

Independent Expert Panel

Chair, Sir Stephen Irwin

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Website: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel>

Rt Hon Jacob Rees-Mogg MP
Leader of the House and Lord President of the Council
House of Commons

25 February 2021

Dear Jacob,

Thank you for meeting me and for the support you have shown for the Panel in commencing our work. I am writing to follow up on some of the issues that we discussed on sanctions, confidentiality and the tabling of motions implementing sanctions on Members of the House. I am aware that the Chair of the Standards Committee, Chris Bryant MP, has also written to you on these points.

Sanctions

The Panel welcome the proposals made by the Committee on Standards in its report of July 2020 on Sanctions in respect of the conduct of Members. We would like clarity on the range of sanctions at the Panel's disposal and that the Panel can, on referral or following an appeal, determine those sanctions that might otherwise fall within the Commissioner's power to impose. This will enable the Panel to determine proportionate sanctions, or mix of sanctions, that reflect the impact of the conduct on the complainant or reporter and the nature and extent of the misconduct proved. It will also support our principled approach that, where possible, sanctions should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community.

In discussion with the Committee on Standards, I suggested that one can usefully distinguish four categories of sanction in terms of their impact on the capacity of MPs to carry out their duties:

1. Sanctions that do not in any way interfere with the functions of an MP
2. Sanctions that interfere with functions of an MP but not core functions
3. Sanctions which interfere with core functions but reflect the nature of the offence, e.g. non-participation in select committee visits if there has been previous inappropriate behaviour on visits
4. Suspension or expulsion, which of their nature interfere with core functions.

I consider that sanctions in the latter two categories should be imposed only by the House, following a determination of sanction by the Panel. I am happy to be guided by the House authorities on the question whether an individual sanction would interfere

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with a Member's core functions. In practice, I would expect the Secretary to the Panel to seek the views of the senior clerks and advise the Panel on the category into which a proposed sanction falls. The Panel will take this advice into account, but we must of course act independently in deciding what sanction to determine in each individual case.

Confidentiality

The success of the ICGS is dependent on confidentiality being maintained during the course of an investigation, decision and appeal. We recognise the importance of confidentiality to the parties to the case and the damage that can be done if information about a case is leaked. We have agreed processes to ensure that we hold information securely and we remind the parties of the continuing need for confidentiality in our correspondence with them.

However, it is apparent that allegations in many cases have been given publicity, either by one of the parties to the case or by one of their supporters. There is a risk that information given to the media or placed online through social media may not be accurate. Members are currently unable to correct misinformation concerning reported allegations and as things stand at present, neither the Commissioner nor I as Chair of the Panel can do so.

Where there is speculation in the media or online, it appears to me to be unfair and likely to mislead if we cannot confirm that there has been a complaint and that there is an ongoing process that will be concluded. It will foster the impression that cases are being buried and there is never an outcome. It will likely be taken to mean that we are window-dressing. That would be wrong for the reputation of Parliament, the Panel and the Commissioner. It is also an incentive to further leaks.

I would ask you to consider whether, in such circumstances, the Panel should not confirm that there is an appeal or referral, and state that an outcome will be announced in due course.

Following the conclusion of a case before the Panel, I will make a report to the House in all cases where a sanction has been determined that can only be imposed by the House. I intend also to publish a report in most cases where a breach of the bullying and harassment policy or sexual misconduct policy has been upheld, and where a complaint has not been upheld but the allegations have already been given publicity. If it had been reported in the papers that someone had been accused of something serious and they had been completely exonerated, it seems unfair that there should be no public acknowledgement of this. By contrast, where a complaint has not been upheld and confidentiality has been maintained, I do not envisage publishing a report since to do so might cause unnecessary damage. In such a case, it may become

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necessary to confirm the outcome publicly at a later stage if there is a subsequent leak.

The Panel have formulated the principles which will apply to all our work – observance of natural justice, fairness for all parties, transparency, proportionality, and the need to protect potentially vulnerable people. These are not mere pieties, and I will approach the question of publication of a report with these principles in mind.

Tabling motions to implement sanction

I understand that there has been a very helpful convention that where the Committee on Standards recommends a suspension, that motion is tabled quickly. I am keen that this convention be maintained. As I know you will understand, any delay in bringing forward a motion to implement a sanction that had been determined by the Panel might also be thought to reflect on the independence and effectiveness of the Panel and on confidence in the ICGS.

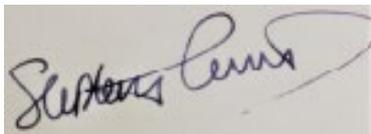
You indicated during our meeting that you would be prepared to commit, so long as you are Leader of the House, to bringing forward such motions in a timely way. I am very grateful for this. I would hope that future Leaders of the House will demonstrate a similar commitment. I would otherwise be driven to look for a more formal mechanism, such as a change to standing orders, to ensure that a sanction determined by the Panel is put before the House without delay.

Guidance

We have prepared guidance for the parties, setting out how cases will be managed. This is available on our webpages.¹ I would be happy to answer any questions you might have about our approach.

I am most grateful for the helpful and constructive start to our relationship.

Kind regards,

A handwritten signature in black ink, appearing to read 'Stephen Irwin', written over a light-colored rectangular background.

Sir Stephen Irwin

Chair of the Independent Expert Panel

¹ <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/>



LORD PRESIDENT OF THE COUNCIL
LEADER OF THE HOUSE OF COMMONS
THE RT. HON. JACOB REES-MOGG M.P.



The Rt. Hon. Sir Stephen Irwin,
Chairman, Independent Expert Panel
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Thank you very much for meeting me last month and for your subsequent correspondence of 25 February. I am delighted that you have assumed the role of Chairman of the Independent Expert Panel and are making progress to establish the Panel in earnest.

Sanctions

As you mention, I have also corresponded with the Chairman of the Committee on Standards on many of the matters you raised. I welcomed your proposed categorisation of sanctions in terms of their effect on the capacity of MPs to carry out their duties. Thank you for your sensible suggestion, I agree with this approach.

It is constitutionally essential that services that are core to a Member's parliamentary duties should only be able to be withdrawn by a decision of the House. Therefore, may I reiterate the view I set out to the Committee that the Panel should err on the side of caution and listen to advice from senior clerks about which sanctions would interfere with a Member's core functions and thus should only be imposed by the House.

Confidentiality

Thank you for setting out your views of the confidentiality system and your thoughts on how it might be improved. It is vital to ensure confidentiality in the ICGS system, given the sensitive nature of the cases with which it deals. In light of this, I believe it important that the Panel be further established before any changes to its confidentiality arrangements are considered or additional powers are afforded to the Panel to make public statements about cases.

Nevertheless, I acknowledge that the current confidentiality system may not have the balance right in ensuring confidentiality whilst also demonstrating that cases are being resolved, which will increase confidence in the scheme. I am grateful to Alison Stanley for her thorough review of the ICGS published last month and her consideration of this issue. In particular, she recommended that the employers of both Houses agree to a method of communicating that there have been consequences of upheld ICGS complaints in disciplinary proceedings, without breaching confidentiality. I look forward to Ms Stanley's recommendations being considered by the Houses.

Tabling motions to impose sanctions

I appreciate the importance of reports from the Panel recommending a sanction for approval being put before the House without delay. However, I am of the view that a formal mechanism would unduly limit the House's arrangements which are deliberately flexible in order to respond to the exigencies and priorities of the day.

I am willing to commit that I, as Leader of the House of Commons, will bring forward such motions to the House without delay in all normal circumstances. It is only right that such serious matters should be dealt with expeditiously. I hope that this commitment will alleviate your concerns about this matter.

Guidance

Lastly, I would like to thank you for producing useful guidance on how the Panel will conduct its investigations. I particularly welcome the section setting out the advice and support that parties involved in cases referred to the Panel can receive. It is important that those involved in the Panel's cases are aware of the support that they can seek from family members, friends or colleagues.

Thank you for your time and rapid work to set up the Panel. It is reassuring that the Panel has already made such progress, including starting to resolve cases and producing the guidance. I am also grateful for your clarifications concerning the sanctions available to the Panel and hope that I have been able to provide you with comfort on the matters of confidentiality and tabling motions to impose sanctions.

The work of the Panel is of the utmost importance and I look forward to continuing to work with you.

With every good wish,

Yus Anwar,
Jack Lewin