP).

3.9 The Commissioner informed the Respondent of her decision on 1 February 2021.

3.10 The Respondent did not appeal the conclusions of the Commissioner. In passing, we note that in the course of the proceedings before us he explained that he had not done so through concern that an appeal, if unsuccessful, might bring a heavier sanction than would otherwise arise. It was, in other words, a tactical decision. He told us that he wished he had appealed. We return to the implications of this later in our reasons.

3.11 On 30 March 2021, the sub-panel reached their conclusion on sanction. Their decision was that the Respondent should make an apology on the floor of the House by means of a personal statement. On 30 April 2021, the Respondent appealed the decision on sanction; the last day on which he was able to do so. The current appeal before us is a challenge to that decision.

### **The decision under challenge**

3.12 It is not necessary here to recapitulate the decision of the sub-panel below. Their reasons and decision were set out in full.

### **The basis of the appeal**

3.13 The Respondent appealed with the benefit of legal advice.

3.14 The grounds for appeal can be summarised as follows. Firstly, it is suggested that the sub-panel failed to pay sufficient or any account to a number of

matters: the impact on the Respondent's mental health "of having to give a public apology on the floor of the House"; the psychological and emotional pressure operating on the Respondent at the time, due to the pandemic and to the then recent floods in his constituency; his apology given to the Complainants; the material he provided to the sub-panel and the efforts he had made "in his rehabilitation". It was also said that the sub-panel had failed to consider first the lowest appropriate level of sanction and to give reasons why they had rejected lower sanctions than that which they imposed.

- 3.15 The Respondent also sought to introduce fresh evidence, in the form of a report from Ms Lucy Lurie, a clinical psychologist. The report was prepared after the hearing before the sub-panel below, and is dated 18 May 2021. In the course of his written submissions to us, dated 30 April 2021, the Respondent stated that: "there has been a further development of the [Respondent's] condition since 8 March 2021. A medical report could not have been reasonably presented before the sub-panel made its decision. If the medical report is accepted, the [Respondent] (sic) has a real prospect of affecting the outcome of this appeal."

### **The "fresh" evidence**

- 3.16 It is appropriate to deal with this issue first. One of the potential grounds of appeal against a sanction determined by a sub-panel is that "credible fresh evidence has become available, *which could not reasonably have been presented before the sub-panel made its decision* [emphasis added] and which, if accepted, has a real prospect of affecting the outcome". It is important to stress the requirement that such evidence should not be admitted in an appeal where it could have been presented below. That is a common provision in appellate structures. It acts to prevent appellants seeking to alter or extend the nature of their case, having lost at first instance. Every party has an obligation to put forward their full case at the first relevant hearing. That is an obligation which the IEP will take seriously.
- 3.17 We considered the report of Ms Lurie in order to determine whether there was fresh material which could not have been brought before the sub-panel below,

and whether the report might have a real prospect of affecting the outcome. The report considers the background and psychological history of the Respondent, considers his current mental state and addresses the impact of the requirement to make a public apology. One major point made in the report is that the mental state of the Respondent, for reasons which it is not necessary to detail here, is markedly better than it was a year ago. There is no evidence to suggest this is a very recent development: rather the contrary. There is no evidence in the report to substantiate the suggestion that matters have changed in any material way since the beginning of March. In the course of the hearing, the Respondent was asked directly whether there had been a “further development ... of his condition since 8 March 2021”. He gave no evidence that there was.

3.18 This report could have been obtained before the first hearing. There is nothing in the content which could not have been elicited then. It falls at the first hurdle for the admission of fresh evidence on an appeal. It should not have been proffered in the way it was, on the unfounded assertion of relevant developments after the first hearing. That would be sufficient to deal with this point. However it is relevant to add that we found nothing in the report which, had it been accepted in evidence, and fully analysed, would have altered the outcome.

3.19 We also note the following. The IEP was aware that the Respondent had consulted one of the doctors provided by the House medical service. That doctor indicated he was in a position to provide a report. Once the IEP was informed that the Respondent sought to introduce expert evidence, the Respondent was asked to consent to a report from the House doctor. He withheld that consent.

### **The other grounds**

3.20 We have summarised the criticisms advanced above. The Respondent’s case is that he was under great pressure at the time, in part for personal reasons which he explained to us. In his public role, a number of real pressures had arisen. Brexit and serious flooding in his constituency both gave rise to serious

difficulties for him as the local MP. The Respondent is 6'9" tall and thus very conspicuous in the street, in his local shops. He found himself under repeated attack by members of the public on both these grounds. He emphasised to us how such attacks could be extremely vicious. Against that background, the advent of the pandemic added another layer of pressure. It was in that context that his frustration with the technical problems associated with a remote meeting caused him to be so angry. Nevertheless, he emphasised that he had never set out to bully anyone and did not wish to bully anyone.

3.21 The Respondent also emphasised the steps he had taken in response to the complaints. He had considerable support from his constituency party. They had recognised that he was under strain. Through the constituency party he had engaged with a specialist in psychological matters and, as one of the results, the two of them are writing a book on emotional intelligence. He had thought deeply about these matters since. He recognised what he should have done in the face of the frustrations of that day. He should have learned how to let go, instead of which he "panicked". He had also given up alcohol, and felt much better for that. He had entered into a new relationship which was stable and supportive. He had also apologised to the two complainants.

3.22 In essence, the Respondent's complaint is that the sub-panel below did not sufficiently reflect these circumstances. Despite advice from at least one senior MP, he saw the requirement to make a public apology as a humiliation, and could not accept it as being justified. He feared that media reports of the apology would distort and exaggerate its meaning and effect. The message would be "Kawczynski is a bully". He said that he was not a bully.

### **The test**

3.23 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, 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. 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.

### **The criticisms of the sub-panel below: our conclusions**

- 3.24 As the sub-panel below pointed out in paragraph 2.10 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.<sup>1</sup> They are:
- a) the sanction should reflect the impact of the conduct on the complainant
  - 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.
- 3.25 The first two principles are plain in their meaning. The third may have different outcomes in different cases. Where a Respondent 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 such like. By contrast, where a Respondent has demonstrated no insight, or a limited understanding, of what has transpired, then this principle is likely to indicate a rather different approach to 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

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

has happened. Experience suggests that such attitudes are not binary, but lie along a spectrum.

- 3.26 It is right to keep in mind the significance of behaviour in breach of ICGS policies for the reputation of Parliament, as emphasised by Dame Laura Cox DBE in her independent enquiry report<sup>2</sup>. It is worth quoting one or two passages from the report relevant to this case:

*147. It is difficult to overstate the impact that the existence of all these allegations [of bullying] has on the level of respect for Members and the authority of the House of Commons as a whole, or the damage being done to its dignity and standing and to public confidence in our Parliament. ...*

*149. The 'non-deskbound' services and those with operational functions feel that they bear the brunt of this behaviour, though the allegations of this pattern of behaviour came from those working in other teams too; "It is as though we are invisible to some of them. We are generally ignored unless there is a problem and then we will be screamed or shouted at, usually in front of people. It is very upsetting". ...*

*158. Some of the most serious allegations related to the conduct of some MPs ... when working on Select Committees.*

*159. The staff working with those Committees will source and analyse evidence, advise the Chair and Committee members and generally manage the process of inquiries so as to enable the Committee's work. Regrettably, this work has resulted in reports of some completely unacceptable behaviour. Some Members are said to "cross the line between an acceptable level of rudeness and strong-arm tactics, humiliation or intimidation," ...*

*162. ... The lack of support when something goes wrong is particularly wounding given the strong professional ethic, among Clerks in particular, that they should be "seen but not heard" and should "always provide seamless support," whatever the provocation. These traditional functions "suppress any 'fight or flight' response in relation to the behaviour of some Members ... our job is to secure the process of business, so when publicly subjected to humiliating abuse, we stay quiet, we try and smooth things out, we don't confront at the time, but we pay a ransom". ...*

*164. In general, resilience and fortitude in the face of unacceptable behaviour, together with not making a fuss or creating difficulties for senior*

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<sup>2</sup> Dame Laura Cox DBE, [The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report](#), 15 October 2018

*colleagues, are seen as valued competencies. The ability of employees to cope with such behaviour is seen as "a significant route to promotion" or as a "badge of honour".*

- 3.27 There can be no doubt that the impact of the conduct in this case on the Complainants was significant, with legitimate concerns raised regarding professional reputation and future career. The Complainants and other Parliamentary staff who were subjected to the Respondent's conduct felt that this whole episode was noteworthy by the vehemence and persistent nature of the Respondent's actions. As they recited in paragraph 2.12 (a) and (b) of their decision, the sub-panel below reached a clear view on the nature of the conduct and its impact. We see no basis for concluding that they misunderstood or misapplied this principle in any way.
- 3.28 In paragraphs 2.12 and 2.13 of their decision, the sub-panel below 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. In particular, (see paragraphs 2.16 and 2.17 of their decision) we consider they judged the level of insight and contrition shown by the Respondent with accuracy. We have noted above the fact that the Respondent indicated to us that he wished he had appealed the conclusions of the Commissioner, suggesting that he still thinks what he did could not properly amount to a breach of the Policy. It was also noteworthy that in the very last phase of his oral remarks to us he emphasised a number of points which clearly in his view defined what had happened. He emphasised that he had "at no stage used inappropriate language", he had never raised his voice, he had repeatedly asked for help and he had panicked. He had never bullied anyone. We ourselves were left with the clear impression that he still had not fully accepted the nature and extent of what he had done.
- 3.29 In his written submissions, the Respondent submitted that "the panel reached contradictory conclusions as to the appellant's remorse". We reject that criticism specifically. In our view, it is the Respondent who has expressed contradictory attitudes to what he did.

- 3.30 We accept that the Respondent had faced a number of personal difficulties at the time in question. The sub-panel below properly took this into consideration as a mitigating factor.
- 3.31 We fully grasp that the life of an MP can be highly pressurised, and we accept that the circumstances which arose on 27 April 2020 were difficult. But they were difficult for everyone, as common sense would have told the Respondent. While the particular characteristics of an MP's life are unique, the level of pressure upon them is not. Many public servants bear comparable levels of pressure, whether in the military, the emergency services, the senior civil service or the judiciary, and in this instance, as staff in the House of Commons. The responsibilities and stresses of being an MP do not justify a loss of courtesy, an exaggerated sense of importance or entitlement, or bullying.
- 3.32 For these reasons, this appeal is dismissed. Our conclusion is that the determination of a requirement to make a public apology on the floor of the House was proper and proportionate, and it is sustained.
- 3.33 We have set out in a separate document for the Respondent the points that we require to be included in his apology.