

House of Commons Standards Committee Review of the Code of Conduct for MPs - Second Public Consultation

Response from the Committee on Standards in Public Life

January 2022

1. The Principles of Public Life

Bespoke principles and the issue of respect

1.1 In our correspondence of 23 June 2021 we welcomed the Standards Committee's decision to continue to base the MPs' Code of Conduct on the Seven Principles of Public Life, noting that bespoke descriptors will help explain how the principles apply directly to an MP's role and responsibilities. We also discussed the proposed new, separate principle of Respect.

1.2 Following our correspondence, CSPL has itself assessed and revised the Seven Principles of Public Life. Having reflected on the need to include a greater focus on standards of interpersonal behaviour, we decided in our November 2021 report, *Upholding Standards in Public Life*, to add a provision on respect under the principle of Leadership, adding the clause that holders of public office should "treat others with respect".

1.3 We have always considered the issue of anti-discrimination to fall under the principle of objectivity, which states that all public office holders must act "without discrimination or bias". The Standards Committee may wish to emulate this approach.

2. The Investigations, Sanctioning and Appeals Process

Improving the independence of the regulatory process

2.1 CSPL's recent report, *Upholding Standards in Public Life*, emphasised the critical importance of independence in standards regulation. We wrote that "Self-regulation, or matters resolved by regulators who are not perceived as independent, offers little assurance to the public that ethical standards are being upheld. The public rightly casts a sceptical eye over regulators perceived to be too close to those they are regulating." We made a number of recommendations to improve the independence of standards regulation in government.

2.2 Similarly, we believe now is the time for the House of Commons to introduce further independence in the process of standards regulation and to remove MPs from the regulatory process entirely, save for a final vote in the case of a sanction of suspension or expulsion, as referenced in paragraph 200 of the Standards Committee's report.

2.3 We believe this can be best achieved by applying the same process currently used for bullying and harassment cases to all standards cases. This single, simplified standards system should operate as follows:

- The Parliamentary Commissioner for Standards conducts or oversees an investigation. The Commissioner may either dismiss a complaint, agree a process of rectification or remedial action, or find a serious breach of the code.
- Where a serious breach is found, the matter is immediately referred to a three-person sub-panel of the Independent Expert Panel (IEP). At this stage, the respondent may appeal against the Commissioner's findings. This sub-panel should hear any appeal on the Commissioner's findings if requested, and decide on sanction.
- A respondent may then appeal against the decision on sanction, which will be heard by a second, separate three-person sub-panel of the IEP.
- Any sanction decided by the IEP should be implemented immediately, save for a recommended sanction of suspension or expulsion, which should be put to the House for a vote, with no opportunity for amendment or debate.
- The provisions of the 2015 Recall of MPs Act should apply to any suspension or expulsion that occurs via this process.

2.4 The Standards Committee's role would be changed to one of reviewing and recommending revisions to the code, the guide, and the regulatory process, but not enforcing it. Under such arrangements the Committee's lay members would continue to provide an important independent perspective on the code.

2.5 We see a number of advantages to this approach. First, we believe reforms of this nature are necessary to restore public confidence in the regulation of MPs' conduct. The public does not view MPs sitting in judgement on their peers as credible. Recent events have damaged public perceptions of the integrity of the House; thorough reforms are needed to address this public concern.

2.6 Second, these proposals would introduce a formal right of appeal for MPs on both findings and sanctions. A common criticism heard from MPs on all sides concerns the fact that there is no formal right of appeal on sanction, and the right of appeal on the Commissioner's findings - to the Standards Committee itself - is seen by many as both not replicating a formal appeals process and as not being sufficiently independent of the Commissioner. Under these proposals, MPs would have a formal right of appeal on the Commissioner's findings to the first sub-panel of the IEP, and a separate formal right of appeal on sanction to the second sub-panel of the IEP.

2.7 Third, these proposals would prevent MPs from intervening in any ongoing cases. The decision to interfere in the sanctioning process in a recent case highlighted the potential damage that can occur when MPs are able to intervene in politically sensitive cases. The regulatory system must be constructed to treat individuals objectively and fairly, and so that partisan political considerations cannot impact the outcome of a standards investigation. For cases of suspension or expulsion, it is constitutionally proper for the House to retain a vote, but such a vote should proceed without opportunity for amendment or debate.

2.8 Fourth, these proposals introduce a level of independence to standards processes that the House has already deemed acceptable in bullying and harassment cases, by bringing non-ICGS cases into line with ICGS cases.

2.9 Finally, by bringing together ICGS and non-ICGS cases into the same process, these proposals would help simplify standards arrangements in the House. Current arrangements are complex, and such complexity inhibits a clear understanding of the rules and processes governing standards in the House.

2.10 Although there are some further considerations to implementing such a proposal - the IEP may, for example, need additional members or extra training - we believe these are surmountable, so long as the IEP is resourced sufficiently.

Introduction of a 'safe harbour' provision

2.11 CSPL welcomes the proposed 'safe harbour' rule and believes it should apply to all aspects of the code and the guide to the rules. It is important that any guidance given by the Commissioner or Registrar is issued in writing, and that there is complete clarity on both the advice given and on how an MP can comply with that advice for the purpose of the safe harbour rule.

Prohibiting the lobbying of any of the parliamentary standards bodies

2.12 CSPL strongly supports this proposed rule. As we noted in our response to the Standards Committee's first public consultation, any attempts to pressure parliamentary standards bodies must be firmly resisted, and any such lobbying or pressure can only undermine the fair and impartial regulation of the code.

Removal of the investigatory panels provision

2.13 CSPL supports removing the provision in Standing Order 150 for an investigatory panel and agrees that its existence today is incoherent.

3. MPs' Outside Interests

Restrictions on paid outside employment

3.1 CSPL's 2018 report *MPs' Outside Interests* made proposals to update the MPs' Code of Conduct so that any outside activity undertaken by an MP, including second jobs, be subject to "reasonable limits". We defined "reasonable limits" on the basis that no external interests or employment should prevent MPs from fully undertaking the range of duties expected of them in their primary role as an MP.

3.2 This proposal was endorsed by the Prime Minister in a letter to the Speaker on November 16 2021, and subsequently endorsed by the House in a motion passed on 17 November 2021.

3.3 The Standards Committee report of 23 November 2021 viewed such a rule as "not practicable or enforceable", on the basis that it would require the Commissioner to "to make highly subjective and potentially partisan political judgements about a Member's use of time, their priorities and their performance as an MP". Particular concerns were raised about the potential exclusion of party political activity from any definition of an MP's "primary role". The

Standards Committee also did not see it as necessary or proportionate to regulate the time MPs spend on unremunerated interests such as charity work.

3.4 A reasonable limits rule remains CSPL's preferred approach. This is because - as the Standards Committee notes - a strict cap on either earnings or hours is a blunt instrument. A cap on earnings may unfairly restrict MPs from outside income which is seen as acceptable, such as income from journalism or speeches. A cap on hours may prevent MPs from engaging in work that poses no conflict of interest, or in work the public deems beneficial, such as acting as a doctor or care worker.

3.5 In light of the Standards Committee's concerns, CSPL has considered again the ways in which a reasonable limits rule can be enforced in an objective and consistent way. Although both earnings and hours are a blunt instrument when exercised alone, it is clear that both factors, as well as any real or perceived conflict of interest, influence the public's perception of legitimate outside interests.

3.6 We therefore believe the criteria for identifying reasonable limits can be clarified by defining more precisely the circumstances in which an MP's second job may be deemed reasonable or unreasonable. We suggest that this can be achieved by the Standards Committee and the House setting an indicative limit of hours and remuneration, while framing those limits as a rebuttable presumption - allowing MPs to exceed those limits when their paid outside employment meets certain criteria.

3.7 We suggest two initial criteria:

3.7.1 A *complementary function* criteria, where paid outside employment can exceed indicative limits where that employment complements an MP's parliamentary role and responsibilities. This would include, for example, any other central and local government employment; party political roles; most think tank and NGO positions; most journalism, writing and broadcasting engagements; some academic work and relevant speaking engagements at conferences and events.

3.7.2 A *professional registration* criteria, where paid outside employment can exceed indicative limits where an MP is required to maintain a certain number of hours to uphold a professional registration held prior to becoming an MP. One example of this would be nursing, as the Nursing and Midwifery Council requires 450 hours minimum practice over three years for nurses to maintain their licence to practice.

3.8 We also suggest that indicative limits can be exceeded where a member can demonstrate that their paid outside employment creates no perception of a conflict of interest, nor will it create the perception that the MP is failing to treat their parliamentary role as their primary employment.

3.9 It would be for the Commissioner to decide on a case-by-case basis whether or not the above criteria are met. The proposed 'safe harbour' process will help ensure the smooth implementation of this rule, giving MPs clarity on whether or not any second job is permitted before they take up any paid outside employment.

3.10 The decision on setting the indicative limits - a certain percentage of an MP's annual remuneration, and a certain number of hours spent on external work per week - is a matter for the Standards Committee and the House.

3.11 We recognise that applying this approach will still require the use of judgement in making any determinations, but believe that it would place fair and proportionate constraints on paid outside employment, without inhibiting the types of paid outside employment that are generally seen as acceptable, such as MPs being paid for newspaper articles or sitting on an advisory board of a think tank.

3.12 We define "paid outside employment" as any remunerated private or public sector roles. We agree that unpaid outside interests need not be subject to any further restrictions, assuming the Standards Committee's proposal that such roles should now be registered and declared is accepted (see paragraph 3.22) Unearned income, including royalty payments received for no additional hours work, would be beyond the scope of such a rule.

3.13 Given that MPs must already declare hours and earnings in the Register of Interests, this rule creates no additional registration responsibilities, and would be enforceable through the Commissioner investigating any allegation that a Member's declarations are false.

3.14 Such a rule may be written into the code of conduct as specifying that "Members' paid outside employment must be kept within reasonable limits", with further detail as necessary set out in the guide to the rules.

3.15 CSPL strongly believes that the status quo is no longer sustainable amid high levels of public concern on MPs' second jobs, and a reasonable limits rule of this nature is fair, proportionate, and enforceable.

A ban on providing services as a parliamentary strategist, adviser, or consultant

3.16 CSPL welcomes the Standards Committee's proposal to implement our recommendation that MPs be prohibited from accepting any paid work to "provide services as a parliamentary strategist, adviser or consultant".

3.17 We see this rule as an extension of the prohibition of paid advocacy. Such a rule would end the scenario in place currently, where an MP cannot undertake paid advocacy on behalf of any specific cause, but they can still be paid to advise private interests on how best to influence the House in relation to any specific cause. This rule is not intended as a broader ban on consultancy work, which would instead be covered by our proposed reasonable limits rule.

Registering non-pecuniary interests

3.18 CSPL welcomes the Standards Committee's proposal to implement our recommendation that all non-pecuniary roles be declared and registered. Such a rule should only cover roles, such as directorships or trustee positions, and not memberships of organisations where MPs have no formal responsibilities.

Interests and Voting

3.19 CSPL continues to believe, in agreement with the Standards Committee, that there should be no change to the rules in relation to interests and voting.

4. Clarifying Rules and Guidance around Paid Advocacy

Requiring MPs to obtain written contracts with mutual prohibitions on paid advocacy

4.1 CSPL welcomes the Standards Committee's proposal to require MPs to obtain a written contract for paid outside employment that includes the code's prohibitions on paid advocacy and paid parliamentary advice. We further support the idea that such prohibitions are mutual, prohibiting both the MP from undertaking any paid advocacy and the employer for requesting that the MP advocate on their behalf.

4.2 Further guidance may be needed on what forms of paid outside employment this rule should apply to. It may be disproportionate to require such contractual arrangements for public sector roles or media work, for example. Such a rule may only be necessary for consultancy work.

Clarifying the serious wrong exemption

4.3 CSPL welcomes the clarifications to the serious wrong exemption proposed in paragraph 165 of the Standards Committee report, to ensure that the exemption is not seen as, or can be used as, a loophole to the paid advocacy rule.

Increasing the time limit for restrictions under the lobbying rules

4.4 CSPL welcomes the proposal to restore to 12 months the time period for which lobbying restrictions apply, in relation to any reward or consideration received (or expected to be received).

Removing the distinction between initiating and participating in proceedings or approaches

4.5 CSPL agrees with the Standards Committee's suggestion that the distinction between initiating and participating in parliamentary proceedings or approaches to government be removed, so that both initiation and participation are prohibited where an MP's paying client would receive a benefit.

5. The relationship between the Ministerial Code and the MPs' Code of Conduct for the purpose of declarations

The registration of gifts, benefits, or hospitality received by ministers

5.1 In our recent report *Upholding Standards in Public Life*, CSPL criticised the poor quality of transparency data published by government departments. Departments are supposed to publish ministerial gifts, hospitality, travel and meetings on a quarterly basis. Particularly in relation to meetings, we said that "information is often released too late, descriptions of the

content of government meetings are ambiguous and lack necessary detail, transparency data is scattered, disparate, and not easily cross-referenced, and information in the public interest is often excluded from data releases completely."

5.2 We recommended that the nature and frequency of government transparency releases be reformed so that they are brought into closer alignment with the House of Commons, notably that they be published monthly in a single database by the Cabinet Office.

5.3 If implemented, our recommendation would resolve the issue identified by the Standards Committee that "were a Minister and a select committee chair both invited to an event and offered hospitality, one of the two Members would have to register this in the House's Register within 28 days and the other would not". Though the minister's registrations would be published separately by the Cabinet Office, both would be in the public domain at the same time.

5.4 CSPL shares the Standards Committee's frustration at the poor quality of government transparency and the consequent effect this has on creating different standards for MPs and ministers. However, our preference at this moment in time is for this issue to be resolved by the improvements in government transparency we recommended in our recent report, rather than removing the ministerial exemption on registrations. The differences between the role of a minister and an MP are significant, and the transparency requirements for each reflect these distinctions (for example, gifts to ministers above £140 automatically become the property of government, whereas only gifts over £300 need be declared by MPs).

5.5 In addition, the net effect of the Standards Committee proposal to remove the ministerial exemption - requiring ministers to declare benefits and hospitality received in a ministerial capacity with the House - would arguably create greater confusion on the overlapping remits of the transparency regimes in government and Parliament. While ministers' meetings, gifts, and interests would be published solely by government; benefits, hospitality and overseas travel would be published by both.

5.6 CSPL recognises that the status quo, where ministers are effectively less transparent on benefits and hospitality than MPs, is unsatisfactory. We hope the government will address this as a matter of urgency.

Registrations of government trade envoys

5.7 Similarly, CSPL believes that any benefits and hospitality received by MPs acting as government trade envoys should be published by government, reflecting the capacity in which such work takes place.

6. Improving the accessibility of the MPs' Register

6.1 CSPL strongly supports the Standards Committee's call for the Parliamentary Digital Service to implement improvements on the digital accessibility and searchability of the Register of MPs' Interests, and we share the Committee's concern "that this work does not appear to be a priority". This proposal is in line with CSPL's 2018 recommended improvements on digital accessibility. Without such improvements, the ability of the Register

to facilitate transparency and accountability is diminished. We also welcome the Standards Committee's suggestions on using hyperlinks in business papers and online Hansard to make MPs' interests more visible.

7. Other Changes to the Rules

Bringing social media into the scope of the code

7.1 In our 2019 report on local government, we recommended that "Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media." In our *Upholding Standards in Public Life* report, we wrote that "We consider that the same principle should apply to MPs and peers".

7.2 Much of the culture of political discourse is set on social media, and so it is important that MPs lead by example and do not engage in abuse or personal attacks themselves. Any new rule to that effect must be implemented proportionately and objectively.

Matters relevant to the Independent Complaints and Grievance Scheme

7.3 CSPL welcomes the Standards Committee's recommendation that a breach of confidentiality in an ICGS case becomes an explicit breach of the code. The success or failure of the scheme depends on victims being confident that their complaints will be processed with the utmost discretion, and so a stronger deterrent here is welcome.

7.4 CSPL also supports proposals to give the Speaker the ability to refer matters to the Commissioner under the ICGS, closing a loophole by which some instances of bullying and harassment on the parliamentary estate would otherwise be out of the remit of the scheme.

Standards training

7.5 CSPL strongly welcomes the Standards Committee's recommendation that the House develop in-depth standards training for all MPs. Lord Nolan's first report in 1995 stressed the importance of education in ensuring that ethical standards are upheld; no standards regime will succeed in inculcating high ethical standards if it relies on rules and regulation alone.

Alignment between the Commons and the Lords

7.6 Greater regulatory alignment between the Commons and the Lords, though superficially desirable, is difficult to achieve given the different roles, status, and nature of both Houses, particularly given that peers are unelected and unsalaried. Any changes that seek to simplify the differences between the Houses is welcome. However it would be difficult, if not impossible, to govern both Houses under the same code of conduct. It is difficult to see how the Commons could impose conduct rules on the Lords, or the Lords impose conduct rules on the Commons.