

Committee on Standards in Public Life

Standards of Conduct in the House of Commons



Issues and Questions Paper

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

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PART 1 INTRODUCTION

1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major. Its terms of reference are:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

For these purposes, public life should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.

1.2 On 12 November 1997, the present Prime Minister, the Rt Hon Tony Blair MP, announced additional terms of reference:

To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.

The Committee has published seven reports. They are listed at Appendix G.

1.3 Since March 2001, the Chair of the Committee has been Sir Nigel Wicks. Other members of the Committee are Ann Abraham, Professor Alice Brown, Sir Anthony Cleaver, Rita Donaghy OBE, Lord Goodhart QC, Frances Heaton, the Rt Hon Lord MacGregor of Pulham Market OBE, Rabbi Julia Neuberger, and the Rt Hon Chris Smith MP.

The scope of the present inquiry

1.4 The inquiry will focus on the present arrangements governing standards of conduct in the House of Commons. We will examine

whether the arrangements and their implementation are sufficient to assure the public that the highest standards of propriety are being upheld.

1.5 The present arrangements stem from the recommendations of this Committee's First Report. Following its publication in 1995, the House of Commons adopted a Code of Conduct (which incorporated the Seven Principles of Public Life), developed new disciplinary procedures, including the appointment of a Parliamentary Commissioner for Standards, and sought to clarify the rules governing the ban on paid advocacy. In the seven years since the First Report, there have been three occupants of the post of Parliamentary Commissioner for Standards.

1.6 In our Sixth Report, published in January 2000, we made further recommendations about the disciplinary procedures in the House of Commons, focusing particularly on the handling of contested allegations of serious misconduct and the rules relating to the ban on paid advocacy. Those recommendations, and the response from the Committee on Standards and Privileges of the House of Commons, can be found at Appendix A.

1.7 With one or two exceptions, the recommendations in our Sixth Report were not accepted by the Committee on Standards and Privileges. The procedure for handling contested allegations of serious misconduct has remained unchanged.

1.8 The broader constitutional environment has changed markedly since 1995. The principal relevant changes are:

- the devolution of powers to representative institutions in Scotland, Wales and Northern Ireland (with each devolved institution developing its own arrangements for the regulation of the conduct of its members); and
- the incorporation into domestic law of the European Convention on Human Rights under the Human Rights Act 1998.

Purpose of consultation paper

1.9 Against that background, the Committee will be considering afresh in this inquiry the main features of the disciplinary arrangements in the House of Commons. We will, too, draw on comparative material with other legislatures and public bodies where appropriate. The purpose of this issues and questions paper is to seek evidence and views. The paper sets out the main issues which seem most relevant at this stage, but the full scope of the inquiry will depend on the evidence received. The Committee does not consider itself restricted to the questions asked here.

1.10 Respondents are encouraged to set out fully the reasons in support of their views. Where respondents are unsatisfied with present arrangements, they are encouraged to describe how the arrangements in question should be amended, or by what they should be replaced.

1.11 In the Part 2, we consider the need for a regulatory procedure and the means by which it is best achieved. Part 3 looks in greater detail at the existing system and the issues that have arisen. The sections of Part 3 are as follows:

- the Code of Conduct for Members of the House of Commons and accompanying guidance;
- the restrictions on outside influences, including the advocacy rule;
- the compliance process, including: the roles of the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards; the investigation and adjudication of complaints.

How to submit evidence

1.12 The Committee would welcome written submissions on any or all of the subjects raised in this consultation paper. For ease of reference, the questions are set out in full on page 21. The Committee appreciates that some questions can only be answered by those with specialist knowledge or experience. There is no need for respondents to answer every question or to confine submissions to the specific issues in the paper.

1.13 Respondents should note that **the Committee's terms of reference specifically preclude it from investigating individual cases or specific allegations of misconduct. Nor has the Committee any powers to require others to do so.** But the Committee may take account of information on material cases in formulating its recommendations.

1.14 All submissions, with the exception of those that appear to the Committee to be defamatory, will be deposited in the Public Record Office following publication of the report and may also be published with the report. Respondents who want to make their submissions public at the time they send them to the Committee are, of course, free to do so on their own responsibility. Any respondents who would prefer their submissions to be treated as confidential should state this clearly and their wishes will be respected.

1.15 Submissions and further evidence in response to this paper should be sent to:

**The Committee on Standards in Public Life
35 Great Smith Street
London SW1P 3BQ**

Alternatively, they can be e-mailed to us at the following address: nigel.wicks@gtnet.gov.uk

The closing date for submissions is **3 May 2002**.

1.16 Further copies of this document may be obtained free of charge from the Committee by telephoning 0800 692 1516. It may also be accessed, along with other Committee publications, via the Committee's Internet site: www.public-standards.gov.uk

More information about the Committee can be found at the same address.

Public hearings

1.17 In addition to receiving written evidence, the Committee intends to hold a number of public hearings. These are likely to begin in May. The Committee regrets that it is unlikely to be possible to invite every respondent who expresses an interest in giving oral evidence to participate in the public hearings.

PART 2 REGULATING STANDARDS OF CONDUCT

WHY IS A SYSTEM OF REGULATION NEEDED?

- 2.1 Members of the House of Commons hold one of the highest forms of public office in the country. This position at the very centre of our country's governance gives them a duty to promote by personal example and leadership the highest standards of propriety. In the words of their Code of Conduct, Members of the House of Commons are required *"to act on all occasions in accordance with the public trust placed in them."*
- 2.2 In its First Report in 1995, the Committee sought to sustain trust in public office holders by establishing in the Seven Principles of Public Life a clear and succinct statement of the principles which should underpin public life. Over the last seven years this statement has become widely adopted in public life. For example, the Seven Principles are set out in the latest edition of the Ministerial Code and in the Code of Conduct for the House of Commons. The Principles are designed to ensure that everyone in public life knows what is expected of them. They also serve to tell the public how they should expect public office holders to behave.
- 2.3 The Seven Principles are necessarily written in general terms. Their application and enforcement require a system of regulation. In particular, such a system needs, among other matters, mechanisms whereby the required behaviours set out in the Seven Principles are translated into practical guidance for holders of public office on how they should behave in carrying out their public duties. The system of regulation also needs effective procedures whereby an office holder can seek advice about the effect of the regulation, complaints about an office holder's behaviour can be investigated, the findings of any investigation can be considered and, if necessary, sanctions can be applied.
- 2.4 Such systems of regulation can be founded on law; they can rest on an informal basis; or they can include both formal and informal elements. For their enforcement, they can have recourse, either wholly or in part, to independent or lay officers and institutions, including the courts, or they can rely either wholly or in part, on a self-regulatory process whereby enforcement is effectively in the hands of the members of the public institution.
- 2.5 But whatever the mechanisms and procedures for enforcing systems of regulation, they are likely to fail if the 'culture' of the public institution, that is, the values, attitudes, and beliefs of its office holders, does not support the highest standards of propriety. To that end, the Committee in its First Report emphasised the importance of guidance, education and training so as to promote and reinforce ethical standards in every public body.

BACKGROUND TO THE PRESENT SYSTEM IN THE HOUSE OF COMMONS

- 2.6 Broadly speaking, in the last forty years or so, concern about standards issues in the House of Commons has focussed on issues relating to paid advocacy and registration and declaration of interests. These three elements – paid advocacy, registration and declaration – are described in Boxes 1 and 2.

Box 1: Paid Advocacy

The question whether Members of Parliament should be permitted to act as paid parliamentary consultants, advisers and lobbyists for outside clients was the greatest current concern about the independence of the House at the time of our First Report.

The First Report recommended that Members should be prohibited from entering into any parliamentary consultancy agreements with organisations that provided parliamentary services to multiple clients.

The House went further in that it decided to ban all paid advocacy (regardless of type of organisation). Paid advice was however acceptable, provided it was registered and declared.

The House also accepted our recommendation that any employment agreements and remuneration relating to parliamentary services should be disclosed, indicating in a range of bands the fees or benefits payable.

Box 2: Registration and Declaration

No matter how great the propriety of individual MPs, it is unlikely that they can avoid entirely having financial or other material interests which may influence – or may be thought to influence – their conduct. The solution has been the development of an approach which indicates Members' relevant interests so that the public and others may make a judgement about their conduct and action may be taken if a conflict of interest is alleged.

In parliamentary terms, the main mechanism is the disclosure of interests by registration and declaration.

Disclosure serves two purposes:

- To indicate those personal interests which might reasonably be thought by others to influence a Member in his or her conduct; and
- To indicate those personal interests which demonstrate a Member's particular involvement in the subject being debated.

A **register of interests** provides a consolidated and published point of reference. It enables fellow legislators, members of the public and the media to see what financial or other material interests a Member has.

Declaration of interests governs the actions of a Member while actually taking part in the parliamentary process. For example, during a debate, a Member should declare his or her relevant financial or other material interests.

- 2.7 Very few complaints were made against Members in the 1970s and 1980s but several cases in the 1990s put the system under severe test. This Committee was established in 1994 to review arrangements in general for standards of conduct amongst public office holders, including Members of Parliament.
- 2.8 The Committee's First Report was published in May 1995. A major part of the Report included recommendations intended to address the perceived fall in standards of conduct of MPs. The main changes proposed were a ban on paid multi-client consultancies and a Code of Conduct underpinned by the creation of the post of Parliamentary Commissioner for Standards (see Box 3 for more detail). The recommendations were considered by a select committee of the House of Commons, and that committee's reports to the House were debated and approved by the House in 1995. By July 1996, the new machinery for dealing with standards of conduct of MPs was in place.

Box 3: Recommendations from the First Report, and the final system of regulation agreed by the House of Commons

The First Report covered several groups of public office holders but the sections relating to the House of Commons have been described as "*a landmark in the development of parliamentary standards regulation*".¹ The key recommendations were as follows:

- A new code of conduct for MPs.
- The appointment of an independent Parliamentary Commissioner for Standards, by analogy with the Comptroller and Auditor General, who would maintain the register and investigate allegations of misconduct.
- A new sub-committee of the Committee of Privileges would hear cases where the Commissioner recommended further action.
- A ban on Members acting as consultants to multi-client lobbying firms.
- Full disclosure of consultancy agreements and payments, and of trade union sponsorship and payments.
- A more informative and detailed Register of Members' Interests.

The House referred our Report to a specially constituted select committee – the Select Committee on Standards in Public Life – whose recommendations differed from ours significantly in two respects:

- It rejected the creation of a separate sub-committee of the Privileges Committee, with an appeal to that Committee, preferring the establishment of a new committee which would deal with all stages of an investigation;
- It adopted a more radical solution to the question of consultancies and prohibited Members from paid advocacy.

By the end of 1995, the House had debated and approved the special Select Committee's two reports. The Standing Order creating the new Committee on Standards and Privileges, which was to oversee the new arrangements, was made on 15 November 1995. The first Parliamentary Commissioner for Standards, Sir Gordon Downey, was appointed in December 1995. The new Code of Conduct for Members was approved in July 1996.

¹ *Parliamentary Standards*, Oonagh Gay, House of Commons Library Research Paper 01/102, November 2001. Much of the historical background to the present system that is set out above has been drawn from this authoritative account.

Developments since 1996

- 2.9 There have been a number of developments since 1996 which are especially relevant to our current inquiry. As we recorded in our Sixth Report in January 2000, the prevailing view was that the reforms implemented following the First Report were in general working well, largely because the number of parliamentary consultancies was substantially reduced. But it was considered that the case involving Mr Neil Hamilton² had tested the ability of the House of Commons to deal with serious, contested allegations.
- 2.10 The Committee therefore concentrated in the Sixth Report on making recommendations for a new form of internal disciplinary tribunal where a complaint was serious and contested by the Member. We also suggested an appellate stage for such cases, possibly a retired senior appellate judge sitting alone.³ The Chairman of the Standards and Privileges Committee, in correspondence with our Chair in July 2000, rejected the recommendations on handling serious, contested cases, both at first instance and on appeal.
- 2.11 Since taking evidence for our Sixth Report in 1999, we have observed the impact of further difficult cases. We should emphasise that these are a minority of the cases handled by the Commissioner and the Select Committee. There have been suggestions that some of these cases provide evidence of differences of approach between the Committee and the Commissioner in cases where her findings were not supported by the Committee.
- 2.12 In October 2001, the House of Commons Commission, which has responsibility for the appointment of the Commissioner, announced that an open competition was to be held for the post. The then Commissioner, Ms Filkin, would be eligible to apply and in the event of wishing to do so, would be placed in the final short list.⁴ In November 2001, she announced her decision not to reapply. In February 2002, the House appointed Mr Philip Mawer as her successor, with effect from the beginning of March.

The emerging issues

- 2.13 The system for regulating standards of conduct in the House of Commons is self-regulatory. Parliamentary self-regulation derives from the ancient tradition of parliamentary privilege: the exercise of exclusive cognisance. This refers to Parliament's right to exercise control over its own affairs without outside interference. This is a right which Parliament has zealously guarded.
- 2.14 The roots of this right lie deep in the history of the House of Commons. However, the point is of more than historical interest. The strong preference within Parliament for a standards procedure that does not break the principle of self-regulation has affected the evolution of the structure and approach of the present system.
- 2.15 By contrast, the Scottish Parliament and the National Assembly of Wales are founded on statute and do not have the equivalent of parliamentary privilege. They are required by the Devolution Acts (the Scotland Act 1998 and the Government of Wales Act 1998) to deal statutorily with Members' interests.
- 2.16 The present system in the House of Commons has now been in place for almost six years without major amendment. Questions have however been raised about whether the current system of self-regulation is adequate in a time when standards procedures in other parts of public life (and in parts of the private sector too) increasingly include independent elements. An element of independent scrutiny, once a relatively new phenomenon, is now widely recognised as being best practice for compliance processes. The recommendations in this Committee's Sixth Report, which suggested an external independent element in the adjudication of '*serious contested cases*', were however rejected by the House, in part because they were perceived as breaking the principle of self-regulation.
- 2.17 Against this background, it is appropriate to review the position and invite evidence as to current concerns. This inquiry should not however be seen as making a judgement about

² In 1996, the Speaker asked the Parliamentary Commissioner for Standards to investigate allegations made by *The Guardian* newspaper about 25 Members and former Members, including Mr Hamilton. Mr Hamilton disputed the findings of the Commissioner, and the Committee on Standards and Privileges concluded that the inquiry highlighted the need for it to assess its own role in relation to inquiries conducted by the Commissioner. In particular, it was thought necessary to consider whether there could be an appeal against the Commissioner's findings or the conclusions of the Committee.

³ We also suggested some amendments to the paid advocacy rule and made recommendations about the composition of the Standards and Privileges Committee.

⁴ Written Answer, *Hansard* (HC) 18 October 2001, col 1285W

standards of conduct in the House of Commons. In our First Report, we stated that “we believe that the great majority of men and women in British public life are honest and hard working, and observe high ethical standards”.⁵ This was reinforced in the Sixth Report, which noted the generally very high standards in this country.⁶ Nevertheless, we believe, too, that the public has high expectations and it is important that the system for regulating standards of conduct in the House of Commons enjoys a high level of public confidence.

QUESTIONS

- Q1. What current concerns do you have in relation to standards of conduct of MPs, and to what extent are these different from those identified in 1994?**
- Q2. How far does the present system of regulation in the House of Commons, which to a large extent is based on self-regulation, meet current concerns?**

⁵ First Report, Committee on Standards in Public Life, Cm 2850, May 1995, para 2. (Hereinafter referred to as ‘CSPL First Report’.)

⁶ Sixth Report, Committee on Standards in Public Life, Cm 4557, January 2000, para 2.13. (Hereinafter referred to as ‘CSPL Sixth Report’.)

PART 3 THE EXISTING SYSTEM

CODE OF CONDUCT

The background

3.1 In our First Report, we recommended that the House of Commons should have a Code of Conduct to ensure that new MPs were fully aware of all the rules on conflict and disclosure of interest by setting out general principles governing the ethical conduct of Members, supplemented by more detailed guidance.⁷ In July 1996 the House of Commons adopted a Code of Conduct (set out in Appendix B). It was the first time that the rules governing the conduct of Members of Parliament had been set out in a single document.

3.2 The Code is a collection of broad ethical prescriptions which are accompanied by 73 detailed paragraphs entitled *The Guide to the Rules Relating to the Conduct of Members*.⁸ The guide has four parts:

- registration of interests
- declaration of interests
- the advocacy rule
- the complaints procedure.

Registration of interests

3.3 The register of interests, described in detail in the Guide to the Rules Relating to the Conduct of Members, is wide-ranging. The main purpose is

*...to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament.*⁹

3.4 The register includes 10 categories of registrable interests: directorships; remunerated employment, office, profession, etc; clients; sponsorships; gifts, benefits and hospitality; overseas visits; overseas benefits and gifts; land and property; shareholdings; and a catch-all category called ‘miscellaneous’.

3.5 Only remunerated interests or material benefits have to be registered: non-financial interests such as charitable interests or membership of professional associations do not have to be disclosed, though many Members choose to do so. A few categories require disclosure also of certain interests of Members’ spouses but not other partners, relatives or friends, as some other Codes of Conduct in the public sector do.¹⁰

3.6 In listing remunerated interests or material benefits, Members are not required to quantify the amount involved. The exception is employment agreements.¹¹

Box 4: Employment agreements

Employment agreements cover an arrangement whereby a Member receives a fee or benefit in return for the provision of services in his or her capacity as a Member of Parliament. A copy of the agreement has to be deposited with the Parliamentary Commissioner for Standards, showing the amount earned in bands of £5000 (after an initial band of £1000).

The term ‘parliamentary services’ is taken to include frequent commitments outside Parliament which arise directly from membership of the House e.g. a regular paid newspaper column or television programme. This rule has sometimes produced difficulties of interpretation.

⁷ CSPL First Report, paras 86-89

⁸ *Guide to the Rules Relating to the Conduct of Members*, House of Commons, July 1996, HC 688

⁹ *Ibid.*, para 9

¹⁰ For example, the proposed Code of Conduct in the House of Lords and the Model Code of Conduct for local government councillors.

¹¹ *Guide to the Rules*, op. cit., paras 35-42

3.7 The register is regularly updated by Members with the assistance of the Registrar of Members' Interests, an officer of the House working in the Office of the Parliamentary Commissioner for Standards. It is publicly available on the House of Commons website.¹²

Declaration of interests

3.8 By a Resolution of the House of Commons in May 1974, a long-standing convention of the House was replaced with the following rule:

*In any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.*¹³

3.9 The rule on declaration of interests is wider than the rules governing the registration of interests in that it covers past and future interests and benefits as well as those which are current. In determining whether an interest or benefit should be declared, the same basic test as applied to the registration of interests is used: namely, that it should be declared "if it might reasonably be thought by others to influence the speech, representation or communication in question".

The emerging issues

3.10 In July 2000, the Committee on Standards and Privileges issued to Members a consultation document proposing a number of changes to the conduct rules.¹⁴ In March 2001, it issued a further report summarising the responses and the Committee's resulting recommendations.¹⁵ The Committee's recommendations were intended to "lead to a more robust and less complex system for the registration and declaration of Members' interests".¹⁶

3.11 Amongst the broader issues addressed in the Standards and Privileges Committee's report are:

- the view that the Code of Conduct does not seek to regulate what Members do in their purely private and personal lives;

- the purpose of registration is openness and an entry in the register should not be taken, either by Members or the media, to imply any wrongdoing;
- the problem of frivolous or vexatious complaints to the Commissioner.

3.12 The House has not yet debated the report. Without wishing to pre-empt its conclusions when it does so, we think it useful to keep the issues in view during our own consultation process.

3.13 A further development has been the statutory requirement on Members to make certain disclosures to the Electoral Commission under the Political Parties, Referendums and Elections Act 2000. There may be a risk of confusion and overlap in having two different systems of registration with which Members have to comply.

3.14 In this section, we have concentrated on the issues surrounding registration and declaration of interests. We consider below the issues surrounding the ban on advocacy and the procedure for making complaints, which also form part of the Guide to the Rules.

QUESTION

Q3. Are the provisions for registration and declaration of the interests of MPs clear and satisfactory?

¹² www.parliament.uk/commons/hsecom.htm

¹³ Ibid., para 37. This also mentions some small amendments to the 1947 Resolution made in 1975, 1992 and 1995.

¹⁴ Consultation on Proposed Amendments to the Rules Relating to the Conduct of Members, HC 710, Session 1999-2000

¹⁵ Proposed Amendments to the Rules Relating to the Conduct of Members, HC 267, Session 2000-01. (Hereinafter referred to as 'S&P Committee Fifth Report'.)

¹⁶ Ibid., para 2

RESTRICTIONS ON OUTSIDE INFLUENCE

The advocacy rule

3.15 The Code of Conduct for Members of Parliament includes provision banning Members from paid advocacy.

3.16 Our First Report noted that the proportion of Members pursuing careers largely unconnected with Parliament had fallen, but that the proportion of Members whose outside employment arose directly out of their membership of the House had risen to a very significant level. The Committee pointed out that:

*... the consequence of the enormous growth in paid consultancy has been to create a real issue out of the distinction between paid advice and paid advocacy.*¹⁷

3.17 A Select Committee on Standards in Public Life was set up by the House to consider all the issues arising from the First Report. It thought that the objective should be to define as closely as possible those *actions* by Members which, because they gave rise to suspicions about the exercise – or attempted exercise – of improper influence, needed to be prohibited. As a result, the Select Committee proposed that the rules of the House should distinguish between paid advocacy in Parliament (which would be unacceptable) and paid advice (acceptable provided it was properly registered and declared). As a result, the House concluded in favour of a ban on paid advocacy.

Issues arising from the operation of the advocacy rule

3.18 *The Guide to the Rules Relating to the Conduct of Members* states that Members in receipt of a pecuniary benefit from an outside body may not *initiate* any parliamentary proceeding which relates specifically and directly to the interests of that body. Members may, however, *participate* in Parliamentary debates etc by speaking freely on matters which relate to the affairs of the outside body provided they do not seek to confer benefit exclusively on the body and provided that the pecuniary benefit they receive from the body is properly registered and declared.¹⁸

3.19 Our Sixth Report returned to the issue of advocacy in the light of concerns that the practical operation of the ban was causing undesirable consequences. The Committee endorsed the ban on paid advocacy but noted that the rules as to its operation should not unnecessarily inhibit the ability of MPs to become well informed and to use their expertise and experience effectively. The Committee recommended (R10) that the rules should be amended so that those on ‘initiation’ took the same form as those relating to ‘participation’. The Committee on Standards and Privileges agreed only that there was a case for exempting overseas travel from the ban on initiation, and was reluctant to go further.¹⁹ The House has yet to consider any revision to the advocacy rule, and the position remains unchanged.

3.20 The Committee on Standards and Privileges has, however, returned to the matter by producing a consultation paper at the end of 2001 on the restrictions on the initiation of Parliamentary proceedings.²⁰ The Committee had received a number of representations indicating that the Members felt the rules were operating too harshly. Concerns had been raised that the restrictions were discouraging Opposition Members with specific expertise from feeling able to take front bench roles.

3.21 The paper of the Committee on Standards and Privileges sets out two options for reducing the effect of the restrictions on initiation, one of which is the recommendation from our Sixth Report. The Committee notes that, of the two options, it would prefer “*that put forward with the authority of the Committee on Standards in Public Life, which would be clearer and therefore easier to apply*”.²¹ Without wishing to pre-empt the conclusions of that consultation, we would be interested in views on the following question.

QUESTION

Q4. Is the advocacy rule operating satisfactorily?

¹⁷ CSPL First Report, para 47

¹⁸ *The Guide to the Rules Relating to the Conduct of Members*, para 58

¹⁹ S&P Committee Fifth Report

²⁰ *Restrictions on the Initiation of Parliamentary Proceedings: A Consultation Paper*, Committee on Standards and Privileges, Fourth Report, Session 2001-02 HC 478

²¹ *Ibid.*, para 13

Alternative approaches to restricting the effect of outside influence

3.22 Although the current approach relies on regulating the activities of MPs, the Committee has previously considered whether it might be appropriate to regulate the organisations which have contact with MPs.

3.23 The First Report of the Committee rejected statutory regulation for those who lobbied parliament, favouring instead the development of a system of self-regulation. The Sixth Report considered whether there was any reason to alter this view, but found none:

...the weight of evidence is against regulation by means of a compulsory register and code of conduct. Lobbyist regulation schemes can help make government more open and accountable, providing useful information about influences on decision-making. But we believe that the amount of information that could be made available through a register would not be proportionate to the extra burden on all concerned of establishing and administering the system. There is also still force in this Committee's original objection, that such a system could give the erroneous impression that only 'registered lobbyists' offer an effective and proper route to MPs and Ministers.²²

The Committee welcomed the steps that the lobbying industry had taken to strengthen their regulatory framework.

New developments

3.24 Since the publication of the Sixth Report there have been two major developments on lobbying:

- The Standards Committee of the Scottish Parliament has decided, after a two stage consultation process,²³ to recommend the introduction of statutory regulation for parliamentary lobbyists and enhanced guidance for MSPs in their Code of Conduct. The Convenor of the Standards Committee, Mr Mike Rumbles MSP, explained their reasons for pursuing this alternative path thus:

...we have recognised that lobbying is an integral and legitimate part of the democratic process. It is, in our view, imperative, however, that lobbying is carried out on a transparent basis in line with the parliament's core principles of openness and accessibility.²⁴

The report is likely to be debated by the Scottish Parliament later this year.

- The Code of Conduct to be introduced in the House of Lords continues to allow Members of the House to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy, and gives guidance on the registration of such interests.

QUESTION

Q5. Are there any new issues in the relationship between lobbyists and MPs since the Sixth Report which cause concern?

²² CSPL Sixth Report, para 7.28

²³ *Lobbying in the Scottish Parliament*, 26 October 2000; Statutory Regulation of Commercial Lobbyists, 1 June 2001.

²⁴ Final report, 8 February 2002 (Committee news release CSTAN 03/2002)

THE COMPLIANCE PROCESS

3.25 The Code of Conduct, and the detailed guidance that accompanies it, requires Members to register and declare their interests. To be effective the Code needs to be supported by a compliance process that both assists Members in complying with the Code and provides a rigorous but fair procedure if a breach is alleged.

3.26 Such a process is likely to have the following elements:

- *Induction* – helping new Members to understand the process
- *Advice* – to provide clarification and guidance to Members
- *Investigation* – a process for examining any alleged breach of the Code
- *Adjudication* – a process for considering the findings from the investigation and reaching a judgement
- *Sanction* – a process for deciding upon and imposing any penalties.

The critical questions are the extent to which these elements should be combined in one person or one body, the consequences of any overlap of bodies, and the degree of independence in the process.

The current process in the House of Commons

3.27 As set out in Box 3 above, the current process is the result of the recommendations made in our First Report, as modified subsequently in some respects by the House.

3.28 The main institutional elements in the process are:

- The Committee on Standards and Privileges
- The Parliamentary Commissioner for Standards.

Committee on Standards and Privileges

3.29 This is a select committee consisting of 11 Members.²⁵ The membership reflects the party political balance in the House. The Committee is currently chaired by a Member from the Opposition. This arrangement, which reflects a specific recommendation in our Sixth Report,²⁶ is intended to counter criticism that the Committee might be (or is perceived to be) partisan in a party political way.

3.30 The Standards and Privileges Committee meets generally once a week in private. It has the power to order the attendance of any Member before the Committee and to order the production of documents. Its role and powers are set out in Standing Order No 149 of the House (see Appendix C).

Parliamentary Commissioner for Standards

3.31 The Parliamentary Commissioner for Standards is a non-statutory post. The Commissioner is an Officer of the House who is appointed by the House and can only be dismissed by Resolution of the House.²⁷

3.32 To date, there have been three holders of the post. Sir Gordon Downey was appointed in November 1995 and retired in November 1998. Ms Elizabeth Filkin was appointed from 15 February 1999. Her appointment ended on 14 February 2002 and she will be succeeded by Mr Philip Mawer from the beginning of March 2002. The terms and conditions of the three appointments are set out in Appendix D.

3.33 In all cases, the appointment process was handled by the House of Commons Commission. This is the committee that is responsible for the management of the House, including appointment and management of almost all staff in the Departments of the House.²⁸ The interviews for the appointment having been conducted, the recommendation and its terms are laid before the

²⁵ The current membership is: Peter Bottomley, Russell Brown, Ross Cranston QC, Andrew Dismore, Michael Foster, David Heath, Tom Levitt, Kevin McNamara, Richard Ottaway, Rt Hon Alan Williams, Rt Hon Sir George Young (Chairman)

²⁶ CSPL Sixth Report, R8(b)

²⁷ The Parliamentary Commissioner for Standards is one of the principal permanent officers of the Commons. The others are the Clerk of the House, the Clerk Assistant, the Serjeant at Arms and Speaker's Counsel. The Clerk of the House and the Clerk Assistant are appointed by the Crown and the appointment of the Serjeant at Arms is in the gift of the Queen. *Parliamentary Practice*, Erskine May 1997, pp188-200.

²⁸ The House of Commons Commission was established by the House of Commons (Administration) Act 1978. The Act provides that the Commission shall consist of the Speaker, the Leader of the House, a Member of the House nominated by the Leader of the Opposition and three other Members appointed by the House, none of whom may be a Minister of the Crown. Its current membership is the Rt Hon Michael Martin, the Rt Hon Robin Cook, the Rt Hon Eric Forth, Archy Kirkwood, Stuart Bell and Sir Patrick Cormack. Parliamentary Questions to the Commission are answered once a month by the spokesman for the Commission (currently Mr Kirkwood). The Commission also produces an annual report. The 2000-01 report states that the Commission held nine meetings during the course of that financial year.

House so that the appointment can be made by Resolution. The House of Commons Commission – either directly or through its delegated powers – also determines the staffing and other resources available to the Parliamentary Commissioner for Standards.

3.34 The role and powers of the Parliamentary Commissioner for Standards are set out in Standing Order No 150 of the House (see Appendix E). The essence of the process is that although the Commissioner has a separate identity from the Committee on Standards and Privileges, he or she, in the absence of separate statutory authority, can operate only *through* the Committee. The viability of this arrangement is central to this inquiry and we return to the specific questions it raises below.

3.35 The Standing Orders focus on the remit and powers of the Committee and the Commissioner but are silent on how each should proceed in carrying out their remits. An account of the investigation and adjudication process was however set out in a report by the Committee on Standards and Privileges,²⁹ and subsequently in a memorandum by the Parliamentary Commissioner.³⁰ This is set out diagrammatically in Figure 1 below (para 3.56).

The emerging issues

3.36 This process has not changed fundamentally since its introduction in 1995 but difficulties have emerged in the past six years. Some, but by no means all, of these have been highlighted by individual cases of complaints against Members.

3.37 We see three central issues:

- The role of Members of Parliament as public office-holders
- The arrangements for independent scrutiny
- Aspects of the investigation and adjudication process

The role of MPs as public office-holders

3.38 Members of the House of Commons hold one of the highest public offices in the country. Any system of regulation they adopt should look both to the public and to the institution. First, the

system should reassure the public that MPs behave with propriety and do not misuse their positions in their own interest. Second, it should ensure consistency between MPs and provide clarity, so that they can fulfil their obligations honourably, while also dealing with any breaches that arise.

3.39 A Member of the House of Commons is also a member of a political party (with very few exceptions) and the elected representative of a constituency. Allegations of misconduct can threaten reputations both within the House, within a constituency and in the country at large.

3.40 The concern to provide a fair process to the individual Member was reflected in the 1999 report by the Joint Committee on Parliamentary Privilege (the Nicholls Committee).³¹ As part of its review, the Nicholls Committee considered the disciplinary and penal powers of Parliament. It concluded that some of the disciplinary procedures of the Committee on Standards and Privileges needed to be revised “*in the interests of fairness*”. The minimum standards of fairness were set out as:

- a prompt and clear statement of the precise allegations against the Member;
- adequate opportunity to take legal advice and have legal assistance throughout;
- the opportunity to be heard in person;
- the opportunity to call relevant witnesses at the appropriate time;
- the opportunity to examine other witnesses;
- the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.³²

The recommendations of the Nicholls Committee have been debated by the House of Commons but not by the House of Lords. Similar concerns about the rights of the individual Member have also arisen in the context of the Human Rights Act 1998.

3.41 As well as threatening the reputation of an individual, an allegation of misconduct against a Member may also have the effect of placing the reputation of the whole institution at risk, especially if media interest is fanned by party political debate and speculation about evidence and findings.

²⁹ Twenty-first Report, Committee on Standards and Privileges, Session 1997-98, HC 1191, para 5

³⁰ *Complaints against Members: the investigation process*, Committee on Standards and Privileges, Ninth Report, 1999-2000, HC 403

³¹ *Report of the Joint Committee on Parliamentary Privilege*, HL Paper 43-I and HC 214-I (1998-99).

³² *Ibid.*, para 281

- 3.42 If the Member against whom a breach is alleged is also a Minister, other questions may arise. There may be the procedural question as to whether an investigation under the Ministerial Code is more appropriate. There may be other questions of congruence between the Ministerial Code and the Code of Conduct for MPs that should be considered.
- 3.43 This combination of factors can place a strain on the regulatory system. The previous Chairman of the Committee on Standards and Privileges, the Rt Hon Robert Sheldon MP (now Lord Sheldon), told us in June 2000 of his concerns about “*the tit-for-tat situation*” by which he meant a Member from one side of the House alleging breaches of the Code against a Member from the other side to score party political advantage.³³ The Committee on Standards and Privileges, under his chairmanship, made some proposals to counteract this practice in a consultation paper which has not yet been debated by the House.³⁴

QUESTION

Q6. How can the compliance process best safeguard the reputation of the House while being fair to the individual Member?

The arrangements for independent scrutiny

- 3.44 In its First Report, this Committee set out the three institutional mechanisms that should reinforce the Seven Principles of Public Life and ensure that they were applied in practice. One of these was ‘Independent Scrutiny’, which the Committee described as follows:

*...internal systems must be supported by independent scrutiny and monitoring...An independent body to oversee the framework within which actions are taken and to monitor compliance can be an important additional safeguard in maintaining public confidence.*³⁵

- 3.45 This Committee has hitherto recommended that the principle of independent scrutiny be applied

to the House of Commons’ compliance process in a number of different ways.

- 3.46 The First Report recommended the creation of the post of Parliamentary Commissioner for Standards as “*a significant independent element with a system which remains essentially self-regulating*”.³⁶ We consider below the detailed questions that have arisen on that recommendation in the light of subsequent experience.
- 3.47 In our Sixth Report, when concern about the handling of ‘*serious contested allegations*’ was uppermost, the Committee recommended that such cases should be referred to a special disciplinary tribunal, rather than the Committee on Standards and Privileges.³⁷ This tribunal would be chaired by an independent lawyer of substantial seniority, sitting with two or four senior MPs. The tribunal would report its conclusions to the Committee on Standards and Privileges. This proposal was rejected by the Committee on Standards and Privileges for the reasons set out in the table opposite.³⁸

- 3.48 Also in the Sixth Report, this Committee made proposals for an appeal procedure in serious, contested cases. We recommended an *ad hoc* appellate tribunal, possibly a retired senior appellate judge sitting alone. This was also rejected by the Committee on Standards and Privileges on the grounds that it would be “*breaking the principle of self-regulation entirely*”.³⁹

- 3.49 It may be that there are other means of introducing an independent or lay element into the compliance process, such as lay members or lay assessors on the adjudicating committee. We invite views on how the independent element can best be achieved.

QUESTION

Q7. To what extent is public confidence safeguarded by the present arrangements for independent scrutiny and monitoring of standards of conduct in the House of Commons?

³³ Seventh Report, vol 2, Day 6/am

³⁴ *Proposed Amendments to the Rules relating to the Conduct of Members*, Committee on Standards and Privileges, fifth Report, Session 2000-01, HC 267, paras 46-48

³⁵ CSPL First Report, para 16

³⁶ *Ibid.*, para 99

³⁷ CSPL Sixth Report, CSPL, Chapter 3

³⁸ S&P Committee Fifth Report, Appendix 1

³⁹ *Ibid.*

Recommendation by Committee on Standards in Public Life

1. Where

- (a) the Parliamentary Commissioner finds a *prima facie* case against an accused MP, the alleged facts of which if true, would amount to serious misconduct but
- (b) the alleged facts are disputed by the accused MP, the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the case be referred to a disciplinary tribunal consisting of a legal chairman sitting with either two or four MPs who should be of substantial seniority.

2. Before making a decision about whether to accept the Parliamentary Commissioner's recommendation the Committee on Standards and Privileges should allow the accused MP an opportunity to make representations in respect of that decision.
3. If the Parliamentary Commissioner's recommendation is accepted, the accused MP should be provided with financial assistance to enable him or her to fund legal representation at the hearings of the tribunal.
4. The tribunal should be governed by procedures that satisfy the "*minimum standards of fairness*" as defined by the Nicholls Committee.
5. The tribunal should act as fact-finder and decide whether, on the basis of the facts found, the charges against the accused MP are proved.
6. The tribunal should report its conclusions to the Committee on Standards and Privileges and, assuming no appeal is being lodged, the Committee should consider what penalty (if any) should be recommended to the House of Commons

The Committee on Standards and Privileges rejected the recommendation on the grounds that:

- MPs could not be involved in the process of investigation because it would take a disproportionate amount of time and give grounds for the complaint that the process was unfair and partial; MPs have party allegiances and were unlikely to be perceived as objective or independent.
- A lawyer would not be better placed than the Parliamentary Commissioner to assemble and evaluate evidence. The assistance of a legal assessor to the Commissioner in complicated cases was considered a more appropriate measure to ensure that procedures were properly followed, and that legal advice was available as required.
- Lawyers had tended to prolong and complicate unnecessarily matters which could have been resolved swiftly through full cooperation between the MP and the Commissioner. The involvement of lawyers was also considered to encourage the (erroneous) view of the Commissioner as prosecutor.
- Similarly, the availability of free legal representation would sometimes lead to matters being prolonged unnecessarily, and would constitute a potentially unlimited drain on public funds. It was noted that free assistance to obtain factual information was already available to MPs from the Parliamentary Commissioner.

The post of Parliamentary Commissioner for Standards

3.50 As stated above, this Committee saw the post of Parliamentary Commissioner for Standards as achieving “a significant independent element”. In formulating the full recommendation, the Committee said:

The House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards...

...the Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the Comptroller and Auditor General and the Parliamentary Commissioner for Administration...

...the Commissioner should have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation...

...the Commissioner should be able to send for persons, papers and records, and will therefore need to be supported by the authority of a Select Committee with the necessary powers.⁴⁰

3.51 This Committee recognised that there were arguments for putting the post of Parliamentary Commissioner for Standards on a statutory basis but concluded that “the test of whether our recommendations are sufficient, or further change is needed, will be their operation in practice”.⁴¹

3.52 When this Committee’s report was considered by the specially constituted Select Committee, it was accepted that the post should be non-statutory.

There were however several consequences from this decision. One was that the analogy made in this Committee’s recommendation with the Comptroller and Auditor General and the Parliamentary Commissioner for Administration could not be fully carried through. Both these post-holders are statutory and are appointed by the Crown and can only be removed from office by the Crown following Addresses from both Houses of Parliament. Their role and powers are also laid down in the Acts which established their offices.⁴²

3.53 By contrast, the appointment process for the Parliamentary Commissioner for Standards is in the hands of the House itself. In terms of powers, the Commissioner operates through a Select Committee of the House. He or she has no power to call for persons and records except through authority derived from the powers of the Committee on Standards and Privileges. The Commissioner cannot publish his or her findings independently of the Committee. In these respects, the Commissioner’s office does not have the ‘stand-alone’ characteristics of the Comptroller and Auditor General and the Parliamentary Commissioner for Administration (although both these post holders are also Officers of the House).⁴³

3.54 Both our predecessors and the Select Committee recognised that it might be necessary to review the arrangements “in the light of practical experience at some future time”.⁴⁴ We shall want to take evidence about what that practical experience has been. We ourselves have recently questioned whether the appointment process matches the best practice established for posts in the public sector⁴⁵ and whether the tenure arrangements are satisfactory. We have also raised the issue of how the post is resourced.⁴⁶

⁴⁰ CSPL First Report, R11 and para 104

⁴¹ *Ibid.*, para 102

⁴² The Crown’s power to appoint the Comptroller and Auditor General (C&AG) is exercisable on an Address presented by the House of Commons. No motion shall be made for such an Address except by the Prime Minister acting with the agreement of the Chairman of the Committee of Public Accounts. The C&AG’s salary is a charge on the Consolidated Fund. His office’s expenses are met by money voted by Parliament. The relevant Acts are the Exchequer and Audit Department Act 1866 and the National Audit Act 1983.

⁴³ The C&AG is made an Officer of the House through the National Audit Act 1993 but the same Act specifically excludes his office from the control of the House of Commons Commission. In both his case and that of the Parliamentary Commissioner for Administration, the intention is to afford them the privileges of an Officer of the House.

⁴⁴ First Report, Select Committee on Standards in Public Life, HC 637, July 1995, para 10

⁴⁵ In our Chair’s letter to the Speaker of 13 December 2001, it was suggested that the guidance of the Commissioner for Public Appointments was generally recognised as establishing best practice in the field of public appointments. This guidance encouraged involvement of an independent assessor as early as possible in the process. The letter of 13 December 2001, and an earlier exchange of correspondence between our Chair and the Speaker, are at Appendix F.

⁴⁶ See correspondence at Appendix F.

QUESTIONS

- Q8. How satisfactory are the present arrangements, including the status and accountability, for the post of Parliamentary Commissioner for Standards?**
- Q9. To what extent are the powers of the Commissioner sufficient?**
- Q10. Are the arrangements for establishing the resources available to the Commissioner satisfactory?**

Aspects of the investigation and adjudication process

3.55 We set out in Fig 1 (on page 20) to show how the investigation and adjudication process works and the respective roles of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges. To some extent, the Commissioner has both investigative and adjudicative roles (in the sense that the Commissioner reports the relevant facts to the Committee, following his or her investigation of a complaint, and comes to conclusions on the complaint, which are also reported to the Committee). At the earlier stages in the process he or she has the discretion to dismiss a complaint, or agree to a rectification in appropriate cases, without reference to the Standards and Privileges Committee. However, once the Commissioner has completed an investigation, the findings are referred to the Committee on Standards and Privileges.

3.56 In the case of a complaint which the Parliamentary Commissioner has upheld, the Committee must reach a conclusion on whether to agree with the Commissioner's findings. If the Member concerned does not accept the Commissioner's findings, the Committee may have to investigate further before adjudicating. So both the Commissioner and the Committee may at various stages be acting as either investigator or adjudicator.

3.57 Some recent cases have highlighted the difficulties in the model suggested in Fig 1. The interaction of the Commissioner's and the Committee's roles may not always be smooth: there may be a dislocation between the

Commissioner's findings and the Committee's conclusions.

- 3.58 There are also procedural uncertainties such as the standard of proof to be applied, the power to require the Member and other witnesses to give evidence on oath and the timing of provision of information to the Member under investigation. The issue of an appeals process also remains unresolved.
- 3.59 One problematic aspect is the extent to which the process can be improved in terms of fairness while accommodating the House's stated preference for avoiding the involvement of lawyers. The recent report by the Standards and Privileges Committee stated that an inquiry by the Commissioner could not be equated with a prosecution. Members were not asked to prove their innocence, but to provide the whole truth. Members were entitled to legal advice but should respond to enquiries themselves and not through legal intermediaries.⁴⁷
- 3.60 The same report by the Committee on Standards and Privileges recognised another concern, namely the number of frivolous or vexatious complaints made to the Commissioner. The Committee's recommendation was as follows:

It is right that the Commissioner should have the discretion not to pursue full investigation on minor issues where, during preliminary consideration, it is clear that the facts are not disputed and the Member immediately rectifies or apologises for a failure to declare or register. Where this rectification procedure is followed there should be a note to the effect in the Register.⁴⁸

The report has not yet been debated by the House.

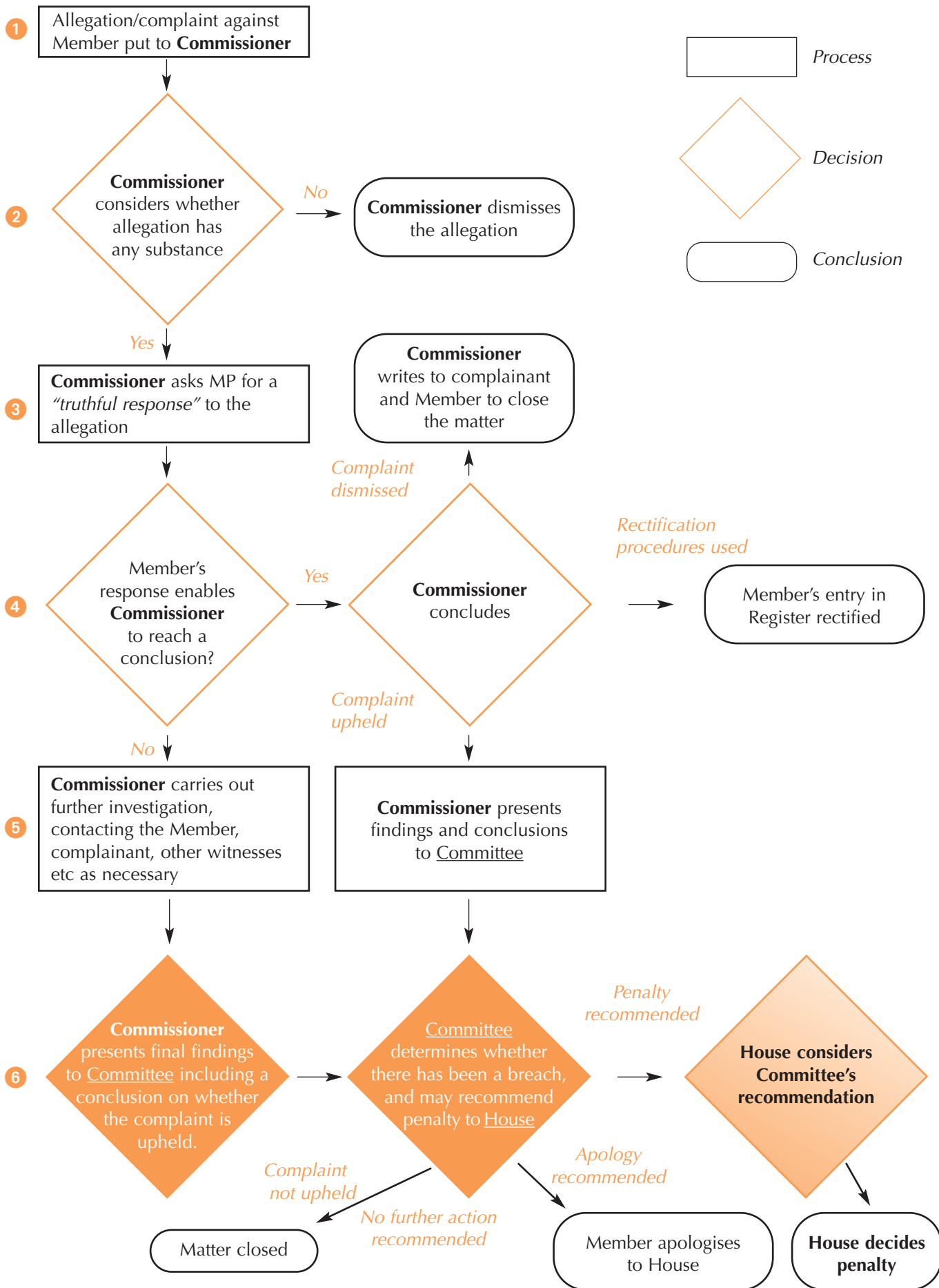
QUESTIONS

- Q11. Does the process for the investigation and adjudication of complaints work satisfactorily?**
- Q12. In particular, are the roles of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges satisfactorily defined?**
- Q13. Should there be an appellate process?**

⁴⁷ S&P Committee Fifth Report, para 49

⁴⁸ Ibid., para 48

Fig 1: Complaints handling process



QUESTIONS

REGULATING CONDUCT

- Q1. What current concerns do you have in relation to standards of conduct of MPs, and to what extent are these different from those identified in 1994? (page 9)
- Q2. How far does the present system of regulation in the House of Commons, which to a large extent is based on self-regulation, meet current concerns? (page 9)

EXISTING PROCEDURES

Code of Conduct

- Q3. Are the provisions for registration and declaration of the interests of MPs clear and satisfactory? (page 11)

Restrictions on outside influences

- Q4. Is the advocacy rule operating satisfactorily? (page 12)
- Q5. Are there any new issues in the relationship between lobbyists and MPs since the Sixth Report which cause concern? (page 13)

The compliance process

- Q6. How can the compliance process best safeguard the reputation of the House while being fair to the individual Member? (page 16)
- Q7. To what extent is public confidence safeguarded by the present arrangements for independent scrutiny and monitoring of standards of conduct in the House of Commons? (page 16)
- Q8. How satisfactory are the present arrangements, including the status and accountability, for the post of Parliamentary Commissioner for Standards? (page 19)
- Q9. To what extent are the powers of the Commissioner sufficient? (page 19)
- Q10. Are the arrangements for establishing the resources available to the Commissioner satisfactory? (page 19)
- Q11. Does the process for the investigation and adjudication of complaints work satisfactorily? (page 19)
- Q12. In particular, are the roles of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges satisfactorily defined? (page 19)
- Q13. Should there be an appellate process? (page 19)

Appendix A

Sixth Report Recommendations on MPs

The following information is taken from *The First Seven Reports – A Review of Progress* which was published by this Committee in September 2001.

No	Recommendation	Response ⁴⁹
1	The Government should introduce its proposed legislation on the criminal law of bribery as soon as possible in order to remove any uncertainty regarding the scope of the statutory offence of bribery and to make clear that members of both Houses of Parliament, acting in their capacity as members, and those who bribe a member of either House of Parliament fall within its scope.	<p>The Government's proposals to reform the law of corruption were published in a discussion paper on 20 June (<i>Raising Standards and Upholding Integrity: The Prevention of Corruption: The Government's Proposals for the Reform of the Criminal Law of Corruption in England and Wales</i>, Cm 4759). The Government noted its intention to legislate as soon as Parliamentary time allowed.</p> <p>The Government said that the proposals were intended to clarify the existing law by defining what is meant by acting 'corruptly' and by removing any uncertainty about the scope of the offence.</p> <p>It was the Government's intention to include members of both Houses of Parliament within the scope of the proposed legislation.</p> <p>The Government also accepted the recommendation of the Joint Committee on Parliamentary Privilege under the chairmanship of Lord Nicholls. This was that the new legislation should provide that evidence relating to any offence committed or alleged to be committed under new corruption legislation should be admissible notwithstanding Article 9 of the Bill of Rights. Article 9 states "<i>that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament</i>".</p>
2	Where a complaint is made to the Parliamentary Commissioner for Standards alleging criminal conduct by an MP and the complaint is neither malicious nor frivolous, then the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the matter be referred to the police for further investigation.	The Committee on Standards and Privileges considered that if such a case were to arise, then the Parliamentary Commissioner should report to the Committee that the matter had been referred to the police for further investigation. It was noted that the Committee would do the same if the Commissioner had not.

⁴⁹ The response to recommendation 1 is drawn from the Government response to the Sixth Report in July 2000 (Cm 4817). The material in response to recommendations 2 to 10 is drawn from a letter from the Chairman of the Committee on Standards and Privileges to the Chair of this Committee. A copy is published in the Fifth Report of the Committee on Standards and Privileges (Session 2000-01, HC 267).

No	Recommendation	Response
<p>3 'Trial' procedure in serious, contested cases</p> <p>1. Where</p> <p>(a) the Parliamentary Commissioner finds a <i>prima facie</i> case against an accused MP, the alleged facts of which, if true, would amount to serious misconduct, but</p> <p>(b) the alleged facts are disputed by the accused MP, the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the case be referred to a disciplinary tribunal consisting of a legal chairman sitting with either two or four MPs who should be of substantial seniority.</p> <p>2. Before making a decision about whether to accept the Parliamentary Commissioner's recommendation, the Committee on Standards and Privileges should allow the accused MP an opportunity to make representations in respect of that decision.</p> <p>3. If the Parliamentary Commissioner's recommendation is accepted, the accused MP should be provided with financial assistance to enable him or her to fund legal representation at the hearings of the tribunal.</p> <p>4. The tribunal should be governed by procedures that satisfy the "<i>minimum standards of fairness</i>", as defined by the Nicholls Committee.</p> <p>5. The tribunal should both act as fact-finder and decide whether, on the basis of the facts found, the charges against the accused MP are proved.</p> <p>6. The tribunal should report its conclusions to the Committee on Standards and Privileges and, assuming no appeal is being lodged, the Committee should consider what penalty (if any) should be recommended to the House of Commons.</p>		<p>The Committee on Standards and Privileges rejected the recommendation on the grounds that:</p> <ul style="list-style-type: none"> • MPs could not be involved in the process of investigation because it would take a disproportionate amount of time, and give grounds for the complaint that the process was unfair and partial; MPs have party allegiances and were unlikely to be perceived as objective or independent. • A lawyer would not be better placed than the Parliamentary Commissioner to assemble and evaluate evidence. The assistance of a legal assessor to the Commissioner in complicated cases was considered a more appropriate measure to ensure that procedures were properly followed, and that legal advice was available as required. • Lawyers had tended to prolong and complicate unnecessarily matters which could have been resolved swiftly through full cooperation between the MP and the Commissioner. The involvement of lawyers was also considered to encourage the (erroneous) view of the Commissioner as prosecutor. • Similarly, the availability of free legal representation would sometimes lead to matters being prolonged unnecessarily, and would constitute a potentially unlimited drain on public funds. It was noted that free assistance to obtain factual information was already available to MPs from the Parliamentary Commissioner.

No	Recommendation	Response
4	<p>Appeal procedure in serious, contested cases</p> <ol style="list-style-type: none"> 1. An accused MP who receives an adverse ruling from the first instance tribunal should have a right of appeal and should be entitled to financial assistance to pursue that appeal. 2. The appeal should be heard by an ad hoc appellate tribunal, possibly a retired senior appellate judge sitting alone. 3. If the appeal is dismissed, the Committee should report the result of the appeal to the House of Commons along with any recommendation as to penalty. 	<p>The Committee on Standards and Privileges noted that the final decision in any case was currently taken by the House on the recommendation of the Committee. The effect of allowing an appeal in serious, contested cases to, for example, a retired judge would be <i>“breaking the principle of self-regulation entirely”</i>.</p>
5	<p>‘Trial’ and appeal procedure in other contested cases</p> <ol style="list-style-type: none"> 1. In cases which, in the opinion of the Parliamentary Commissioner, do not warrant a referral to the full tribunal, the Parliamentary Commissioner should make a recommendation to the Committee on Standards and Privileges accordingly. The Committee should decide whether to uphold the recommendation of the Commissioner on the basis of the Commissioner’s report and of the representations (if any) by the accused MP. 2. In those cases that remain with the Parliamentary Commissioner, the Commissioner should investigate the complaint and, on the basis of the facts found, decide whether the complaint should be upheld or dismissed. The Commissioner’s decision should be reported to the Standards and Privileges Committee, which should, in turn, decide whether or not to adopt the Commissioner’s report and what penalty (if any) should be recommended to the House. 3. In cases where an accused MP disputes the Commissioner’s findings or conclusions, that MP should be able to appeal against the Commissioner’s decision, such an appeal to be heard either by the Committee itself or by such ad hoc appellate body as it decides to appoint. 	<p>The Committee on Standards and Privileges noted that the recommendation reflected very much how it already operated.</p>

No	Recommendation	Response
6	<p>Disciplinary procedure in non-contested cases</p> <p>In non-contested cases, whether serious or minor, the Parliamentary Commissioner should, in accordance with present practice, report the (undisputed) facts and conclusions based on those facts to the Committee on Standards and Privileges which, if it endorses the report, should recommend to the House of Commons what penalty (if any) should be imposed.</p>	<p>The Committee on Standards and Privileges noted that the recommendation reflected very much how it already operated.</p>
7	<p>The disciplinary proceedings of the House of Commons should be held in public but should not be broadcast. This recommendation as to hearings in public does not extend to the private deliberations of the Standards and Privileges Committee on or of any disciplinary or appellate tribunal (which should remain private).</p>	<p>The Committee on Standards and Privileges noted that all its experience pointed to proceedings of the Committee being held in private, and that the Committee generally published the oral evidence taken in private alongside the relevant report.</p>
8	<p>The House of Commons should take measures in relation to the Committee on Standards and Privileges, with a view:</p> <p>(a) to ensuring that a substantial proportion of its members are senior MPs; and</p> <p>(b) to exempting the Committee from the convention that its chairman should be drawn from the government benches.</p>	<p>The Committee on Standards and Privileges agreed that the Chairman need not be drawn from the Government benches. Response contains no reference to the seniority point.</p>
9	<p>The ban on paid advocacy should be retained.</p>	<p>Agreed</p>
10	<p>The guidelines relating to the ban on paid advocacy, set out in the <i>Guide to the Rules relating to the Conduct of Members</i>, should be amended so as to make it possible for an MP who has a personal interest to initiate proceedings which relate in a general way (and not exclusively) to that interest, subject to the following safeguards:</p> <ul style="list-style-type: none"> • the MP is prohibited from engaging in ‘paid advocacy’ on behalf of that interest; • he or she is required to register and declare the interest in accordance with the guidelines; and • he or she must identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol when initiating a debate. 	<p>Partially accepted. The Committee on Standards and Privileges agreed that there was a case for exempting overseas travel from the rule which bans the initiation of parliamentary proceedings where there is a paid interest, but was reluctant to propose any more general change to the rule on the basis that the extent of relaxation of the guidelines propose would undermine the ban on paid advocacy.</p> <p>The Committee on Standards and Privileges recommended the change as it proposed in its Fifth Report for the Session 2000-01 (HC 267). (NB: The Fifth Report has yet to be debated by the House.)</p>

Appendix B

The Code of Conduct for Members of Parliament

I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life as applying to holders of public office.

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

No Member shall act as a paid advocate in any proceeding of the House. No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

Appendix C

Standing Order No 149

The Role and Powers of the Standards and Privileges Committee

- (1) There shall be a select committee, called the Committee on Standards and Privileges –
 - (a) to consider specific matters relating to privileges referred to it by the House;
 - (b) to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; and
 - (c) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary.
- (2) The committee shall consist of eleven Members, of whom five shall be a quorum.
- (3) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a Member of it for the remainder of the Parliament.
- (4) The committee shall have power to appoint sub-committees consisting of no more than seven Members, of whom three shall be a quorum, and to refer to such sub-committees any of the matters referred to the committee; and shall appoint one such sub-committee to receive reports from the Commissioner relating to investigations into specific complaints.
- (5) The committee and any sub-committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time and to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.
- (6) The committee shall have power to order the attendance of any Member before the committee or any sub-committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of a sub-committee or of the Commissioner, be laid before the committee or any sub-committee.
- (7) The committee, or any sub-committee, shall have power to refer to unreported evidence of former Committees of Privileges or of former Select Committees on Members' Interests and to any documents circulated to any such committee.
- (8) The committee shall have power to refuse to allow proceedings to which strangers are admitted to be broadcast.
- (9) Mr Attorney General, the Advocate General and Mr Solicitor General, being Members of the House, may attend the committee or any sub-committee, may take part in deliberations, may receive committee or sub-committee papers and may give such other assistance to the committee or sub-committee as may be appropriate, but shall not vote or make any motion or move any amendment or be counted in the quorum.

Appendix D

Parliamentary Commissioner for Standards: terms and conditions of appointment

- 1 **Sir Gordon Downey** served as Commissioner between November 1995 and November 1998. His appointment was made by Resolution on 6 November 1995, following the recommendations of the House of Commons Commission. The terms and conditions of his appointment were as follows:

...the appointment should be initially for three years on the basis of four days per week, at an annual salary of £72,000. After the second year, the duties of the post should be reviewed in order to decide whether this level of duties remained appropriate. It would be open to the Commissioner to propose modifications earlier in the light of his own assessment of the requirements of the post.

The Commissioner will be an Officer of the House with his own small secretariat. Supporting staff comprising the current Assistant Registrar of Members' Interests and a Personal Secretary will be seconded to the Commissioner from the Department of the Clerk of the House. On a temporary basis, the Commissioner will also be assisted by the current Registrar. It will be for the Commissioner to assess whether any further staff may be necessary.⁵⁰

- 2 **Ms Elizabeth Filkin** served as Commissioner between February 1999 and February 2002. Her appointment was made by Resolution on 17 November 1998, following the recommendations of the House of Commons Commission. The terms and conditions of her appointment were as follows:

...the new appointment should be for three years on the basis of four days per week, at an annual salary of £76,576. After the first year, the duties of the post should be reviewed in order to decide whether this level of duties remained appropriate. It would be open to the Commissioner to propose modifications earlier in the light of her own assessment of the requirements of the post.

The Commissioner will be an Officer of the House with her own small group of support staff seconded from the Department of the Clerk of the House.⁵¹

- 3 **Mr Philip Mawer** was appointed by Resolution on 13 February 2002, following the recommendations of the House of Commons Commission. The terms and conditions of his appointment are as follows:

... the appointment should be initially for three years. The House's Internal Review Service (IRS) is carrying out a review of the resources necessary to support the work of the Parliamentary Commissioner for Standards. The Commission will base its judgement of the resources required on the IRS's advice and on the views of the new Commissioner and of the Chairman of the Committee on Standards and Privileges. Whatever resources are judged to be required will be provided, and the situation will be reviewed as necessary.

The new Commissioner will wish to form a view on the time commitment necessary for him fully to discharge his duties. If his nomination is approved by the House, Mr Mawer will take up the appointment initially on the basis of a three-day week at a salary of £75,000 p.a.; it is of course likely that the workload will vary from time to time, and the Commission will impose no restriction on the days per week which the Parliamentary Commissioner considers necessary.⁵²

⁵⁰ HC 789 1994-95

⁵¹ HC 1143, 1997-98

⁵² HC 598, 2001-02

Appendix E

Standing Order No 150

The Role and Powers of the Parliamentary Commissioner for Standards

- (1) There shall be an officer of this House, called the Parliamentary Commissioner for Standards, who shall be appointed by the House.
- (2) The principal duties of the Commissioner shall be –
 - (a) to maintain the Register of Members' Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards and Privileges or an appropriate sub-committee thereof;
 - (b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;
 - (c) to advise the Committee on Standards and Privileges, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;
 - (d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards and Privileges or an appropriate sub-committee thereof; and
 - (e) to receive and, if he thinks fit, investigate specific complaints from Members and from members of the public in respect of-
 - (i) the registration or declaration of interests, or
 - (ii) other aspects of the propriety of a Member's conduct, and to report to the Committee on Standards and Privileges or to an appropriate sub-committee thereof.
- (3) The Commissioner may be dismissed by resolution of the House.

Appendix F

Letters from the Chair to the Speaker

29 November, 2001

You will have received a copy of the letter of 26 November which Mr Peter Bottomley sent to me about the post of Parliamentary Commissioner for Standards. I believe it appropriate to address my reply to you, with a copy to Mr Bottomley, since the matters which he raises fall within the responsibility of the House of Commons Commission.

As you know, it has become a standing principle of the Committee not to involve itself in individual cases or appointments and the appointment of a Parliamentary Commissioner is, of course, a matter for the House of Commons Commission. But since my Committee's work led to the creation of the position of Parliamentary Commissioner as a key component of the process of Parliamentary self-regulation, the Committee has always had a strong interest in the work of the Parliamentary Commissioner. Our review of the process of self-regulation in our Sixth Report is further evidence of that interest.

Against this background, the Committee believes that the Commissioner should be able to devote sufficient time to his or her important task. We understand that the current post holder is contracted to work for four days a week. However, the advertisement seeking applications for the post stated that "the time commitment is likely to be three days per week", although we note, from Mr Archy Kirkwood's Parliamentary Answer of 23 November, that the figure of three days is not set in stone and will be discussed with the successful candidate.

The correct level of time commitment for the post is presumably dependent on the anticipated workload. We are not aware of any evidence that suggests that the Commissioner's workload is likely to fall, nor that the Commissioner's office has received recently significant additional resources. In view of this, you should know that my Committee is not able to see the justification for reducing the time commitment of the post.

The Committee published in September, *The First Seven Reports – A Review of Progress*, a copy of which I sent to you on 7 September. This document provided a stock-take of all the Committee's recommendations in its seven reports. I said in my published statement of 10 September that we would want to review the implementation, delivery and outcomes of each report. As far as Parliamentary self-regulation is concerned, the First Report itself said that "...the test of whether our recommendations are sufficient, or further change is needed, will be their operation in practice". When we turn to this issue in light of the stock-take, the Committee will, no doubt, wish to take account of the issues raised in the last paragraph of Mr Bottomley's letter, as well as revisit recommendation 11 of the First Report, which related, among other matters, to the appointment, independence, tenure and powers of the Commissioner.

Since Mr Bottomley has informed the media of his letter, I will, in accordance with this Committee's usual procedure, put this letter on the Committee's website.

13 December, 2001

Thank you for your timely reply of 10 December to my letter of 29 November. It was very helpful to be able to discuss it at our Committee meeting on 11 December.

Your letter raises a number of wider issues, which I will not touch upon in detail in this letter for the reason I will explain later. But following my Committee's discussion I would like to seek reassurance on three issues that relate to the appointment of the next Parliamentary Commissioner for Standards.

First, as you say, the appointment does not technically fall within the remit of the Commissioner for Public Appointments, although your letter notes that you are anxious to ensure that the selection process should meet the highest standards, and that the external assessor will be "overseeing" the process. The guidance of the Commissioner for Public Appointments is generally recognised as establishing best practice in the field of public appointments. This guidance encourages involvement of the independent assessor as early as possible in the process, i.e. when the role and person specification are being drawn up. The independent assessor should then be directly involved in decisions on those candidates to be shortlisted for interview through to the selection of the candidate to be recommended for appointment. We assume you will be using a similar approach, as your process will no doubt be judged against the Commissioner's guidance.

Second, we are grateful for the explanation of the history leading to the advertisement of the post stating that "*the time commitment is likely to be three days per week*". As I noted in my letter of 29 November, the correct level of time commitment for the post should be dependent on the anticipated workload. We understand that there have been various reviews of the staffing in the Parliamentary Commissioner's office, "*because of concerns which had arisen over the office's workload*". We understand that these reviews resulted in a small extra resource, suggesting at least that no diminution of workload had been found (Mr Kirkwood's Parliamentary Answer of 2 May 2001). Without further evidence, for example from the reviews, we remain unable to see the reasoning for offering the appointment on a time commitment below that worked in practice by the current Commissioner.

Third, on the question of the tenure available to the holder of the post, we note your view that the position has not changed from the appointment of the first Commissioner. We think however that there is a wider point of principle, namely that arrangements regarding tenure should be clear and such as to safeguard the independence of the post.

In my letter of 29 November I said that the Committee would return to Parliamentary self-regulation in light of its September publication, *The First Seven Reports – A Review of Progress*. At its meeting on 11 December, the Committee concluded that we should revisit the recommendations in our First and Sixth Reports, and taking account of subsequent developments, review in full the relevant arrangements for regulating standards of conduct in the House of Commons. We intend that the process will begin early in the New Year with the publication of a list of the questions we wish to consider. We will then take evidence at public hearings before producing a final report.

I am sending copies of this letter to Mr Robin Cook, Mr Eric Forth and Mr Paul Tyler. As the previous correspondence has been published, I am releasing this letter.

Appendix G

Previous reports by the Committee on Standards in Public Life

The Committee has published reports on the following subjects:

- Members of Parliament, Ministers, civil servants and quangos (First Report (Cm 2850)) (May 1995)
- Local public spending bodies (Second Report (Cm 3270)) (June 1996)
- Local government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
- The funding of political parties in the United Kingdom (Fifth Report entitled *The Funding of Political Parties in the United Kingdom* (Cm 4057)) (October 1998)
- Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000).

The Committee is a standing committee. It can therefore not only conduct enquiries into new areas of concern about standards in public life but also, having reported its recommendations following an enquiry, it has can later re-visit that area and monitor

whether and how well its recommendations have been put into effect. The Committee has so far conducted two reviews, and in 2001 published a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994:

- A review of recommendations contained in the First and Second Reports relating to standards of conduct in executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report) (November 1997)¹
- A review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and 'proportionality' in the public appointments system (Sixth Report entitled *Reinforcing Standards* (Cm 4557)) (January 2000).²
- A stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (*The First Seven Reports – A Review of Progress*) (September 2001)¹

¹ This report was not published as a Command Paper.

² 'Proportionality' is a term used to describe the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled.

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