

Committee on Standards in Public Life

Standards of Conduct in the House of Commons



Eighth Report
Cm 5663

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.



Eighth Report of the Committee on
Standards in Public Life

Chair: Sir Nigel Wicks GCB CVO CBE

Standards of Conduct in the House of Commons

Report

Presented to Parliament by the Prime Minister
by Command of Her Majesty
November 2002
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*Committee on Standards
in Public Life*



Chair:

Sir Nigel Wicks GCB CVO CBE

November 2002

Dear Prime Minister,

I am pleased to present the Committee's Eighth Report on Standards of Conduct in the House of Commons.

The Report reviews the implementation of the relevant recommendations in the Committee's First and Sixth Reports concerning the regulation of standards of conduct in the House. In line with our terms of reference, it also considers the "current concerns" expressed both in Parliament and elsewhere relating to the arrangements for the appointment of the Parliamentary Commissioner for Standards.

The evidence presented to the Committee suggested that, following publication of the First Report in 1995, real progress has been made in establishing and enforcing high standards of conduct. We concluded, however, that one or two serious cases of misconduct can lead to a disproportionate loss of public confidence in the House of Commons as an institution. Many of our witnesses identified a lack of clarity in the regulatory arrangements in the House, notably in the position and role of the Parliamentary Commissioner for Standards and of the Committee on Standards and Privileges. We also have concerns that the arrangements do not ensure fairness to Members against whom allegations are made. The recommendations set out in our report are intended to ensure that the system of regulation delivers public confidence in the House while carrying the confidence of the House itself.

Most of the recommendations in the Report are matters for the House of Commons. But Recommendation 6 is, I think, a matter for you in that it proposes that it should be a requirement of the Ministerial Code that Members of the House who are Ministers must co-operate with any investigation, at all stages.

*Yours sincerely
Nigel Wicks*

Nigel Wicks

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LIST OF RECOMMENDATIONS

Chapter 4: Establishing and promulgating standards

- R1** (a) In each Parliament, the Parliamentary Commissioner for Standards should initiate a review of the Code of Conduct and Guide to the Rules.
- (b) The Parliamentary Commissioner for Standards should recommend any amendments to the Code and the Guide to the Committee on Standards and Privileges.
- (c) The Committee on Standards and Privileges should consult on amendments to the Code and the Guide with relevant external bodies.
- (d) Following this consultation, the Committee on Standards and Privileges should recommend any amendments to the Code and the Guide to the House.
- (e) The House of Commons should debate the recommendations of the Committee on Standards and Privileges in a timely fashion. *(page 24)*
- R2** The Parliamentary Commissioner for Standards should periodically review, in conjunction with the House authorities and the Whips, the effectiveness of the provision for training and guidance on standards of conduct. *(page 25)*
- R3** The Parliamentary Commissioner for Standards should ensure that there are effective means in place to inform all MPs of changes to the Code or Guide. *(page 26)*

Chapter 5: The role of the Parliamentary Commissioner for Standards in investigating complaints

- R4** It should be made clear that it is the responsibility of the Parliamentary Commissioner for Standards to notify the MP at the earliest possible stage of each relevant part of the Code of Conduct which it is alleged has been breached. *(page 29)*

- R5** It should be an explicit requirement of the Code of Conduct that Members must co-operate with any investigation, at all stages. *(page 29)*
- R6** It should be an explicit requirement of the Ministerial Code that Members who are Ministers must co-operate with any investigation, at all stages. *(page 30)*
- R7** The Guide to the Rules should be amended to set out clearly the means by which the Committee on Standards and Privileges would deal with frivolous or vexatious complaints. *(page 30)*
- R8** It should be made clear that the role of the Commissioner as an investigator is to report the facts as he/she has found them and, wherever possible, offer his/her own conclusion on whether the Code has been breached. *(page 32)*
- R9** The role of the Commissioner in the rectification procedure should be set out clearly. *(page 32)*

Chapter 6: The role of the Committee on Standards and Privileges in reaching a decision on a complaint

- R10** The role of the Committee on Standards and Privileges should be set out fully. *(page 34)*
- R11** The Committee should be required to set out in full the reasons for its decisions. *(page 35)*
- R12** (a) The House should establish an Investigatory Panel to handle serious, contested cases.
- (b) The Investigatory Panel should comprise an independent legal Chair from outside the House and two MPs of substantial seniority drawn from different parties and who are not members of the Committee on Standards and Privileges.
- (c) The Chair of the Investigatory Panel and the pool of MPs from which the two other Panel members will be drawn should be identified at the beginning of each Parliament.

(d) The Committee on Standards and Privileges should refer to the Investigatory Panel any cases involving disputed and significant issues of fact where the Member would face a serious penalty in the event of the complaint being found to be proved.

(e) An MP whose case is being considered by the Panel should have the right (i) to call and examine witnesses and (ii) to receive reasonable financial assistance for legal advice and representation.

(f) The Investigatory Panel should be able to appoint Counsel who could cross-examine witnesses.

(g) The Investigatory Panel should reach decisions by a majority.

(h) The Investigatory Panel should report its findings on the facts that it has identified and its own conclusion on whether the Code has been breached to the Committee on Standards and Privileges.

(i) It should be for the Committee on Standards and Privileges to decide whether there has been a breach of the Code, taking account of the findings of the Investigatory Panel.

(j) The findings of the Investigatory Panel should be published as an appendix to the report of the Committee on Standards and Privileges. *(page 38)*

R13 (a) The Investigatory Panel and the Committee on Standards and Privileges, where it takes evidence, should take evidence in public.

(b) The proceedings of the Investigatory Panel and the Committee on Standards and Privileges should not be broadcast. *(page 39)*

R14 The House should take steps to introduce additional financial penalties without suspension as a sanction for breach of the Code of Conduct. *(page 41)*

Chapter 7: Strengthening the position of the Committee on Standards and Privileges

R15 No one party should hold an overall majority membership of the Committee on Standards and Privileges. *(page 46)*

R16 The Committee on Standards and Privileges should be composed of a majority of members with senior standing in the House. The Chairman should continue to be drawn from the Opposition parties. The inclusion of any recently elected Members should be based on their having relevant experience outside the House which would contribute to the work of the Committee. *(page 47)*

R17 Parliamentary Private Secretaries should be excluded from membership of the Committee on Standards and Privileges and from membership of the Investigatory Panel. *(page 48)*

R18 The Committee should appoint an outside legal adviser in order to assist it with its work on a regular basis. *(page 48)*

R19 (a) It should be a requirement of the Code of Conduct that no MP shall lobby a member of the Committee on Standards and Privileges with the intention of influencing their view of a case.

(b) Until the Committee's report on a case is published, there should be an explicit requirement that no member of the Committee on Standards and Privileges should discuss the case outside Committee meetings.

(c) The recommendations at (a) and (b) should apply equally to members of the Investigatory Panel. *(page 49)*

Chapter 8: Strengthening the position of the Commissioner

R20 The post of Parliamentary Commissioner for Standards should be clearly defined as an office-holder, appointed and paid for, but not employed, by the House. *(page 53)*

R21 (a) The Commissioner should in future be appointed for a non-renewable fixed term.

(b) The House should decide on a term of between five and seven years. *(page 54)*

R22 (a) The House should continue to appoint the Parliamentary Commissioner for Standards on a recommendation from the House of Commons Commission.

(b) The House of Commons Commission should, as best practice, conform with the Code of Practice of the Commissioner for Public Appointments at all stages of the selection process.

(c) The Chairman of the Committee on Standards and Privileges should be a member of the selection panel and attend any relevant meetings of the Commission when the appointment of the Commissioner is discussed. *(page 56)*

R23 (a) The Commissioner should be given direct powers equivalent to those of the Committee to call for witnesses and papers.

(b) If a witness was unwilling to comply with the Commissioner's use of these powers, the Commissioner could refer the case to the Committee on Standards and Privileges, who could then, if so minded, use its own powers. *(page 57)*

R24 The process for setting the resources for the Commissioner's office should be transparent; the Commissioner and the Chairman of the Committee on Standards and Privileges should be involved in arriving at the budget. *(page 58)*

R25 (a) In relation to all stages of an individual complaint, the Commissioner should confine

comments to the media to the fact that a complaint has (or has not) been received, whilst making clear that the existence of a complaint does not mean that the Code has been breached.

(b) After consultation with the Committee on Standards and Privileges, the Commissioner should draw up a statement of his/her strategy towards inquiries from the media. The statement should be published and included in the annual report. *(page 60)*

R26 The Commissioner should publish an annual report. *(page 60)*

R27 The House should implement the following recommendations by Standing Order:

- Chapter 4: R1(a), (b), (c), (d);
- Chapter 5: R4, R8, R9;
- Chapter 6: R10, R11, R12(a), (d), (e), (f), (g), (h), (i), (j), R13;
- Chapter 7: R18, R19(b) and (c);
- Chapter 8: R20, R23, R26. *(page 62)*

CHAPTER 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, in response to public concern about standards in public life.
- 1.2 The Committee was given wide-ranging terms of reference:

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.

These terms of reference were extended in November 1997 by the present Prime Minister, the Rt Hon Tony Blair MP, to enable the Committee to undertake an enquiry into the funding of political parties. A list of the Committee's previous reports is at Appendix D.

The First and Sixth Reports

- 1.3 For its **First Report**, the Committee, under its Chair, the Rt Hon Lord Nolan, concentrated on three areas: the House of Commons; Central Government (Ministers and civil servants); and executive Non-Departmental Public Bodies (NDPBs) – or ‘quangos’ – including NHS bodies.
- 1.4 The report was published in May 1995 and contained four general recommendations and 55 other recommendations. The first general recommendation was the formulation of Seven Principles which should underpin standards in public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership (set out in full inside the front cover of this report). These have since come to be widely used as the touchstone for ethical standards in public life. The other general recommendations were:
- all public bodies should draw up codes of conduct incorporating the Seven Principles;
 - internal systems for maintaining standards

should be supported by independent scrutiny;

- more should be done to promote and reinforce standards of conduct in public bodies, particularly through guidance and training, including induction training.

- 1.5 Of the 55 specific recommendations which followed, 11 concerned the House of Commons. They proposed the introduction of a Code of Conduct for MPs, the tightening of the rules on the registration of interests by MPs, and the creation of the office of Parliamentary Commissioner for Standards.
- 1.6 In January 2000, under its second Chair, Lord Neill of Bladen QC, the Committee reviewed the implementation of all the recommendations in the First Report and looked specifically at the ability of the House of Commons to deal with serious, contested allegations. The result was the **Sixth Report**, *Reinforcing Standards*, which included ten recommendations on the House of Commons. The recommendations about the House of Commons from both reports are set out in full at Appendix A.

The purpose and scope of the present inquiry

- 1.7 In September 2001, the Committee, under its present Chair, Sir Nigel Wicks, published *The First Seven Reports – A Review of Progress*. This took stock of each of the 308 recommendations made by the Committee in its seven reports since 1995. The Committee stated its intention to follow this up in due course with a review of the implementation, delivery and outcomes of each report.
- 1.8 Shortly afterwards, the House of Commons Commission announced that the three-year appointment of the then Parliamentary Commissioner for Standards, Ms Elizabeth Filkin would cease in February 2002 and that there would be an open competition to fill the post. This fuelled questions from some Members of Parliament and in the media about why Ms Filkin was not being automatically re-appointed.

1.9 In correspondence with the Speaker in November 2001, the Chair noted that the Committee did not consider individual cases but had a continuing interest in the appointment, independence, tenure and powers of the post of Parliamentary Commissioner. In December 2001, the Committee announced that it was timely to begin its promised review of each of its reports by turning first to the recommendations about the House of Commons contained in the First and Sixth Reports.

Gathering evidence

Written evidence

1.10 In February 2002, the Committee published a consultation paper setting out the principal areas on which we intended to focus; we raised 13 questions relating to those areas. The paper was advertised in selected national and local publications and circulated widely within both Houses of Parliament, to Members of the Scottish Parliament, and to Assembly Members of the Northern Ireland Assembly and the National Assembly for Wales. It was also sent to a number of academics and political commentators and to members of the public who have shown an interest in our work. The paper was also available from the Committee's website. We received nearly 70 written responses to the consultation paper from a variety of organisations and individuals.

1.11 All written submissions (save, in accordance with the Committee's long-standing procedure, those which we were asked to treat as confidential or those which we considered might be defamatory) can be found on the CD-ROM which forms part of this report. A list of those submitting written evidence is at Appendix B. The CD-ROM also contains a copy of this report, transcripts of the oral evidence we received and a research paper produced for us by the Constitution Unit, *The Regulation of Parliamentary Standards – A Comparative Perspective*.

Public hearings

1.12 Between 7 May and 14 June 2002, the Committee took evidence at eight full days of public hearings – seven in London and one in Edinburgh. Two witnesses who appeared in May¹ were invited to give further evidence in September. A list of witnesses who gave oral evidence, either on their own behalf or in a representative capacity, is set out in Appendix C.

1.13 The transcripts of evidence given at the public hearings can be found in the attached CD-ROM. References in this report to the transcripts of oral evidence denote the day of the public hearing and indicate whether the evidence was taken in the morning or the afternoon (for example, 'Day 2, pm').

Acknowledgements

1.14 We would like to record our thanks to those who took the time and trouble to make a written submission. We thank in particular those who, in addition, appeared before us to give oral evidence. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable.

The framework within which the Committee works

1.15 This Committee is an advisory body only. It reports to the Prime Minister but sets its own programme after consultation between the Committee and the Government. It has no legal powers. It cannot summon witnesses to appear before it. It has no powers of enforcement and has, therefore, no power to impose any of its recommendations. As this report is predominantly directed at the House of Commons, it will therefore be open to the House of Commons to accept, modify or reject all or any of the proposals which the Committee puts forward for its consideration.

¹ The Rt Hon Sir George Young Bt MP, Chairman of the Committee on Standards and Privileges and Sir Philip Mawer, the Parliamentary Commissioner for Standards.

CHAPTER 2 UPHOLDING STANDARDS OF CONDUCT IN THE HOUSE OF COMMONS

2.1 The House of Commons stands at the heart of our democracy. In many senses, it is a unique institution, with unique powers and responsibilities. As Lord Nicholls of Birkenhead put it “A proper sense that Parliament is different ... is constitutionally of great importance”.²

Self-regulation in the House of Commons

2.2 The House is responsible for regulating its own affairs. This responsibility 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. The roots of this right lie deep in the history of the House of Commons and the right is zealously guarded. As the Leader of the House, the Rt Hon Robin Cook MP, put it:

*This is not some arcane or self-serving point of privilege; it is a fundamental principle of our parliamentary democracy, and an essential right of the British public that no external agency may constrain the freedom of speech of elected MPs or the conduct of their proceedings.*³

We consider this important principle further below (paras 2.15 to 2.21).

2.3 The current system for regulating standards of conduct in the House of Commons dates from 1996 when the House adopted most of the proposals put forward in this Committee’s First Report. We describe the system fully in

Chapter 3. The Select Committee of the House which scrutinised our First Report commented that these arrangements would need to be reviewed “in the light of practical experience at some future time”.⁴

Overall standards of conduct in the House

2.4 In reviewing that experience over the past six years, several witnesses made the point that standards of conduct at Westminster bear favourable comparison with other legislatures. The Leader of the House said “I would put on record my strong opinion that standards of integrity are as high at Westminster as any other national parliament”.⁵ He pointed out that only four Members had been suspended for misconduct relating to the declaration or registration of interests in the past six years. In the context of well over 600 Members, they represented barely half of one per cent.

2.5 Other witnesses pointed out that, reprehensible though failures to declare or register were, they did not amount to corruption. James Hardy, Chairman of the Lobby journalists, told us “People do not generally think there is a problem with corruption in the House of Commons”.⁶

2.6 The question of public perception was also raised by Paul Tyler CBE MP, the Liberal Democrat Shadow Leader of the House. Against the background of a recent opinion poll, that rated trust in politicians against other occupational

² Day 6, pm. Lord Nicholls is a Lord of Appeal in Ordinary and was Chairman of the Joint Committee on Parliamentary Privilege which reported in 1999.

³ Day 1, am.

⁴ Select Committee on Standards in Public Life, First Report, HC 637, (1994-95), para 10.

⁵ Day 1, am.

⁶ Day 3, am. He is also Political Editor of *The Mirror*.

groups, he commented “*although the reputation of the institution is at a very low ebb, the reputation of individual members is not*”.⁷

- 2.7 We endorse the view that standards in the House of Commons are generally high, and that the overwhelming majority of members seek to, and in practice do, uphold high standards of propriety. We believe that the system put in place after 1996 has largely eradicated the problem of paid advocacy and that most alleged breaches now concern a failure to declare or register interests. As one member of the present Standards and Privileges Committee, David Heath CBE MP put it “*almost all of our work is dealing with errors of judgement, which are effectively misdemeanours within the context of the Rules of the House, but do not constitute a matter of bribery or corruption, or a serious offence against the principles of democratic accountability*”.⁸

The impact of serious cases

- 2.8 Nevertheless, although statistically very few, serious cases of misconduct do arise, and can lead to a disproportionate loss of public confidence in the House of Commons as an institution. Moreover the progress to a high level of conduct can be seriously undermined if the question of public perception is not carefully addressed. The Rt Hon Baroness Boothroyd, a former Speaker of the House, put the point strongly to us:

*I am concerned about the public's perception of Members of Parliament ... One only has to have one or two bad apples in a barrel and the public think that everybody is tainted with that same disease.*⁹

- 2.9 A similar point was made by the Rt Hon Kenneth Clarke QC MP:

I do not share this sense ... that there is general public disquiet out there and that guilty men are going free. Although, if you put that last question to members of the public ... they seem unable to lift from its shoulders the feeling that ‘Oh

well, all this stuff appears in the newspapers. It is obvious they are all covering up misdemeanours.’¹⁰

- 2.10 Other witnesses spoke of the loss in public confidence that followed from the decision in late 2001 not to offer re-appointment to the second Parliamentary Commissioner, Elizabeth Filkin. Dr Tony Wright MP, Chair of the Public Administration Select Committee, told us:

*... the Filkin affair was damaging ... it has set back a process of reform and restoration of reputations a good deal. And it has of course revealed ... some of the shortcomings in how we do these things.*¹¹

- 2.11 The Rt Hon Charles Clarke MP, the then Chair of the Labour Party, said:

*I think it is a relatively uncontroversial statement that the events that took place around that time gave an impression publicly that we were not addressing these things as we needed to.*¹²

- 2.12 For some MPs across all parties, the apparent loss of public confidence was enough to bring into question the system of self-regulation in the House. Paul Tyler MP said “*if we do not get it right, we may be in the last chance saloon for self-regulation*”.¹³ The Rt Hon Sir Archibald Hamilton, a former MP and former Chairman of the 1922 Committee, said “*I think the existing system of self-regulation is now discredited*”.¹⁴ Alex Salmond MP, SNP Parliamentary Group Leader, when asked if the House’s system of self-regulation could command public confidence, said “*I do not think [so] ... I do not have any confidence in any aspect of self-regulation through the Standards Committee ... the evidence against that type of self-regulation is overwhelming*”.¹⁵

- 2.13 Other witnesses felt that the system of self-regulation needed to be made more effective and, in Charles Clarke’s words, should be given “*a bit more of a whirl*”.¹⁶ Peter Preston, former Editor-in-Chief of *The Guardian*, agreed that the point had not been reached when self-regulation

⁷ Day 2, am.

⁸ Day 3, pm.

⁹ Day 5, am.

¹⁰ Day 6, am.

¹¹ Day 7, pm.

¹² Day 1, pm.

¹³ Day 2, am.

¹⁴ Day 2, pm.

¹⁵ Day 7, pm.

¹⁶ Day 1, pm.

in the Commons had become “so lax, or so clubby, or so generally sloppy that people lost trust in it all the way”.¹⁷ Angela Browning MP said “self-regulation will work if we are able to learn from the initial mistakes – and I think there have been mistakes in the last two or three years – and to improve the way in which self-regulation works, including transparency of process of information”.¹⁸ Elizabeth Filkin, the former Parliamentary Commissioner made the point that “you cannot get a good system of compliance with high ethical standards without self-regulation, so you have got to have that”.¹⁹

2.14 In later chapters we consider in detail how concerns about the self-regulatory system might be addressed. Before doing so, we look at:

- how the system of self-regulation in the House is shaped by the doctrine of parliamentary privilege; and
- the evidence of other models of regulation outside the House.

Parliamentary privilege

2.15 As the Leader of the House emphasised, self-regulation in the House of Commons has a constitutional importance because the House is sovereign. In order to fulfil its responsibilities as a sovereign institution, Parliament must have the freedom of privilege so that it is protected from outside interference. The Report of the Joint Committee on Parliamentary Privilege sets out the background to this clearly:

Parliament makes the law and raises taxes. It is also the place where ministers are called to account by representatives of the whole nation for their decisions and their expenditure of public money. Grievances, great and small, can be aired, regardless of the power or wealth of those criticised.

In order to carry out these public duties without fear or favour, Parliament and its members and officers need certain rights and immunities. Parliament needs the right to regulate its own affairs, free from intervention by the government or the courts. Members need to be able to speak

*freely, uninhibited by possible defamation claims. These rights and immunities, rooted in this country’s constitutional history, are known as **parliamentary privilege**.*²⁰

2.16 There is no doubt that Members of Parliament take this doctrine very seriously for proper and necessary reasons. Paul Tyler MP, who was a member of the Joint Committee on Parliamentary Privilege, told us “it is actually very important, for the freedom of Members of Parliament ... to do their job properly, that there are not unnatural constraints on that activity”.²¹ A former MP, Matthew Parris, also emphasised how strongly parliamentarians feel about preserving the autonomy of the House: “It is their House and they do lead the democracy. So, however sensible or convenient [in the context of regulating standards] it might seem to set up a rival focus of authority, I feel very wary about doing so”.²²

2.17 However, there is some evidence that the public perception of parliamentary privilege may not be a positive one. This was underlined by a submission from a member of the public to our inquiry, in which he said “the immunity extended to [MPs] whilst speaking in the House was surely never intended to allow them to think they were above the law”.²³ Paul Tyler MP also recognised that the House’s emphasis on regulating its own activities could be misinterpreted by the outside world as a “protective, closed, cosy club in Westminster, saying ‘Keep out, we do not want you in’.” He emphasised that this was not the case: rather Parliament was saying “it is an essential part of the freedom of a free Parliament that we try and organise ourselves in such a way that we do not need to call you in”.²⁴

2.18 This dichotomy was also highlighted by Barry Winetrobe, a parliamentary and constitutional consultant who has had direct experience of both the Westminster and Scottish Parliaments. He suggested that those who would regard Westminster as:

... less Draconian [than the Scottish Parliament], would regard it as something where self-regulation means ‘a club’, a cosy group where

¹⁷ Day 5, am.

¹⁸ Day 5, pm.

¹⁹ Day 5, pm.

²⁰ Report of Joint Committee on Parliamentary Privilege (Session 1998-99, HL 43, HC 214), Executive Summary.

²¹ Day 2, am.

²² Day 1, am.

²³ Mr Gordon Harrison, 20/15. The Government is committed to making bribery of an MP a criminal offence but statutory time has not yet been found.

²⁴ Day 2, am.

*you are not being as harsh or critical as someone would be looking at it from the outside. The other argument is that you are stricter because you are preserving the integrity of the institution. That is a subjective point that goes to the heart of self-regulation.*²⁵

The threat of challenge to parliamentary privilege

2.19 The ‘immunity’ which Parliament is particularly anxious to preserve is immunity from a review of its decisions by the Courts. Because the present self-regulatory process governing standards of conduct comes within the definition of ‘*proceedings in Parliament*’,²⁶ it is currently understood to be immune to judicial review. We heard arguments, however, that if some part of the process were made external to Parliament (e.g. by having an external tribunal to hear cases or by creating a statutorily independent Commissioner for Standards), it is possible that the courts would be able to review the process judicially. The Clerk of the House, Sir William McKay, put his interpretation of the undesirability of this development graphically when he said:

*If we begin to expose some aspects of the House’s self-regulation to judicial review, it will ... creep and the judges will, perfectly rationally as they would see it, move further and further into the heart of parliamentary decision-making ... You must surely avoid the huge actual and, what is worse, potential loss in multiplying the number of judicial tanks on the parliamentary lawn.*²⁷

2.20 However, Dawn Oliver, Professor of Constitutional Law at University College London²⁸ and Ms Rhoda James and Dr Richard Kirkham of Sheffield University,²⁹ suggested that it would not necessarily undermine the principle of Parliamentary sovereignty to allow some form of external regulation. They agreed that Parliament was sovereign in the sense of being the supreme law-making body.³⁰ But they suggested that the system for judging the fitness of MPs to take part in the law-making process

could properly be separated from, and need not affect, the sovereignty of that law-making process and the consequent doctrine of parliamentary privilege.

2.21 Ms James and Dr Kirkham went on to suggest that “*if you look at the outside world now, it is taken for granted that there is an independent element in matters of complaint and disciplinary processes. A whole series of government initiatives over the last 20 years have introduced this*”.³¹ Other witnesses such as Peter Preston of *The Guardian* also drew attention to the passing by Parliament of an external scheme of regulation for local government, and the benefits it appeared to have brought:

*... hundreds of local councillors ... largely approve of the kind of disciplines that have been exerted. They feel they are working on the public behalf and that it has done them some good with their constituents.*³²

Models of regulation

2.22 Although the system of regulation in the House is based on self-regulation, all systems of regulation fall along a spectrum which has pure self-regulation at one end and wholly external regulation at the other. Most systems are a hybrid, combining elements of both internal and external regulation. As Ross Cranston QC MP put it:

*... there is not a binary divide between self-regulation on the one hand and regulation on the other hand ... all systems fall along the spectrum.*³³

The Committee agrees with this judgement.

2.23 We received some academic evidence about the different models for self-regulation. Professor Oliver suggested that self-regulation was of two kinds: pure self-regulation, which does not involve any independent body; and co-regulation which involves an independent element. She suggested that there was a strong trend in the direction of co-regulation.

²⁵ Day 4, pm.

²⁶ Article 9 of the Bill of Rights 1689: “*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.*”

²⁷ Day 1, am.

²⁸ Written evidence 20/13 and Day 3, pm.

²⁹ Written evidence 20/34 and Day 8, am.

³⁰ While noting that there were complications arising from EC statute law.

³¹ *Ibid.*

³² Day 5, am.

³³ Day 7, am.

2.24 Looking at regulatory systems for the professions and much of commerce and the world of finance, Professor Oliver noted that self-regulation has been found to work best when *“there is an independent, external element exerting pressure on the self-regulatory body to promote public interests and not their own interests and holding them to account for departures from standards of fairness and probity”*.³⁴ She did not believe the Parliamentary Commissioner for Standards could provide the required independent element because the Commissioner did not have security of tenure or the independent right to publish findings without the consent of the House.

SCOTLAND, WALES AND NORTHERN IRELAND

We also considered the devolved administrations and took evidence from Scotland and Northern Ireland.³⁵ The devolution legislation sets out the framework for regulation of standards of conduct within which Scotland, Wales and Northern Ireland are required to approach the regulation of standards of conduct.

Although the administrations have set in place structures which owe much to the Westminster approach (with an independent Commissioner and a Committee analogous to the Committee on Standards and Privileges), the fact that the regulation of standards is based on statute makes for some fundamental differences. In a significant departure from the position for MPs, the devolution legislation makes it a criminal offence for MSPs and Assembly Members to fail to register or declare interests or to be involved in paid advocacy. Any infringement is a matter for the police, leaving the Standards Commissioner and Committee within each administration with a more limited responsibility than their analogues in Westminster.

In Northern Ireland and Wales the devolution legislation provided a ready made code of conduct for adoption (although subsequent modifications are allowed, and Northern Ireland has been consulting on amendments). In Scotland, the legislation requires the implementation of a code, but its content is for the Scottish Parliament to decide. Both the Welsh Assembly and the Scottish Parliament are potentially subject to judicial review of their affairs.

Self-regulation in the professions

2.25 Evidence given to us by the General Medical Council and the Bar Council helped the Committee to explore the spectrum between regulation and self-regulation to which Ross Cranston QC MP referred.

The General Medical Council

2.26 Sir Donald Irvine, past President of the General Medical Council and Chairman of its Committee on Standards and Medical Ethics between 1985 and 1995, emphasised in his evidence several features of the system of regulation governing the medical profession.³⁶

2.27 First, he emphasised the length of time and intensity of effort that had been required by the Council and key stakeholders to think through issues which had seemed, on the face of it, *“deceptively simple”*.

2.28 Second, he mentioned two key shifts in thinking in the early 1990s. One had been to reverse a negative, complaints-driven process where standards were implicit into one where explicit standards were positively and proactively communicated as a key component of good medical practice. Doctors should be encouraged to see the process *“as a positive enhancement of their professionalism rather than an imposed duty from outside”*.

2.29 Third, there had been a substantial increase in the level of involvement by the public through greater lay membership on the Council and its Committees. This enabled the GMC *“to make sure we had a well-founded view of what people who are not doctors thought about doctoring”* and to promote confidence in the GMC amongst the public.

2.30 Fourth, he underlined that the key objective for complaint-handling was clarity of process: *“that has now got to be made quite public so that everybody can see quite clearly, at each step in the process, what it is and what the results are.”*

2.31 Finally he stressed the importance of *“getting the collective culture right and the principle of positive affirmation of compliance”* and reinforcing that through education and leadership.

³⁴ Ibid.

³⁵ Written evidence 20/39, oral evidence Day 4, am and pm and Day 8, am. In addition, we commissioned and published research on the regulation of parliamentary standards in both these administrations as well as in Wales, Ireland, Australia and Canada: *The Regulation of Parliamentary Standards – A Comparative Perspective* by Oonagh Gay, The Constitution Unit, University College London (included on the CD-ROM which forms part of this report).

³⁶ Day 7, pm passim.

REGULATING STANDARDS OF CONDUCT IN THE MEDICAL PROFESSION

The General Medical Council was established by statute in 1858. Its prime objective is to protect the public. Since 2000 it has been carrying out a review of its structures and governance. The key criteria they have established for any new system are:

- **effectiveness**, to discharge its statutory functions as effectively as possible;
- **inclusiveness**, to have the confidence of all key stakeholders;
- **accountability**, to enable stakeholders to judge its performance.

Currently, complaints about doctors go through several stages. The large majority of complaints come from members of the public – others come from people in a position of responsibility such as a chairman of a trust or employers.

- About 40 per cent of complaints are eliminated in an office-based procedure because they do not come within the jurisdiction of the GMC.
- If a complaint appears to be a matter for the GMC, it is looked at by both medical and lay members called ‘**screeners**’. On the basis of what is known and any preliminary investigation, their task is to assess whether serious professional misconduct could be found if the facts were proved. Complaints may be rejected at this stage but only if a lay member agrees that there is no case to answer.
- If the case proceeds, further evidence is collected and the case prepared. Serious cases

are reviewed by the **Preliminary Proceedings Committee** which acts as the final screen about cases to go forward. Their decision may result in either a letter of warning or a referral to the Professional Conduct Committee.

- The **Professional Conduct Committee** meets in public and conducts a full hearing with both parties represented legally and witnesses giving evidence on oath. The criminal standard of proof (‘beyond all reasonable doubt’) is applied. The penalties range from a public warning, through suspension, to being struck off permanently.
- Both the Preliminary Proceedings Committee and the Professional Conduct Committee have some lay membership.
- A doctor whose registration is affected by the outcome of the Conduct Committee may appeal to the **Judicial Committee of the Privy Council**.

The Government has now accepted the GMC’s proposals for change and is currently bringing forward legislation to implement them. The key changes will be:

- a smaller, more strategic GMC with increased lay input;
- greatly streamlined, more accessible, transparent and flexible fitness to practice procedures;
- the introduction of ‘revalidation’: the requirement for doctors to demonstrate on a regular basis that they are up-to-date and fit to practise.

The Bar Council

2.32 When the Lay Commissioner, Major General Michael Scott CB CBE DSO, and Jonathan Acton Davis QC, Chairman of the Professional Conduct and Complaints Committee gave evidence to us, they began with an overall observation about regulatory bodies. They suggested that *“it was axiomatic that any regulatory body, whether self- or publicly-regulated, should have on it representation from those who are not part of the profession.”* They gave three reasons:

- to give public confidence;
- to add a non-professional dimension;
- to prevent development of an incestuous, inward-looking profession.³⁷

2.33 In describing the role of lay members, they stressed that they should be *“impartial and even-handed”*, not merely *“the champion of the consumer or complainant”*. They must also be self-confident and robust, not shy of stating their opinions. They should be selected by a process involving lay representatives which is open to public scrutiny.

2.34 Transparency in general was an important feature *“in order to give the public the confidence there is no white-wash, cover up or self-protection.”* The Commissioner’s Annual Report was another aspect of that. The Bar Council has also commissioned an external assessment of how the system is seen to work.

³⁷ Day 6, am passim.

REGULATING STANDARDS OF CONDUCT AT THE BAR

The Bar's system for regulating standards has several components: a Lay Complaints Commissioner, a Professional Conduct and Complaints Committee (PCC) and several tribunals that hear particular types of case.

The Complaints Commissioner is a lay figure employed by the Bar to make initial inquiries into all complaints brought under their Code of Conduct, by fellow barristers, others in the legal system or the general public. He has the power to dismiss all cases which seem frivolous, vindictive or groundless without further reference to anyone. Well over a third of cases completed in 2001 fell at this stage. Workflow was reasonably steady at around 600 complaints per year until a change last year brought in nearly 300 complaints about lapsed Practising Certificates.

If the Commissioner considers there may be a case to answer it is handed on to a member of the PCC, who prepares a report for the Committee's consideration. At this stage the system becomes more complex. The initial PCC hearing will consider the case to determine the strength of the evidence and whether Professional Misconduct or Inadequate Professional Service are alleged, as each type of offence is handled by a different type of tribunal. There is a clear gradation in the process according to the gravity of the charges and likely penalties incurred, and particular arrangements apply for serious and contested cases. The criminal standard of proof is applied

in professional misconduct cases. The lower civil standard of proof is applied in cases of inadequate professional service.

The full PCC is made up of 40 barristers and a panel of 20 lay members. A standard meeting consists of 20 barristers and 2 lay members, together with the Complaints Commissioner. No complaint before the PCC may be dismissed without both lay members on the Committee agreeing. There is also lay representation on each of the different types of panel and tribunal. Lay members are appointed by open competition from a wide range of backgrounds through a selection process that includes lay representation at all stages.

The system is subject to external scrutiny, in that a dissatisfied complainant can take up a case with the Legal Services Ombudsman, who is a statutory office-holder.

The Lay Commissioner is appointed and can be dismissed by the Bar Council. His role and function is set out in the Bar's Code of Conduct, though the independent nature of the post is not defined. The current Commissioner was appointed for three years initially, renewable until retirement age. He does not have his own budget but is able to use the staff supporting the Professional Conduct Committee. He does not confirm the existence of a complaint to the press but will talk to them about procedural issues. He produces an annual report, which is seen as supporting the objectives of transparency and education.

Overall characteristics of an effective system

2.35 The Committee's examination of other models suggests a number of desirable characteristics of an effective system of self-regulation. First there is the presence of either or both an **independent** or **external element** in a self-regulatory system. In the Bar Council's case, there are both elements; in the GMC's case, there is an external element through the lay membership of its committees. Lord Nicholls described this trend as the *"ongoing march of outside participation in disciplinary and regulatory processes ... the public feels that self-regulation is not 100 per cent reliable"*.³⁸

2.36 Second is the requirement for greater **clarity and transparency** in the regulatory process itself. Behind this move is the recognition that there are two audiences for any regulatory decision – the institution or profession itself and the public. In order to achieve the necessary degree of confidence, it is important for the public to understand how each element in the system works and to be able to see the reasons why particular decisions have been taken. At the same time the arrangements must carry the confidence of the members of the institution.

2.37 Third, the **cultural outlook** of the profession or institution needs to be right. Evidence we took from witnesses in Scotland emphasised the strong 'cultural' objective of changing the perception that politics was in disrepute. This had led to *"the default position in Scotland ... [being] for disclosure, for independence, for autonomous investigation and for sorting it out in the public interest"*.³⁹

2.38 Fourth, we take it as axiomatic that a self-regulatory system must command the confidence of those who will be subject to it. Members of the institution or profession must believe that it will be a **fair process**, conducted in accordance with the principles of natural justice.

2.39 Fifth, there is the importance of **leadership** in setting high ethical standards. Parliament's supreme stature as the sovereign legislature gives

it particular responsibilities in this area. People in all walks of life look to Parliament to set the example through its own regulatory system. As Sir Donald Irvine put it: *"The citizens judge Members of Parliament like they do doctors too, about their ultimate conduct and in particular their honesty and their trustworthiness ... I would like to think, as a citizen, that Members of Parliament who are representing me were taking that seriously"*.⁴⁰

Relevance to the House of Commons

2.40 Comparisons with other models can only be taken so far. Several MPs who gave evidence rejected a direct comparison between themselves and those in professions. They argued that only they were *"subjected to that supreme test of going to the electorate at regular intervals ... that is the critical difference between an elected Parliament and any other institution in the land"*.⁴¹ The Rt Hon Eric Forth MP also argued that the five yearly electoral cycle was *"a sufficient corrective"* and that there was the *"greater bar of opinion of the electorate at large"*.⁴² The Rt Hon Sir George Young Bt MP reminded us of the great weight MPs attach to their reputation and integrity.⁴³

2.41 While we acknowledge the unique feature of re-selection and re-election for Members of the House, we also acknowledge the arguments of weight which point in the other direction. An individual elector's vote is rarely determined solely by conduct issues. Even more importantly, the accountability of Members for their conduct should be a continuing obligation, not a *"once every four or five years exercise"*.⁴⁴

2.42 While some witnesses suggested that public perception of politicians' behaviour was *"a very fickle thing"*,⁴⁵ largely governed by the media, the Rt Hon Hilary Armstrong MP, the Government Chief Whip, put it succinctly when she said *"if people outside think it is an issue, it is an issue whether we like it or not"*. She went on:

You have to end up with a system that has integrity, a system that the people who are monitored by it believe is a rigorous system,

³⁸ Day 6, pm.

³⁹ Brian Taylor, Political Editor, BBC Scotland, Day 4, am.

⁴⁰ Ibid.

⁴¹ Paul Tyler MP, Day 2, am.

⁴² Day 1, am.

⁴³ See para 6.16

⁴⁴ Barry Winetrobe, Day 4, pm.

⁴⁵ Ross Cranston QC MP, Day 7, am

*but also fair, and they can have trust in it. But [one] that also gives as much evidence to people outside that it is both rigorous and fair. I think we do have to continually strive to get there.*⁴⁶

We agree with the Chief Whip's analysis.

2.43 From the evidence gathered during the inquiry, we believe that there is overwhelming agreement that the system of regulation in the House of Commons should demonstrate the characteristics set out above, namely:

- **an independent or an external element or both;**
- **clarity and transparency;**
- **the right cultural outlook;**
- **fairness to those being regulated;**
- **the responsibility of leadership.**

2.44 The Committee believes that a system of regulation in the House of Commons which demonstrates these characteristics should be able to meet the twin objectives of:

- **delivering public confidence in the House of Commons; and**
- **carrying the confidence of the House itself.**

In Chapter 3 we turn to an analysis of the current system and outline areas which have been identified as lacking in clarity.

⁴⁶ Day 7, am.

CHAPTER 3 THE CURRENT SYSTEM

3.1 We set out at the end of Chapter 2 the objectives that the system of regulation in the House of Commons should fulfil. These were to:

- deliver public confidence in the House; and
- carry the confidence of the House itself.

3.2 Before assessing below the extent to which the current system delivers these objectives we describe the components of the system.⁴⁷ We also identify those areas which our evidence suggests are lacking in clarity. The three main component parts of the system are: the Code of Conduct; the Parliamentary Commissioner for Standards; and the Committee on Standards and Privileges.

The Code of Conduct – setting out the rules

3.3 The First Report of this Committee recommended that:

*... the House should draw up a Code of Conduct setting out the broad principles which should guide the conduct of Members, and that this should be restated in every new Parliament.*⁴⁸

A Code of Conduct was adopted in July 1996 – the first time that the rules governing the conduct of Members of Parliament had been set out in a single document. The Code is at Appendix G to this report. The Code is supplemented by a Guide to the Rules which falls into four areas:

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

3.4 The first three of these areas focus on the creation of a positive culture which encourages openness and transparency. Important activities associated with the creation of a positive culture

include advice to Members and induction training for those new to the House. The fourth area sets out the procedure to be followed in those rare but important and potentially damaging cases when the Code has, or may have, been breached.

3.5 Maintenance, development and enforcement of the Code are carried out by the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges.

3.6 Several of our witnesses, including the current Commissioner, were of the opinion that the Code and its accompanying Guide are unduly complicated, and that there is scope for simplification. **Clarity in this area is crucial, as the effective regulation of standards must start with the Code: this is discussed in more detail in Chapter 4.**

The Parliamentary Commissioner for Standards

3.7 Our First Report argued the need for a “significant independent element with a system which remains essentially self-regulating”. We recommended that:

... 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;

⁴⁷ Part 3 of the Committee’s Issues and Questions Paper describes the current system in full.

⁴⁸ Committee on Standards in Public Life, First Report, R9. (Hereafter referred to as CSPL First Report.)

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.⁴⁹

3.8 We envisaged, “an officer of the House, called the Parliamentary Commissioner for Standards, to take responsibility for advising Members on, and playing an independent role in the enforcement of, the House’s rules in respect of Members’ conduct”.⁵⁰ The Committee did not specify the precise role and functions of the Commissioner in its First Report. That task was taken forward by the House of Commons Select Committee on Standards in Public Life which was set up to consider our First Report.⁵¹

3.9 The Select Committee noted that the analogy with the Comptroller and Auditor General was not wholly appropriate since this post is a Crown appointment and the Comptroller and Auditor General audits the functions of the Executive, not Parliament. The Select Committee concluded that: “Even if the House wished to follow through the analogy with the Comptroller and Auditor General in appointing the Commissioner this would require legislation”.⁵²

3.10 The Select Committee’s solution was to establish the Commissioner as “an Officer of the House, not the servant of the [Select] Committee [on Standards and Privileges]”.⁵³ The consequence was that “Without statutory authority, however, [the Commissioner] can only operate, under the procedures of the House, through the Committee”.⁵⁴

3.11 The First Report noted that “the test of whether our recommendations are sufficient, or further change is needed, will be their operation in practice”.⁵⁵ The Select Committee said, in the same context:

Both Nolan and the Clerk of the House [in his memorandum]... drew attention to the possibility that at some later stage it might be desirable to introduce such legislation, on the lines of the National Audit Act and the Parliamentary Commissioner Act, to cover the functions and duties of the Commissioner. We

*accept that this is not a matter to be considered now, though the House might wish to return to it in the light of practical experience at some future time.*⁵⁶

3.12 The House of Commons concurred with the two reports of the Select Committee, and the office of Parliamentary Commissioner for Standards was established by the House in 1995. The role and powers of the Parliamentary Commissioner for Standards are set out in Standing Order No 150.⁵⁷ The Order is brief and lays down only that there shall be a Commissioner, what the principal duties shall be (summarised in the box below), and that dismissal may be achieved by resolution of the House.

The duties of the Parliamentary Commissioner for Standards

- to maintain the Register of Members’ Interests;
- to provide advice to Members;
- to advise the Committee on Standards and Privileges on interpretation of the Code of Conduct;
- to monitor the operation of the Code and make recommendations;
- to investigate complaints.

3.13 Since November 1995 there have been three Commissioners. Sir Gordon Downey was the first, Elizabeth Filkin succeeded him in February 1999, and Sir Philip Mawer is the current Commissioner, whose tenure began in March 2002.

3.14 Successive Commissioners have been selected by the House of Commons Commission, the body responsible for the personnel and financial management of the House in respect of its staff under the terms of the House of Commons (Administration) Act 1978. The House of Commons considers the Commission’s selection and is responsible for making the appointment. This is different from the method of appointment of other permanent officers of the House. The Clerk and the Clerk Assistant are appointed by the Crown and the appointment of the Serjeant at Arms is in the gift of The Queen under a

⁴⁹ CSPL First Report, R11.

⁵⁰ CSPL First Report, page 19.

⁵¹ House of Commons Select Committee on Standards in Public Life, First and Second Reports, Session 1994-96 HC 637 and HC 816

⁵² Ibid, First Report, page vii, para 10.

⁵³ Ibid, page ix, para 24.

⁵⁴ Ibid.

⁵⁵ CSPL First Report, para 102.

⁵⁶ House of Commons Select Committee on Standards in Public Life, First Report HC 637 (1994-95), page vii, para 24.

⁵⁷ See Appendix F.

warrant from the Lord Chamberlain. **It became clear from the evidence put before us that there was considerable confusion about many aspects of the Commissioner's role. These included questions about the post's status, tenure and powers. These matters are discussed in detail in Chapter 8.**

- 3.15 The Standing Order refers to investigating complaints, but paragraph 87 of the Guide to the Rules adds that the Commissioner *“will normally report the facts and his conclusions to the Committee”*⁵⁸ (emphasis added). **Evidence we received identified differing views about the extent to which the Commissioner is investigator, adjudicator or both. This is discussed in Chapter 5.**

The Committee on Standards and Privileges

- 3.16 The Committee on Standards and Privileges is a Select Committee of the House. It consists of 11 members nominated by the political parties. The political split of the Committee is proportional to that of the House. Currently there are seven Labour members, three Conservative members and one Liberal Democrat. Our Sixth Report recommended that *“the Committee should be exempt from the convention that its Chairman should be drawn from the Government benches”*.⁵⁹ This has now been accepted with the appointment of Sir George Young MP as Chairman in July 2001. The Committee meets in private on a weekly basis and requires five members to make a quorum.

- 3.17 Standing Order No 149⁶⁰ sets out the role and powers of the Committee. Essentially, it:

- considers matters of privilege referred by the House (outside the terms of reference of this inquiry);
- oversees the work of the Commissioner – including the compilation, maintenance and accessibility of the Register of Members' Interests;

- considers any matter relating to the conduct of Members, including complaints in relation to alleged breaches of the Code of Conduct.

- 3.18 The Committee's core function, described by Sir George Young MP, the current chairman, as its *“bread and butter”*,⁶¹ is processing complaints which come from the Commissioner. **In evidence, witnesses expressed concerns to us about the degree to which the Committee is able to demonstrate that it is both impartial in its consideration of the evidence presented to it and fair in its treatment of any Member accused of breaching the Code. These issues are discussed more fully in Chapters 6 and 7.**

How the system works

- 3.19 Notwithstanding the high standards existing in the House of Commons, any system of regulation needs to have processes in place to handle allegations that the Code of Conduct has been breached. The current process is shown in Figure 1 below. Many allegations are unfounded, and real breaches of conduct are rare. As a result there are few cases which will make their way through the entire process.

- 3.20 Statistics provided by the Commissioner's office show that 40 per cent of the complaints⁶² received by Sir Gordon Downey and Elizabeth Filkin required further consideration by the Commissioner (stage 2 of Figure 1). Forty-three per cent of those (or 17 per cent of the total complaints received) then required a full investigation (stage 5 of Figure 1).⁶³

- 3.21 **Concerns have been expressed to us that some aspects of the process for handling complaints are not entirely satisfactory. We turn to this in more detail in subsequent chapters.**

Summary of concerns

- 3.22 To summarise, the concerns which have been identified in this Chapter fall into five broad categories. These are:

⁵⁸ HC 841 of 14 May 2002.

⁵⁹ Committee on Standards in Public Life, Sixth Report, Recommendation 8. (Hereafter referred to as CSPL Sixth Report.)

⁶⁰ See Appendix E.

⁶¹ Day 1, pm.

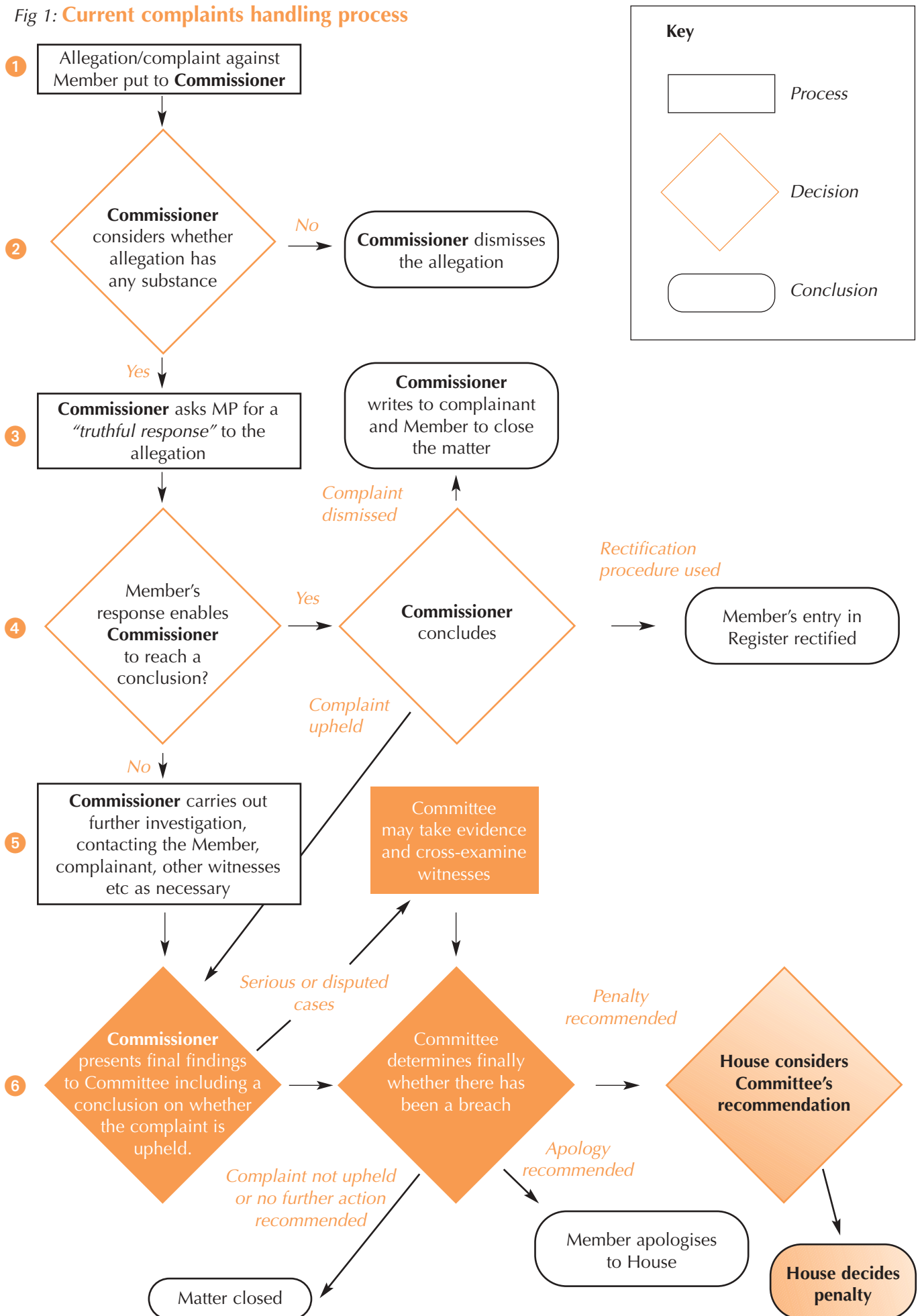
⁶² A complaint is defined by the Commissioner's office as a complaint or allegation against a named MP which has been referred to the Commissioner by the 'complainant', whether or not the subject matter falls within the remit of the office.

⁶³ The statistics are indicative only; the basis on which the information was kept by the Commissioner's office changed over time.

- the Code and Guide to the Rules, notably their complexity;
- the status of the Commissioner, including issues such as appointment, tenure and powers;
- the Commissioner's role and more specifically the extent to which he or she is an investigator, an adjudicator or both;
- the role of the Committee on Standards and Privileges, in particular whether its composition and proceedings can hinder, or be perceived to hinder, its impartiality;
- the processes involved in adjudicating complaints and deciding sanctions, and whether these processes are fair to the accused Member.

3.23 We believe, along with many of our witnesses, that the fundamental structure of the current system for regulating standards of conduct in the House of Commons is sound. However, it requires some considerable strengthening of the system's components to meet the areas of concern described above and to provide effective regulation of standards. How we suggest this should be done is the focus of the rest of the report.

Fig 1: Current complaints handling process



CHAPTER 4 ESTABLISHING AND PROMULGATING STANDARDS

4.1 Whatever the mechanisms and procedures for enforcing systems of regulation, they are likely to fail if the ‘culture’ of the public institution does not support the highest standards of propriety. We particularly endorse, therefore, the approach being taken by the current Chairman of the Committee on Standards and Privileges and the current Commissioner. Sir Philip Mawer told us of their *“shared objective ... to create a culture in Westminster which encourages and sustains ethical conduct”*. It was seen as important to develop *“a collective culture here and that implies a collective ownership”*. We agree strongly with the Commissioner’s assertion that, *“At the end of the day, this culture has to be self-internalised. It has to be owned”*.⁶⁴

4.2 We understand culture to mean the values, attitudes and beliefs of MPs. We see three key aspects to maintaining the desired culture:

- a clear statement of the expected values;
- effective promulgation of those values through education and training to ensure that they inform and influence the attitudes and beliefs of Members;
- having processes in place which demonstrate those values.

We deal below with the first two aspects. The third is a broader issue. The way in which the regulation of standards of conduct is addressed will in itself contribute to impressions of the overall culture. We believe that the recommendations we make in the following chapters will improve the way the processes in the House of Commons demonstrate its values.

The Code of Conduct and the Guide to the Rules

4.3 The Code of Conduct⁶⁵ is the House’s statement of values. It sets out the House’s definition of the way in which Members should behave. It records three public duties and nine broad statements of principle about the way in which Members should conduct their public life. The accompanying Guide to the Rules sets out more specific requirements surrounding the actions of Members. It focuses primarily on arrangements surrounding the registration and declaration of pecuniary interests.

4.4 The two documents were described as *“an amalgam”*⁶⁶ by Sir George Young MP and *“a bit of a ragbag”*⁶⁷ by the current Commissioner. Sir George emphasised that, *“although [the Code] is correct – there is nothing wrong here – I think it is trying to do quite a lot of things”*.⁶⁸ The Commissioner considered that what was needed was a set of *“clear, simple statements, which are then fleshed out to some considerable degree through case law”*.⁶⁹

4.5 Other witnesses expressed a number of broad concerns about the Code and Guide. Issues of interpretation have arisen with both documents. The Guide is long (23 pages, in comparison with the three pages of the Code) and not particularly straightforward. Witnesses said that few MPs were intimately familiar with the Code and the Guide, and the complexity of the Guide was seen as prohibitive to detailed awareness. Ross Cranston QC MP thought that the

⁶⁴ Day 9, pm.

⁶⁵ Set out at Appendix G.

⁶⁶ Day 9, pm.

⁶⁷ Ibid.

⁶⁸ Day 9, pm.

⁶⁹ Ibid.

documents should have *“more specific and up-to-date provisions to provide guidance to MPs on day-to-day behaviour”*.⁷⁰ The Liberal Democrat Chief Whip, Andrew Stunell OBE MP noted that uncertainty about the operation of the rules *“provides a smokescreen for the miscreant and a trap for the unprepared”*.⁷¹

- 4.6 There was also concern about the existence of multiple registration requirements, with MPs having to register interests also with the Electoral Commission, some of which overlapped with the requirements of the Commons’ register. This was seen as causing confusion and particular concern since non-registration with the Electoral Commission is a criminal offence.
- 4.7 We believe it is vital that the Code has a prominence and clarity which means both MPs and the public are confident about what is expected. We think more should be done to enhance this. Ross Cranston QC MP considered that, *“the Code of Conduct should be given much more prominence than it is.”* He continued, *“a building up of the Code would contribute much more to a good, ethical culture”*.⁷²
- 4.8 We are pleased, therefore, that the Chairman and the Commissioner see this as an area that needs *“a fresh look”*.⁷³ The Commissioner told us that he saw it as his responsibility to produce the first draft of a revised Code and we share this view. But this should be more than a one-off responsibility. No code can stand the test of time indefinitely. Not only will practical experience raise new issues, but expectations about standards of conduct will change over time; what may have delivered public confidence at one stage may not be guaranteed to do so at another. **We recommend** that the Code and the Guide be reviewed during each Parliament, with any necessary amendments debated and implemented as soon after they are identified as possible.
- 4.9 **We recommend** that production of a first draft becomes a permanent responsibility of the Commissioner and that the Commissioner put his draft to the Committee on Standards and Privileges for them to consider and amend if they wish before putting it to the House.

- 4.10 In Chapter 2 we referred to the fact that external involvement was a characteristic of some of the professional models of self-regulation on which we heard evidence. In particular, the Bar Council noted that one of the advantages of external involvement was to prevent an *“inward-looking profession”*.⁷⁴ Since the Code was first drafted in 1994, codes of conduct have become far more widely used; examples can be found across the professions, local government and the devolved institutions. There is also a wide range of experience in other countries, as demonstrated in the research paper we commissioned from The Constitution Unit.⁷⁵ **We recommend** that, when the Code and Guide are being revised, there should be a consultation process with relevant outside organisations in order to provide an external perspective. The aim would be to facilitate an exchange of best practice ideas so that developments to the Code can be informed by views from outside the House.

RECOMMENDATION

R1 (a) In each Parliament, the Parliamentary Commissioner for Standards should initiate a review of the Code of Conduct and Guide to the Rules.

(b) The Parliamentary Commissioner for Standards should recommend any amendments to the Code and the Guide to the Committee on Standards and Privileges.

(c) The Committee on Standards and Privileges should consult on amendments to the Code and the Guide with relevant external bodies.

(d) Following this consultation, the Committee on Standards and Privileges should recommend any amendments to the Code and the Guide to the House.

(e) The House of Commons should debate the recommendations of the Committee on Standards and Privileges in a timely fashion.

⁷⁰ Written evidence, 20/62.

⁷¹ Written evidence, 20/50.

⁷² Day 7, am.

⁷³ Day 9, pm.

⁷⁴ Day 6, am.

⁷⁵ *The Regulation of Parliamentary Standards – A Comparative Perspective*. A research paper published by CSPL in May 2002 (see attached CD-ROM).

Induction

4.11 It is vital that the values of the House are effectively promulgated to Members. MPs need to feel confident that they understand what is expected of them so that they feel comfortable exercising their personal judgement. Sir Donald Irvine said the GMC had realised that its practice of concentrating on defining non-compliance meant “*nobody really knew what good practice was about*”.⁷⁶

4.12 Witnesses told us that training and induction were undertaken variously by the Commissioner, the House authorities and the political parties themselves. Sir George Young MP explained the induction process for new MPs:

*For new Members the two main parties certainly put on training sessions, in the first few days when the new Parliament assembles ... That is complemented by sessions that the House puts on. The Fees Office and the Clerks also put on sessions. So, in a sense, you have got a joint approach. The party managers presenting it in their way and the impartial professionals presenting it in their way.*⁷⁷

4.13 There is a danger here that, without careful co-ordination, new MPs may be given overlapping or conflicting information. The evidence we heard from witnesses did not assure us that such co-ordination was always taking place. The Rt Hon David MacLean MP, Conservative Chief Whip, told us that he had been responsible for “*the induction-training day for all new Conservative MPs*”⁷⁸ following the 2001 election at which officers of the House gave a “*teach-in on the forms they had to fill in and the rules they had to comply with*”.⁷⁹ However, the former independent MP, Martin Bell OBE, who became a member of the House in 1997 said, “*I never received any training or guidance about anything*”.⁸⁰ Similarly, David Heath MP, a Liberal Democrat, said that:

... there is no formal induction. And certainly no induction in terms of process, which I think ... would be quite helpful to have some understanding of rules of natural justice and

*what is appropriate and what is not appropriate. But the House is not very good at doing that in any capacity. You learn as you go.*⁸¹

4.14 We heard of encouraging developments from the new Commissioner. He explained that he was considering hosting occasional seminars jointly with the Electoral Commission, which may go some way towards minimising the overlap between the requirements of the House and those of the Commission. Sir Philip also said that he would be talking to the Parliamentary Labour Party and to the 1922 Committee: “*Everything, in short, that we can do to sustain a consciousness of these matters and to build a relationship as well*”.⁸²

4.15 Notwithstanding these initiatives, we think that the induction process would benefit from a fresh look. **We recommend** that the Commissioner considers, in conjunction with the House authorities and the Whips, whether anything more is needed to ensure that comprehensive training and guidance are provided on standards, especially if different aspects of the training are to be provided by different authorities. For example, closer links between the training given by the Fees Office and the Commissioner may be beneficial, given that strict observance of the rules for payments and allowances is a requirement of the Code of Conduct.

RECOMMENDATION

R2 The Parliamentary Commissioner for Standards should periodically review, in conjunction with the House authorities and the Whips, the effectiveness of the provision for training and guidance on standards of conduct.

Ongoing advice and training

4.16 It is a specific responsibility of the Commissioner, set out in Standing Order No 150,⁸³ to provide “*advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests.*” This is an important part

⁷⁶ Day 7, pm.

⁷⁷ Day 9, pm.

⁷⁸ Day 8, pm.

⁷⁹ Ibid.

⁸⁰ Day 2, am.

⁸¹ Day 3, pm.

⁸² Day 9, pm.

⁸³ See Appendix F.

of the Commissioner's role, summed up by Sir George Young MP when he said, *"I hope that ... all colleagues will have got the message ... that if in doubt, ask"*.⁸⁴

4.17 The Commissioner emphasised to us the importance of informing Members of evolving case law. The complexity of the Code and Guide makes this a necessity. Sir Philip said that he was planning *"a series of Q&A notes with simple guidance, which will be circulated to all Members"*.⁸⁵ He also thought that *"the annual report would be one place in which the case law, over the year, would be brought together"*.⁸⁶ The Commissioner emphasised the difficulty of conveying guidance and information to busy MPs. As a result he considered, *"you have got to use a number of different means, no one approach. Just putting on seminars is not good enough"*.⁸⁷ We agree and **we recommend** that the Commissioner should ensure there are effective means in place to inform all MPs of each major change to the Code or Guide.

RECOMMENDATION

R3 The Parliamentary Commissioner for Standards should ensure that there are effective means in place to inform all MPs of changes to the Code or Guide.

Implementing our recommendations

4.18 We set out in Chapter 8 (para 8.61) how recommendation 1(a), (b), (c) and (d) should be implemented.

⁸⁴ Day 1, pm.

⁸⁵ Day 9, pm.

⁸⁶ Ibid.

⁸⁷ Ibid.

CHAPTER 5 THE ROLE OF THE PARLIAMENTARY COMMISSIONER FOR STANDARDS IN INVESTIGATING COMPLAINTS

Handling complaints

5.1 However strong the culture supporting the maintenance of high standards of conduct and however honourable the overwhelming majority of Members of the House of Commons, there will, from time to time, be lapses or allegations of lapses.

5.2 The importance of having a robust and effective system for dealing with – to use Baroness Boothroyd’s words – the “*one or two bad apples*”⁸⁸ cannot be sufficiently stressed. The conduct of a very few Members is capable of besmirching the reputation of the overwhelming majority of Members and of the House itself. The way the House therefore deals with those few Members, and the public perception of the strength of that process, is crucial.

5.3 Only a few of the complaints which fall within the jurisdiction of the Commissioner will travel through all stages of the non-compliance process. The majority will be concluded at earlier stages; Elizabeth Filkin told us that during her tenure she only found it necessary to investigate 13 per cent of the complaints which came to her.

⁸⁸ Day 5, am.

Categories of complaint

There are three main categories of complaint, defined by the handling they receive:

Dismissal

The complaint is not made out and can be dismissed by the Commissioner.

Rectification

The complaint is made out and can be dealt with by the Commissioner using the rectification procedure, i.e. it is a case of minor or inadvertent failure to register or declare an interest. In such circumstances the Commissioner has discretion to allow the member to rectify the matter. In the case of non-registration this is by a belated entry to the Register with an explanation; in the case of non-declaration it requires an apology to the House by means of a point of order. Any rectification is reported briefly to the Committee on Standards and Privileges.⁸⁹

Cases not able to be rectified

Rectification is not an option (either because the MP disputes the case or because, although the MP admits a breach, the breach is serious enough to require sanction) and the Commissioner must refer the complaint to the Committee. It is then for the Committee to reach a view on whether the Code has been breached and to report that conclusion, along with any recommendation for sanction, to the House.

In most cases the Committee accepts the Commissioner's findings, but it may also find itself faced with either of the following issues:

- a) there is a significant dispute of fact requiring a more formal hearing procedure or a shortage of evidence caused by a lack of co-operation from the MP; or
- b) there is a significant issue about interpretation of the Code and the Guide.

In these circumstances, which can be difficult and complicated, the Committee must still reach a view on whether the Code has been breached. It may not necessarily reach the same conclusion as the Commissioner.

Investigating complaints

- 5.4 The responsibility of the Commissioner for investigating allegations of breaches of the Code is only part of the role, and it affects only a small minority of members. But it is by far the most public aspect; allegations of breaches are usually regarded as newsworthy by the media and the Commissioner's role, as the independent investigator, naturally attracts attention. So we deal here in some detail with the processes followed by the Commissioner in investigating complaints. (Witnesses also raised with us concerns about the post of Commissioner, including its tenure and powers: these matters are dealt with in Chapter 8.)

The function of the Commissioner in investigating complaints

Standing Order No 150 provides for the Commissioner 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.⁹⁰

Identification of the relevant part of the Code or Guide

- 5.5 For reasons of fairness, we believe that the MP must be informed at the earliest practicable opportunity of the complaint made against him or her. The Guide to the Rules indicates that this can happen in two ways:

It is a basic courtesy that a Member making a complaint to the Commissioner should at the same time send a copy of the letter of complaint to the Member concerned.⁹¹

If the Commissioner is satisfied that sufficient evidence has been tendered in support of the complaint to justify his taking the matter further,

⁸⁹ This procedure is described in *The Guide to the Rules*, page 29, para 88.

⁹⁰ Standing Order No 150, para 2(e) (see Appendix F).

⁹¹ The Guide to the Rules, p29, para 85.

he will ask the Member to respond to the complaint.⁹²

- 5.6 One or two witnesses expressed concern to us that the alleged breach of the Code was not always made clear. This seemed to arise particularly in situations where further evidence was uncovered during the course of an investigation which led the Commissioner to believe there were other breaches of the Code than the one(s) first identified. We see no difficulty with the fact that the Commissioner may identify and pursue other breaches. But **we recommend** that it be made clear that it is the responsibility of the Commissioner to ensure that, at the earliest possible stage, the MP, and ultimately the Committee, are clear about which is the relevant part(s) of the Code that it is alleged has been breached. Such information should also be set out in the Commissioner's report.

RECOMMENDATION

- R4 It should be made clear that it is the responsibility of the Parliamentary Commissioner for Standards to notify the MP at the earliest possible stage of each relevant part of the Code of Conduct which it is alleged has been breached.**

Co-operation with the Commissioner's investigation

- 5.7 There has been a small number of cases where the Commissioner has needed to report to the Committee a lack of co-operation from the Member. Sir George Young MP said, *"it struck me, looking at some of the reports, that the initial offence was actually a relatively minor one. It had been compounded by a failure to co-operate, smokescreens and the rest"*.⁹³ A former member of the Committee, Martin Bell told us that *"... there was an awful lot of obfuscation and delay, an appalling amount ... It was the politics that made it difficult, not the contested nature of the evidence"*.⁹⁴
- 5.8 We have considered whether there should be a requirement in the Code of Conduct to co-operate with any investigation. The Clerk to the Committee on Standards and Privileges explained that co-operation was implicit in the

Code and the Commissioner thought *"the most powerful statement on the record about the requirement for co-operation is the Committee's ruling in the Vaz case"*.⁹⁵ We appreciate these points. But we believe that the Code should be reinforced by including in it an explicit requirement to co-operate with an investigation. **We recommend** that such a requirement be included.

RECOMMENDATION

- R5 It should be an explicit requirement of the Code of Conduct that Members must co-operate with any investigation, at all stages.**

The Ministerial Code

- 5.9 In 2001, the Committee on Standards and Privileges felt it necessary to record in its report into complaints against Keith Vaz MP, Minister for Europe between 1999 and 2001, that:

*Mr Vaz was wrong to say to the Commissioner last December that he was not prepared to answer further questions from her. All Members have a duty to co-operate with the Commissioner and to assist her with her inquiries. We consider that in this respect Mr Vaz's behaviour was not in accordance with his duty of accountability under the Code of Conduct.*⁹⁶

- 5.10 In general terms, MPs who are also Ministers must already comply not only with the Code of Conduct for MPs but also with the Ministerial Code. The Leader of the House told us:

In the light of experience, the Government has resolved that the following addition should be made to the Ministerial Code:

*"Ministers must also **comply** at all times with the requirements which Parliament has, itself, laid on them, including in particular the Codes of Conduct for their respective Houses as Members."*

*I believe this explicit requirement will reinforce the status of the Members' Code of Conduct and will underline the Government's commitment to its observance.*⁹⁷ (emphasis added)

⁹² Ibid, para 87.

⁹³ Day 1, pm.

⁹⁴ Day 2, am.

⁹⁵ Day 9, am.

⁹⁶ Third Report of the Committee on Standards and Privileges, HC 314-I (2000-01) page xx, para 66.

⁹⁷ Day 1, am.

We endorse the need for this reinforcement.

- 5.11 Peter Bottomley MP suggested that the Ministerial Code might go even further:

*The Prime Minister needs to make absolutely plain that if a Member of the House of Commons, say, is failing to co-operate with the Commissioner or the Committee, that that Member of the Government stops being a Member of the Government, just like that.*⁹⁸

- 5.12 Clearly any allegation against a Minister, as a member of the Government, is likely to receive particular public scrutiny. Such cases will always throw a spotlight on the effectiveness of the House's system of regulation. It is crucial that the system is seen to treat any Minister both fairly and with impartiality and we return to these issues in Chapter 7. It is also crucial that any Minister facing an allegation is seen to co-operate and thereby reinforce the authority of the system; lack of co-operation will undermine public confidence. We see this as being part of the responsibility of leadership which we identified in Chapter 2. **We recommend** that our recommendation for an explicit requirement in the MPs Code for all MPs to co-operate should be complemented with a requirement in the Ministerial Code for Ministers to **co-operate**, as well as to comply, with the MPs' Code.

RECOMMENDATION

R6 It should be an explicit requirement of the Ministerial Code that Members who are Ministers must co-operate with any investigation, at all stages.

Frivolous and vexatious complaints

- 5.13 Many of our witnesses were united in their concern about the damage that could be caused by frivolous or vexatious complaints or 'tit-for-tatting'. These were seen as bringing the system into disrepute as well as tying up resources unnecessarily. We note with approval, therefore, the recent amendment to the Guide to the Rules which states:

The Committee [on Standards and Privileges] has said that where it feels that a complaint from a

*Member was frivolous or had been made only for partisan reasons, it would expect to state that in any report it made about the complaint.*⁹⁹

- 5.14 Sir George Young MP indicated that the Committee had also considered, and in one case used, other options:

*We have just issued what I might call a yellow card¹⁰⁰ but I see no reason why there should not be a public letter in appropriate cases, either from myself or from the Commissioner, that is published, put in the public domain, criticising somebody for making a frivolous, vexatious, time-wasting criticism.*¹⁰¹

- 5.15 From this it would appear that the Committee regards itself as having at least three options at its disposal: a private letter (the yellow card); a public letter (the red card); naming in a Committee report. This procedure is somewhat different from the statement in the Guide to the Rules. **We recommend** that the description in the Guide to the Rules be amended to set out clearly the means by which the Committee would deal with frivolous or vexatious complaints. The Commissioner should feel free to draw such cases to the Committee's attention.

RECOMMENDATION

R7 The Guide to the Rules should be amended to set out clearly the means by which the Committee on Standards and Privileges would deal with frivolous or vexatious complaints.

Status of the Commissioner's findings

- 5.16 The only formal description of what the Commissioner's investigation entails is in the Guide to the Rules:

If the Commissioner is satisfied that sufficient evidence has been tendered in support of the complaint to justify his taking the matter further, he will ask the Member to respond to the complaint and will then conduct a preliminary investigation. If he decides, after some inquiry, that there is no prima facie case, he will report that conclusion briefly to the Committee on

⁹⁸ Day 2, am.

⁹⁹ *The Guide to the Rules*, page 29, para 93.

¹⁰⁰ A private letter to an MP admonishing them for making a frivolous complaint.

¹⁰¹ Day 1, pm.

*Standards and Privileges. If he finds that there is a prima facie case or that the complaint raises issues of wider importance, he will normally report the facts and his conclusions to the Committee.*¹⁰²

5.17 The paragraph amplifies the role of the Commissioner and, in particular, makes clear that the Commissioner should report ‘conclusions’. It became apparent during the course of our inquiry that there is considerable confusion about the status of those conclusions. Some witnesses asserted that the decision on whether the Code had been breached was rightly the responsibility of Members themselves and therefore it was always open to the Committee to overturn the Commissioner’s conclusions. To others such a decision amounted to an apparently unjustified overturning of independent findings.

5.18 This confusion is compounded by the description in the Guide to the Rules about the procedure for complaints. This states that, “If [the Commissioner] finds that there is a prima facie case ... he will normally report the facts and his conclusions to the Committee”.¹⁰³ The Guide then continues, “On specific complaints for which **the Commissioner has decided** there is a prima facie case, the Committee will make recommendations to the House on whether further action is required”¹⁰⁴ (emphasis added). It is possible to interpret this as meaning that the Committee is a post box which simply receives and forwards the Commissioner’s reports to the House with the addition of a recommendation on sanction. It is clear, too, from a reading of the Commissioner’s reports to the Committee that the Commissioner’s conclusions go beyond the *prima facie* and are much more of a substantive nature.

5.19 One of the current members of the Committee on Standards and Privileges, Michael Jabez Foster DL MP thought that, “[The Commissioner] is investigator, first of all, and then the adjudicator. And the problem of those two roles is that by the time it gets to the Committee it is a done job.” He elaborated, “it has gone too far by the time that [the Committee] get to look at it as a decision has already been reached

and a recommendation made”.¹⁰⁵ During the debate on 13 February 2002, Alex Salmond MP said:

*We have a hybrid system that cannot work ... We have lumped the two roles [of investigation and adjudication] together. We then have a second-guess system of self-regulation in the Committee on Standards and Privileges.*¹⁰⁶

5.20 The first Parliamentary Standards Commissioner, Sir Gordon Downey, was clear, in his evidence to the Committee, that his role was to “consider whether the complaint had enough justification to be pursued ... pursue it ... produce the evidence, assess it and lay his **findings** before the Committee”¹⁰⁷ (emphasis added). Sir Gordon’s successor, Elizabeth Filkin described the role in this way: “I think it is critical – and the independence requires it – that the Commissioner must reach a **judgment** on the facts against the Code of Conduct, and must reach that judgment and say it clearly to the Committee”¹⁰⁸ (emphasis added).

5.21 We believe strongly that it is important for there to be absolute clarity about the status of the Commissioner’s conclusions if the subsequent decisions of the Committee are to be soundly based and if the process is to sustain public confidence. There has been a handful of cases where the Committee has disagreed with the Commissioner’s conclusions. Such cases are likely to receive close attention from the media and others, especially as the Commissioner’s opinion, as the independent voice in the process, carries weight with the public. The Committee is unlikely to disagree with the Commissioner if he or she concludes that there is insufficient evidence to uphold a complaint. By definition, therefore, it is likely that if the Committee disagrees with the Commissioner, as it is entitled to do, it will be in favour of the Member. Such cases will also be the more serious ones. We deal later with the way in which the Committee should handle these cases. But greater clarity about the Commissioner’s role in these circumstances is also essential.

5.22 We share the view of Sir George Young MP, who described the position as follows:

¹⁰² *The Guide to the Rules*, page 29, para 87.

¹⁰³ *Ibid.*, p29.

¹⁰⁴ *Ibid.*

¹⁰⁵ Day 3, pm.

¹⁰⁶ Debate to appoint the new Parliamentary Commissioner, Hansard (HC) col 254.

¹⁰⁷ Day 5, pm.

¹⁰⁸ Day 5, pm.

*The more serious [cases] reach the Committee. When they reach my Committee, [the Commissioner] produces a report which is published and the first bit tends to be factual and the second says whether or not, **in his view**, there has been a breach of the Code. Then it is left to the Committee to agree with him and, if we do, decide what penalty to inflict on whoever has been found guilty of a breach of the Code*¹⁰⁹ (emphasis added).

- 5.23 We agree with this description of the status of the Commissioner's findings. **We recommend** it be made clear that the role of the Commissioner as an investigator is to report the facts as he has found them and offer his own conclusion on whether the Code has been breached. We can also see merit in the Commissioner arriving at an agreed form of words for use in his reports which identifies that his conclusion is his own, for example, *"Based on the facts I have found and reported, I conclude that ..."*.¹¹⁰

RECOMMENDATION

- R8** It should be made clear that the role of the Commissioner as an investigator is to report the facts as he/she has found them and, wherever possible, offer his/her own conclusion on whether the Code has been breached.

Where the Commissioner's function extends beyond investigation

- 5.24 In May 2002, the House of Commons approved amendments proposed by the Committee on Standards and Privileges to the Code of Conduct and Guide to the Rules. This included a description of the rectification procedure, which allows the Commissioner to use his discretion to allow Members to rectify admitted minor failures to register or declare interests. We welcome this amendment. However, Standing Order No 150 gives no indication of this power; the Order gives the impression that the Commissioner's role with regard to complaints stops after investigation. For purposes of clarity **we recommend** that it should be made clear that, in certain circumstances, the Commissioner's functions go beyond investigation and can involve the rectification procedure.

RECOMMENDATION

- R9** The role of the Commissioner in the rectification procedure should be set out clearly.

Implementing our recommendations

- 5.25 We set out in Chapter 8 (para 8.61) how recommendations 4, 8 and 9 should be implemented.

¹⁰⁹ Day 1, pm.

¹¹⁰ We recognise that the Commissioner may not always feel it is possible to present final conclusions. In some cases, for example, the Commissioner may need to report a significant dispute of fact which means he/she feels unable to reach a clear view.

CHAPTER 6 THE ROLE OF THE COMMITTEE ON STANDARDS AND PRIVILEGES IN REACHING A DECISION ON A COMPLAINT

- 6.1 The Committee's role lies at the heart of the self-regulatory process. In its role as the arbiter of whether or not a complaint has been proved and of what sanction is to be recommended, it is the embodiment of self-regulation: Members judging the propriety of other Members' conduct.
- 6.2 Several of our witnesses were clear about its importance. Matthew Parris, political commentator and former MP, told us, *"It is one of the most important Committees of the House, and in a constitutional sense, it is perhaps the most important"*.¹¹¹ The Government Chief Whip, Hilary Armstrong MP, said *"I do see this Committee as different from other Committees ... we have got to treat the Committee as very special"*.¹¹² However, she went on to make the important point that it is not a popular choice amongst Members as a Committee upon which to serve as they *"are up to be hit at, rather than getting the kudos from it"*.¹¹³
- 6.3 We consider in Chapter 7 whether the 'special' nature of this Committee is sufficiently reflected in the way it fits into the House's institutional structure, or in the nature of its membership.
- 6.4 There are several reasons why the Committee on Standards and Privileges has such an important role. First, it should play a central role in establishing the culture of ethical behaviour which we discussed in Chapter 4. We welcome the fact that the present Chairman, Sir George Young MP, shares the objective of doing so with the present Commissioner: *"When I became Chairman, I looked at the job and one of the things I wanted to do was to switch the emphasis more into prevention and education"*.¹¹⁴
- 6.5 Second, the decisions of the Committee can have a major effect on the career of any Member under scrutiny. Sir George Young MP pointed out the very damaging consequences *"for a politician of a fairly severe ruling from my Committee on his career, his electoral prospects, ministerial future and all the rest"*.¹¹⁵ With such consequences, it is imperative that the Member feels the Committee has treated his or her case fairly.
- 6.6 Third, it must, through making clear, consistent and impartial decisions, secure public

¹¹¹ Day 1, am.

¹¹² Day 7, am.

¹¹³ Ibid.

¹¹⁴ Day 1, pm.

¹¹⁵ Ibid.

confidence in the self-regulatory process. This will be particularly important in those rare cases where the Committee disagrees with the Commissioner's report.

The Committee's role and function

6.7 Given the Committee's centrality in the self-regulatory process, it is important that its role and functions are at least as well understood, both inside and outside the House, as those of the Commissioner. It is therefore particularly surprising that there is no formal description of the Committee's full responsibilities. The Standing Order which defines the Committee's role and powers states solely that the Committee shall:

*... consider any specific complaints in relation to the registering or declaring of interests referred to it by the Commissioner; and consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct.*¹¹⁶

6.8 This gives no indication of the fact that it is the responsibility of the Committee to adjudicate on complaints referred to it and to present its conclusion to the House, including any recommendation for sanction. There is also no indication of the processes involved in achieving these responsibilities. In the past these have included: asking the Commissioner to carry out further investigation; using its powers to call for people or papers; requiring witnesses to give evidence on oath; taking legal advice.

6.9 **We recommend**, therefore, that in order to clarify the process, the role of the Committee should be set out fully. We consider and make recommendations in the rest of this chapter about what that role should entail.

RECOMMENDATION

R10 The role of the Committee on Standards and Privileges should be set out fully.

Explaining the Committee's conclusions

6.10 Ross Cranston QC MP, a member of the Committee on Standards and Privileges, told us in written evidence, *"With hindsight, I am staggered that we have been able to get by with*

ex cathedra pronouncements for so long ... A member, a Commissioner, the House and indeed the public are entitled to know the detailed reasoning of the Committee".¹¹⁷ We are also surprised that the Committee's reports offer little by way of detailed explanation. While it may be sufficient for the Committee simply to endorse the Commissioner's findings where it is in complete agreement with them, it is essential that, where the Committee has different views from the Commissioner (even though it may reach the same conclusion) or disagrees with the Commissioner's findings, the Committee sets out its reasons very clearly in its report.

6.11 Where the Committee agrees with the Commissioner that a Member is in breach of the Code, both that Member and others in the House must be able to see and understand the reasons for the Committee's view if that is different in any way from the Commissioner's. Any concern that a Member has been treated unfairly will quickly undermine the authority of the Committee and of the process itself.

6.12 Explanation is of particular importance where the Committee has reached a different conclusion from that of the Commissioner. Where the Committee rejects the Commissioner's conclusions that the Member is in breach of the Code, public confidence may be damaged unless the Committee explains clearly its reasons for doing so. We should emphasise here that such a difference of view is entirely legitimate; the principle is that the Committee accepts the Commissioner's findings of fact, but is not bound by the Commissioner's conclusions as to whether the facts as so found amount to a breach of the Code. There may also be cases where the Committee decides that the Commissioner has made a procedural mistake (for example, by applying the wrong standard of proof), though in such cases the appropriate course may be for the Committee to refer the case back to the Commissioner to reconsider his report in the light of the Committee's decision rather than substitute its own conclusions. A reference back to the Commissioner would also be appropriate if significant new evidence has emerged between the time of the Commissioner's report and the time when the Committee considers it.

6.13 As Ross Cranston QC MP emphasises, detailed reasoning *"should also enhance the standing of*

¹¹⁶ Standing Order No 149. This is set out at Appendix E.

¹¹⁷ Written evidence 20/62.

the Committee, so it can take its rightful place as a partner of the Commissioner in upholding Parliamentary standards".¹¹⁸ **We recommend** that the Committee be required to set out in full the reasons for its decisions.¹¹⁹

RECOMMENDATION

R11 The Committee should be required to set out in full the reasons for its decisions.

The effectiveness of the Committee

6.14 As noted in paragraph 6.8 above, the Committee's task may include a number of different functions in order to fulfil the requirements of hearing and adjudication. In practice, its task has not always proved straightforward. For example, between 2000 and 2002 there were a number of difficult cases where the Commissioner and Committee did not reach the same conclusion. These were: the former MP, Mr John Maxton and the Rt Hon Dr John Reid MP;¹²⁰ two reports concerning Mr Keith Vaz MP;¹²¹ and Mr Nigel Griffiths MP.¹²² The fact that all of these cases involved Government Ministers led to concern that the Committee:

- may be, or may be perceived to be, overly sensitive to external interests or pressures; and
- is insufficiently equipped to deal with cases where it hears evidence.

6.15 We consider in Chapter 7 the membership of the Committee and the extent to which it may be, or may be perceived to be, subject to external interests. We turn here, however, to the question of whether the Committee is properly equipped to deal with cases where it hears evidence.

Ability to apply fairness

6.16 Although only a very small number of the complaints investigated result in a finding that an MP is at fault, the consequences for an accused MP can, at the extreme, result in loss of career. Sir George Young MP noted:

*All we have is our reputation and our integrity ... I am not sure that everybody outside realises the consequences for a politician of a fairly severe ruling from my Committee on his career, his electoral prospects, ministerial future and all the rest.*¹²³

As a result of those consequences, MPs need to have confidence that the system will operate fairly.

6.17 In 1999, the Joint Committee on Parliamentary Privilege, chaired by Lord Nicholls of Birkenhead, published its report. In the light of the European Convention on Human Rights, the Joint Committee set out, for particularly serious cases, six minimum requirements for fairness for treatment of the member who is accused.

The minimum requirements for fairness

- 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; and
- the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.

6.18 Sir George Young MP told us *"I think we comply with four of them and we do not comply with two, which is the ability to cross-examine witnesses, and one other [the opportunity to call witnesses]"*.¹²⁴ The previous Chairman, the Rt Hon Lord Sheldon told us that he had seen *"no advantage"*¹²⁵ in the accused member having the opportunity to either call or examine witnesses. When this was raised with Lord Nicholls, he said:

If it is a serious offence, I confess that I would expect to find ... that [the MP subject to a complaint] has the right to present his own evidence to the Committee and that includes the

¹¹⁸ Written evidence 20/62.

¹¹⁹ We recognise that a simple endorsement of the Commissioner's decision may be all that is needed in circumstances where the Committee is in complete agreement with the Commissioner's reasons for that decision.

¹²⁰ HC 89

¹²¹ HC 314 and HC 605.

¹²² HC 625. There was also a second case involving John Maxton and a complaint against Roy Beggs. These two were more minor.

¹²³ Day 1, pm.

¹²⁴ Day 1, pm.

¹²⁵ Day 3, am.

evidence of other people. Then I would expect to find ... that he would have the opportunity himself to ask questions of witnesses ... I think it would be a serious blemish in the proceedings if those features were not present.¹²⁶

6.19 However, Sir George Young MP argued that:

*An MP, in a sense, has the last word in that he will come before my Committee with a copy of the report of the Commissioner, knowing what the witnesses have said against him, and about him, and he will have an opportunity to deal with those. So, in a sense, although he cannot cross-examine the witnesses, he does have an opportunity to explain to my Committee his perceptions of what the witnesses have said and his response to them.*¹²⁷

6.20 We appreciate that the hesitation in not applying all six principles lies in concern about making the process over-legalistic and losing the flexibility and speed which is, rightly, seen as an advantage of the current system. However, we are particularly concerned that the current processes of the Committee are not demonstrably fair to the Member against whom a complaint has been made. An MP facing a serious allegation must be confident that the system will deal fairly with his or her case. The report of the Joint Committee on Parliamentary Privilege emphasised that the six standards of fairness were *minimum* requirements only; to offer four out of the six falls short of that minimum. The six requirements also accord with recommendations made by the Commons' own Select Committee on Standards in Public Life in 1995.¹²⁸

Operation of the Committee as an evidence-taking body

6.21 The size of the Committee (11 members) may also be an impediment to an effective and fair process in difficult and contested cases. The most serious cases are complex and involve a high volume of evidence. A large Committee does not lend itself well to the process of questioning witnesses. Moreover, not all members may be able to attend all meetings

concerning a particular case. Lord Campbell-Savours, a former member of the Committee, told us, *"The attendance rate on the Privileges Committee is probably the highest of all committees of Parliament. However, there were occasions when I was on the Committee, when certain Members did not attend and yet they would turn up for, what I call, judgment hearings"*.¹²⁹ This contravenes the well-established principle that those who sit in judgment should be present throughout the hearing.

6.22 Peter Riddell of *The Times* observed, *"I think in the case of the hard cases, clearly the legal process requires proper cross-examination, and I think in those cases the procedures need to be more formalised"*.¹³⁰ When asked whether 11 members was an effective forum to conduct a quasi-judicial hearing, Lord Nicholls said, *"I would have thought it was much too big"*, and that *"not more than five"*,¹³¹ would be a reasonable size for the task.

6.23 Sir George Young MP, was, however, confident that the Committee was not too unwieldy. He argued:

*Before we conduct a hearing of an MP who has been accused of some breach, the Committee will decide in advance what the issues are that are challenged; what the areas of disagreement are. And, in the most recent case [Keith Vaz MP], we then decided who was going to be, as it were, the lead interrogator on that particular area of disagreement and we moved sequentially through the report, dealing with each of the issues where the MP challenged the evidence or challenged the draft conclusions ... It was logical, fair, sequential and cohesive.*¹³²

Ross Cranston QC MP, concurred, saying *"I have been impressed with the way the Committee has operated ... Members are diligent; they examine the issue with great care"*.¹³³

6.24 While we are ready to accept these Members' views about the operation of the Committee for the generality of cases it considers, we believe that its processes are not apt for the most serious

¹²⁶ Day 6, pm.

¹²⁷ Day 1, pm.

¹²⁸ HC 637, Appendix 2(b), *Modus Operandi*.

¹²⁹ Day 8, pm.

¹³⁰ Day 6, pm.

¹³¹ Day 6, pm.

¹³² Day 1, pm.

¹³³ Day 7, am.

and contested cases. By its own admission, the Committee on Standards and Privileges falls short of offering the minimum standards of fairness set out in the Nicholls Report. Further, we consider that its ability to carry out an effective cross-examination of disputed facts is hampered by its size. Finally, there is the possibility that not all members will be present for all hearings.

An Investigatory Panel

6.25 **We recommend**, therefore, that the House should have available the option of an Investigatory Panel for serious, contested cases. In such cases, which could be rare, the Panel would be a forum in which witnesses can be called and examined by both the accused Member as well as by the Panel itself. This would provide the Committee with a body better suited than itself to conduct hearings on the most serious and contested cases whilst ensuring fairness to the individual Member.

6.26 In making this recommendation we are treading familiar ground. In our Sixth Report we recommended¹³⁴ that there should be a disciplinary tribunal to deal with serious, contested cases. The House did not accept this recommendation. Nevertheless, we still have concerns about the effectiveness of a Select Committee to deal procedurally with serious cases where there is a conflict of evidence.

6.27 We are, however, modifying our previous recommendation. We are now proposing that the Committee should retain the final power to decide whether the facts as found by the Panel amount to a breach of the Code, even if the Panel itself has reached the conclusion that a breach has occurred. We have reached the view that the centrality of the Committee's role in the self-regulatory process makes it vital that the Committee be the final arbiter before the matter is put before the full House of Commons.

6.28 The main elements of the Investigatory Panel as we recommend it are set out below.

- **The Panel would be involved only in cases where the facts are disputed by the MP, and which carry the potential, if proved, of a serious penalty.** The Committee would have the final decision on whether a case should be referred to

the Panel. The criteria would be that proof of the complaint would be likely to lead to the imposition of a serious penalty on the Member and that there appeared to be significant contested issues of fact which could not properly be decided unless the Member was given the opportunity to call witnesses and/or to cross-examine witnesses supporting the complaint.

If the Commissioner believes that these criteria are satisfied, he should, when he has finished gathering the information, send a report to the Committee containing no conclusions and recommending a reference to the Panel. It would also be open to a Member to ask the Committee to refer the case to the Panel even if the Commissioner has not recommended it. The Committee would be free to decide to refer a case to the Panel even without a recommendation from the Commissioner or a request from the Member.

- **The Panel should be chaired by a lawyer of substantial seniority who is not a Member of the House.** The Chair of the Panel should combine both independence and legal ability to ensure public confidence in the process and fairness towards the Member.

We also believe that a contested case will involve a range of complex legal issues – conflicts of evidence, legal debates on procedural and substantive points, issues relating to the standard of proof and so forth – which will be difficult for non-lawyers to control and decide. It is important, therefore that the panel should be chaired by a lawyer of substantial seniority. **We recommend**, therefore, that there should be **an independent Chair who is external to the House**. We also think the Chair should not be a full-time serving judge, but should be a retired judge or senior practitioner.

- **The remaining membership of the Panel should be two MPs.** They must have substantial seniority, be drawn from different parties and should not be members of the Committee on Standards and Privileges. We envisage that there will be an identified pool of MPs from which two will be drawn as necessary.
- **The Chair of the Panel and the pool of MPs from which the two other members will be drawn should be identified at the beginning of**

¹³⁴ CSPL Sixth Report, R3.

each Parliament. It is important that there should be no perception that the members of the Panel were selected to handle a particular case.

- **The Panel should call and examine witnesses, including the accused MP.** As a measure of fairness, the accused MP would have the right to call and question witnesses before the Panel and the right to receive financial assistance to enable him or her to fund legal representation at the hearings of the Panel. The Panel should be able to appoint a Counsel to the Panel, where necessary, to cross-examine witnesses and the MP concerned.
 - **The Panel would take decisions by majority.** This would reflect the accepted practice elsewhere, e.g. employment tribunals.
 - **The Panel would produce a report to the Committee on Standards and Privileges on the same basis as the Commissioner.** That is, a report of the facts that it has identified, and its own conclusion on whether the Code has been breached. It would be for the Committee on Standards and Privileges to take the final decision on whether the Code had been breached, based on the reports of the Commissioner and the Panel. The Panel's report should be published as an appendix to that of the Committee.
- 6.29 **We recommend** that the role and function of the Panel, as described above, be made explicit in a Standing Order of the House. Such a Panel, chaired in the way we suggest, would in no way compromise the integrity of the investigating process thus far. It would, however, strengthen the position of the Committee in dealing with the most complex and contested cases by proving an effective, fair and objective process. We believe that this would add to public confidence in the arrangements.

RECOMMENDATION

R12 (a) The House should establish an Investigatory Panel to handle serious, contested cases.

(b) The Investigatory Panel should comprise an independent legal Chair from outside the House and two MPs of substantial seniority drawn from different parties and who are not members of the Committee on Standards and Privileges.

(c) The Chair of the Investigatory Panel and the pool of MPs from which the two other Panel members will be drawn should be identified at the beginning of each Parliament.

(d) The Committee on Standards and Privileges should refer to the Investigatory Panel any cases involving disputed and significant issues of fact where the Member would face a serious penalty in the event of the complaint being found to be proved.

(e) An MP whose case is being considered by the Panel should have the right (i) to call and examine witnesses and (ii) to receive reasonable financial assistance for legal advice and representation.

(f) The Investigatory Panel should be able to appoint Counsel who could cross-examine witnesses.

(g) The Investigatory Panel should reach decisions by a majority.

(h) The Investigatory Panel should report its findings on the facts that it has identified and its own conclusion on whether the Code has been breached to the Committee on Standards and Privileges.

(i) It should be for the Committee on Standards and Privileges to decide whether there has been a breach of the Code, taking account of the findings of the Investigatory Panel.

(j) The findings of the Investigatory Panel should be published as an appendix to the report of the Committee on Standards and Privileges.

Openness of proceedings

6.30 In our Sixth Report, we recommended that the evidence-taking aspects of the disciplinary proceedings of the House should be held in public but should not be broadcast. The deliberations of the Committee on Standards and Privileges were expected to remain in private. The recommendation to have public hearings was rejected by the Committee on Standards and Privileges on the basis that its experience pointed to the proceedings of the Committee being held in private; publication of the oral evidence taken alongside the relevant report was seen as sufficient.

6.31 Since then the Scottish Parliament has been established, and its Standards Committee takes evidence in public. Its experience of this approach appears to have been positive and a number of witnesses commented positively to us on their perception that Scotland has a more open culture than Westminster. Brian Taylor, Political Editor of BBC told us:

*It is a question of intrinsic tone. Holyrood's default position is more skewed towards public disclosure, close scrutiny and independent monitoring.*¹³⁵

6.32 Three current members of the Committee on Standards and Privileges were also of the view that taking evidence in public could be an advantage. Kevin McNamara MP said, *"I think that [MPs being examined in front of the Committee in public] should be an option. It may well be that a Member would seek to protect his reputation by wanting it to be seen in public, rather than behind closed doors"*.¹³⁶ Ross Cranston QC MP told us in written evidence, *"I am now quite clear that when the Committee takes evidence that should be in public. Any disadvantage to the MP of the latter – of which I remain unconvinced – is at the expense of the integrity of the process."*¹³⁷ Michael Jabez Foster MP appeared to go even further when he said, *"It would be useful perhaps if, in some ways, the Committee's deliberations could be in public"*.¹³⁸

6.33 In Chapter 2 we noted that clarity and transparency were essential characteristics of an

effective system of self-regulation. This view was shared by many of our witnesses. Eric Forth MP said, *"I think certainly we can look at mechanisms which would provide more reassurance and more transparency"*.¹³⁹ Paul Tyler MP emphasised, *"the critical element there is transparency. If the whole of that process – not only how it works, but at the end of the process, the results of that exercise – is transparent, I think that is the proper way to advance"*.¹⁴⁰ The Rt Hon David Davis MP saw, *"Transparency in what we do – transparency in our policing of our own methods and approaches"*¹⁴¹ as a means of enhancing public confidence. Peter Preston of *The Guardian* thought simply that *"Transparency matters"*.¹⁴²

6.34 We remain of the view that, where the Committee takes evidence, it should be in public. Our recommendation for an Investigatory Panel means that we expect that the Committee's role in taking evidence will be limited to the less serious cases where there are questions of interpretation about the Code (we define taking evidence to include any questioning of the MP against whom an allegation has been made). It is necessary that the Panel should also take evidence in public. We expect, however, that the deliberations of the Committee and the Panel will remain in private.

6.35 We also remain of the view that the disciplinary proceedings of the Committee and the Panel should not be broadcast. In our Sixth Report we remarked that we feared the presence of television cameras or microphones would adversely influence the manner in which proceedings were conducted and that the broadcasting of the proceedings would be done selectively.¹⁴³ In each case, the effect would be detrimental to the fairness of proceedings.

RECOMMENDATION

R13 (a) The Investigatory Panel and the Committee on Standards and Privileges, where it takes evidence, should take evidence in public.

(b) The proceedings of the Investigatory Panel and the Committee on Standards and Privileges should not be broadcast.

¹³⁵ Day 4, am.

¹³⁶ Day 5, pm.

¹³⁷ Written evidence 20/62.

¹³⁸ Day 3, pm.

¹³⁹ Day 1, am.

¹⁴⁰ Day 2, am.

¹⁴¹ Day 1, pm.

¹⁴² Day 5, am.

¹⁴³ CSPL Sixth Report, para 3.60.

Appeals

- 6.36 In the wake of the difficulties arising from the complaint against the former MP Neil Hamilton,¹⁴⁴ our Sixth Report identified the need for an appeal procedure. Lord Neill noted in a letter to the Chairman of the Committee on Standards and Privileges that, *“Much of the unease which the Neil Hamilton case generated among informed observers was because of the perception that your Committee had not sufficiently secured the necessary fairness between the parties”*.¹⁴⁵ It was recommended that an MP should be able to appeal against an adverse ruling in a serious, contested case to an *ad hoc* appellate tribunal which was envisaged as a retired senior appellate judge sitting alone. For contested cases which were not considered serious, it was recommended that the MP be able to appeal against the Commissioner’s report to the Committee on Standards and Privileges. The latter recommendation reflects what happens in practice, but the former was rejected by the Committee on Standards and Privileges on the basis that it would be *“breaking the principle of self-regulation entirely”*.¹⁴⁶
- 6.37 Sir George Young MP told us that there was an appeal process, *“which is when the case goes to the floor of the House of Commons. That is the opportunity for the recommendations of the Committee to be reviewed and overturned”*.¹⁴⁷ We doubt whether this amounts to a realistic route of appeal. Even so, we recognise the difficulties in designing a structure which does. The fact of MPs adjudicating on MPs’ conduct means that any course of appeal would need to be to an external body and this would, indeed, break the principle of self-regulation entirely. We believe, however, that the addition of the Investigatory Panel will ensure that there is fairness built into the system which does not exist at present.

Deciding on and implementing sanctions – the role of the House of Commons

- 6.38 It is for the House to decide the sanction to be applied to a Member found to be in breach of the Code, although that decision will be informed by a recommendation from the Committee on Standards and Privileges. None of our witnesses suggested any change to the principle that the House decides. However, it was suggested that the range of penalties available was insufficient. At present Members found guilty of a breach of the Code may be required to apologise to the House and/or may be suspended from the House for a specified period of time. If a Member is suspended they also incur a financial penalty as their salary is withheld for the period of the suspension.
- 6.39 Witnesses suggested to us that there should be the option of a financial penalty without suspension from the House. This is not a new suggestion. In a report in 1967, the then Privileges Committee recommended that the House introduce legislation to enable the Commons to impose fines with statutory authority. This recommendation was repeated by that Committee in 1977.
- 6.40 Robert Kaye, of the London School of Economics, pointed out that not only did suspension *“deprive the constituents of any sort of representation”* but also:
- ... we are in this situation where you go from nothing to suspension, and there is not really enough in the middle. I think that having some system of fining ... would at least enable the Committee to have some sort of quantification of how serious an offence was.*¹⁴⁸

¹⁴⁴ 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.

¹⁴⁵ Committee on Standards and Privileges, Twenty-first Report (Session 1997-98, HC 1191), Appendix 2.

¹⁴⁶ Committee on Standards and Privileges, Fifth Report (Session 2000-01, HC 267), page xvii.

¹⁴⁷ Day 1, pm.

¹⁴⁸ Day 6, pm.

This sentiment was shared by the Rt Hon Alan Williams MP and by the current Commissioner.

- 6.41 We recognise that the introduction of an ability to fine would not necessarily be straightforward, but can see strong advantage in this option being available to the House.

RECOMMENDATION

R14 The House should take steps to introduce additional financial penalties without suspension as a sanction for breach of the Code of Conduct.

Implementing our recommendations

- 6.42 We set out in Chapter 8 (para 8.61) how recommendations 10, 11, 12(a), (d), (e), (f), (g), (h), (i), (j) and 13 should be implemented.

CHAPTER 7 STRENGTHENING THE POSITION OF THE COMMITTEE ON STANDARDS AND PRIVILEGES

7.1 In Chapter 6 we considered the role of the Committee as the pivotal player in the regulatory system in making decisions on complaints. We noted in para 6.2 that several witnesses felt that this role set the Committee apart from other select committees of the House. They stressed both its importance and its difference as a quasi-judicial committee making decisions on other Members' conduct.

7.2 In general terms, select committees of the House are:

- formed entirely of MPs;
- reflect the balance between the main political parties in the House (in practice this usually means the governing party will have a majority on the Committee); and
- selected by the Whips.¹⁴⁹

In addition, departmental select committees do not have Parliamentary Private Secretaries (PPSs) on them.¹⁵⁰

7.3 We turn now to consider whether the Committee's composition as a select committee is seen to affect its work or to condition the public's perception of its work. In para 6.14, we noted concerns that the Committee on Standards and Privileges is, or is perceived to be, overly sensitive to interests and pressures external to the Committee, especially in cases involving

Ministers. In particular, it was queried whether it was realistic to rely on members of the Committee being able to operate as Committee members first and foremost, regardless of party political affiliation.

7.4 Two former members of the Committee on Standards and Privileges identified the difficulties. Martin Bell said, *"I think most of the members managed to leave their party allegiances behind, but some did not"*. He went on:

*... if you have somebody really powerful in your party, can you wall off that fact from the kind of inquiry which you are undertaking, and can you convince yourself that the fact that this person can have some influence on your career is entirely irrelevant?*¹⁵¹

Peter Bottomley MP told us, *"the Committee was not always meeting the sorts of standards I wanted"*. Later, he added:

*... the cases which have involved senior Members of Government have been treated in a different way, where the pressures, looking back on the members of Committee, were occasional and arbitrary and sometimes effective.*¹⁵²

7.5 Others outside the Committee also saw evidence of this. David Davis MP, former Chair of the Conservative Party, said:

¹⁴⁹ The Leader of the House told us of plans to introduce a Committee of Nominations to oversee nominations to select committees. This proposal was part of a series of modernising initiatives. It was rejected by the House shortly after the Rt Hon Robin Cook MP gave evidence to us.

¹⁵⁰ This has been the practice, so far as circumstances permit, since 1979. Members of the Government and regular Opposition frontbench spokesmen are similarly excluded. (*Parliamentary Practice*, Erskine May, 22nd edition, London 1997, page 631.)

¹⁵¹ Day 2, am.

¹⁵² Day 2, am.

I have a high opinion of everybody who actually works in the Standards and Privileges Committee but there is no doubt that the House of Commons – and certainly my side of the House of Commons – believes that one side gets tougher treatment than the other. Whatever the substance of that, that is the belief and in justice you have to deal with the perceived injustice as well as the real injustice.¹⁵³

The first Commissioner, Sir Gordon Downey, reflecting on his period of tenure, said:

I was conscious from time to time that when the Committee was looking at cases involving front bench Members, there was greater tension in their deliberations and more anguish perhaps in reaching the right judgement. I just felt that, although I could not claim that this had led to a miscarriage of justice, one could visualise this as being a slightly distorting factor which could, in certain circumstances, persuade Members of the Committee to sort of hold back.¹⁵⁴

- 7.6 Robert Kaye from the London School of Economics, who carried out a detailed study of the Committee on Standards and Privileges,¹⁵⁵ thought it clear that *“The Committee has shown itself a lot more willing to overturn decisions of the Commissioner when they have been dealing with a Minister.”*¹⁵⁶ Peter Riddell, Assistant Editor of *The Times* observed, *“it is very interesting that those people who have been Ministers get punished when they are ex-Ministers.”*¹⁵⁷
- 7.7 Rightly or wrongly, such perceptions are damaging, and have contributed to an undermining of the Committee’s credibility when it has disagreed with the conclusions of the Commissioner. Tony Wright MP illustrated this point when he said, *“the Standards and Privileges Committee I think has been revealed as having shortcomings too and certainly should have no role in relation to changing reports and recommendations from the Commissioner.”*¹⁵⁸
- 7.8 Although Chapter 6 recommends ways in which the process can be strengthened, this in itself will be insufficient if the composition of the Committee is not also addressed.

The question of outside participation

7.9 We noted in Chapter 2 that two professional bodies, the General Medical Council and the Bar Council, have lay members on their disciplinary committees. This raises the question of whether a Committee composed entirely of MPs can deliver public confidence or whether some lay involvement is necessary in the decision-making process. (Our definition of lay is, other than a Member of the House.)

7.10 Lord Nicholls told us that he had changed his mind since the report of the Joint Committee on Parliamentary Privilege, saying that, *“I myself would wish now to consider the desirability of some outside participation – I do not put it higher than that – in the disciplining processes of MPs.”* He later explained:

I fear that what has happened over the last two or three years has already damaged, to some extent, the public confidence in the adequacy of Parliament’s self-disciplinary processes. ... I do think it is of constitutional importance that everyone should have full confidence in the way in which Parliament disciplines itself. The suggestion I made ... is with the object of restoring that confidence which ought to exist in Parliament’s self-disciplinary processes.¹⁵⁹

7.11 Written evidence provided to us by the Bar Council included the following comment from one of its lay members:

I believe that those who are actively engaged in a profession ... are well-placed to make judgements on their peers. ... But it is unrealistic for them to expect the general public to take their word on trust or to expect that their decisions will be automatically accepted by those who have been disappointed by an adverse outcome, or disappointed by a lapse of performance. The presence of lay members provides a safeguard both to the public and to the professionals.¹⁶⁰

Robert Kaye of the LSE said, *“I think certainly the lesson from the professional bodies is that there needs to be some lay involvement, there*

¹⁵³ Day 1, pm.

¹⁵⁴ Day 5, pm.

¹⁵⁵ Robert Kaye told us, *“I spent four years on looking at both of these Committees [the Members’ Interest Committee and the Standards and Privileges Committee], I interviewed about 40 former Members of the Committee ... about three years ago, obviously going through all the reports of the Committee, proceedings in the House etc.”* Day 6, pm and written evidence 20/28.

¹⁵⁶ Day 6, am.

¹⁵⁷ Day 6, pm.

¹⁵⁸ Day 7, pm.

¹⁵⁹ Day 6, pm.

¹⁶⁰ Written evidence 20/46.

needs to be some people from outside Westminster and outside the political club".¹⁶¹

7.12 It became clear to us from the evidence that there are significant hesitations in the House about the acceptance of lay members in even an advisory capacity on the Committee on Standards and Privileges. This hesitation took a number of forms. In written evidence, Ross Cranston QC MP, a member of the Committee on Standards and Privileges, noted that the opposition to the idea of lay members which he had voiced to us in oral evidence *"was based not on a principled objection, but primarily on my perception of colleagues' reactions"*.¹⁶² Tony Wright MP said, *"my sense is that this would not be immediately received with approbation so I just would urge caution there"*.¹⁶³ Sir George Young MP told us, *"I am not sure that the culture of Select Committees in the House of Commons is amenable to the concept of ... lay members"*.¹⁶⁴ David Maclean MP argued, *"I cannot see what extra skills [a lay member] would bring and the only argument for it is this fig leaf approach, that it will enhance the reputation"*.¹⁶⁵ Kenneth Clarke QC MP noted, *"I am not sure lay representation would meet most of the [criticisms] ... I am not instantly attracted to lay representation"*.¹⁶⁶

7.13 While we recognise that a strong case can be made out for some lay membership of the Committee on Standards and Privileges, we do not think it necessary to recommend it at this stage. We think it more appropriate to strengthen the actual and perceived independence of the process of regulation of standards in the House of Commons by a package of measures which will deliver a greater confidence in the system. We have recommended in Chapters 4, 5 and 6:

- consultation with external organisations on revisions to the Code;
- the referral of serious cases to an Investigatory Panel with an independent Chair;
- the taking of evidence in public;
- the publication in full of the Committee's reasons for a decision;
- buttressing the independence of the Commissioner; and
- the publication of an annual report by the

Commissioner which could help put more serious cases in context and which would allow the Commissioner to express any concerns.

In the rest of this chapter we elaborate on two further measures: that no one party should have an overall majority of members on the Committee, and that the House should appoint an independent legal adviser to assist the Committee.

Ensuring no party has majority membership of the Committee

7.14 As we explained in para 7.2, the current membership of the Committee on Standards and Privileges reflects the political balance in the House. In practice this will almost always mean that there is a Government majority. However, Professor Oliver argued that: *"In the case of the House of Commons it will be essential that the Government does not have oversight of the self-regulatory process since this would enable it to capture the regulatory process, which it may wish to do when it is directed against people who are also ministers or government backbenchers"*.¹⁶⁷ The evidence we heard during the course of this inquiry illustrated to us the extent to which some believe this has happened in the past. Even if this is a matter of perception rather than practice, the fact that the Government has an overall majority on the Committee leaves the Committee particularly vulnerable to such a charge.

7.15 David Davis MP suggested that we look at an alternative balance of membership, saying, *"My party, in other contexts, has argued for balancing Select Committees – not on a proportionate basis to the votes in the House as it were, but to have them equally balanced – so that the argument wins, rather than the party"*.¹⁶⁸ A current member of the Committee, David Heath MP argued similarly, saying *"I think the benefit of having a Committee which could no longer be described as Labour dominated, in the case of the present Government, or majority party dominated, outweighs any perception of difficulty [about the Government not having a proportional repre-*

¹⁶¹ Day 6, pm.

¹⁶² Written evidence 20/62.

¹⁶³ Day 7, pm.

¹⁶⁴ Day 1, pm.

¹⁶⁵ Day 8, am.

¹⁶⁶ Day 6, am.

¹⁶⁷ Written evidence, 20/13.

¹⁶⁸ Day 1, pm.

sentation on the Committee]".¹⁶⁹ He also said: *I think there is a need to differentiate this Committee from other Committees of the House in order for it to enjoy public confidence. I would agree there is an argument for no overall political control within the Committee... That would be resisted by those who hold the Select Committee and its proportionalities within the House as of more importance than any outside perception.*¹⁷⁰

- 7.16 While it is understandable for Members of Opposition parties to put forward such an argument, we believe that it is supported by other evidence from outside the House. We return to the fundamental point that the Committee on Standards and Privileges should be seen as one of the most important committees of the House, fulfilling a unique and highly valuable role in sustaining the reputation of the House. We believe that, to do so successfully, its position would be greatly strengthened by making clear the politically impartial nature of the Committee. We therefore **recommend** that no one party should hold an overall majority membership on the Committee.

RECOMMENDATION

R15 No one party should hold an overall majority membership of the Committee on Standards and Privileges.

The individual members of the Committee

- 7.17 Recommendation 15 dealt with the overall composition of the Committee. We also need to be aware of the qualities being sought from individuals. In our Sixth Report, we recommended that a substantial number of the Committee members should be senior MPs and that the Committee should be exempted from the convention that its Chairman should be drawn from the Government benches.¹⁷¹ With the appointment as Chairman of Sir George Young MP in July 2001, the second part of the recommendation was achieved. Witnesses spoke positively about this and saw it as an important element in demonstrating impartiality.

- 7.18 Nevertheless witnesses remained concerned about the issue of individual membership in securing the reputation of the Committee as an impartial quasi-judicial body. The former Chairman of the Committee on Standards and Privileges, the Rt Hon Lord Sheldon said:

*I was surprised, astonished in fact, when I was informed of the membership of the Committee back in 1997 ... They asked for volunteers .. I was just astonished ... I mean, this is a body that should have the respect of the whole House, and it depends on the respect and the admiration and the reputation that each of these Members have.*¹⁷²

Sir Gordon Downey, in speaking of cases involving front bench Members, noted:

*I felt, in those circumstances, that the Committee, because there were these extra tensions involved in some of those cases, would be more self-confident, in a way, if they were bolstered a bit ... [by] having some very senior Members on the Committee.*¹⁷³

- 7.19 Kenneth Clarke QC MP encapsulated the principle espoused by those who thought that the Committee should be composed of senior MPs when he said:

*It is extraordinary how party political people can be in their first two or three years in the House until they discover that the other side are human. And then, actually, if they either get promoted, sacked, overlooked or get more senior, they learn about politics, they get remarkably independent by the time they are more experienced Members of the House.*¹⁷⁴

- 7.20 The point of difficulty, however, came in attempting to define seniority. Martin Bell spoke of MPs *"in whom the fires of personal ambition no longer burn"*¹⁷⁵ and this was echoed by others. The other side of the argument was put by a number of witnesses. Kevin McNamara MP, a member of the Committee on Standards and Privileges, said, *"Ambition might be spent, but passion is rarely spent."* He added, *"I do not think that seniority necessarily gives wisdom"*.¹⁷⁶ Robin Cook MP pointed out that new MPs:

¹⁶⁹ Day 3, pm.

¹⁷⁰ Ibid.

¹⁷¹ CSPL First Report, R8.

¹⁷² Day 3, am.

¹⁷³ Ibid.

¹⁷⁴ Day 6, am.

¹⁷⁵ Day 2, am.

¹⁷⁶ Day 5, pm.

*... do not arrive ... from the maternity wards in the House of Commons. They come there often after a lifetime of political activity ... some of that can be as much rough and tumble and hardening as anything that they are going to experience in the course of parliament.*¹⁷⁷

- 7.21 David Heath MP, another member of the Committee on Standards and Privileges, identified the key considerations, *“I think the most important thing is that those members should be people who are prepared to leave their party affiliations at the door, first of all, [and] who have a judicious frame of mind”*.¹⁷⁸
- 7.22 We agree specifically with the view that a *“judicious frame of mind”* is a key requirement which any member of the Committee, whenever elected to the House, should bring to the Committee’s work. We accept that recently elected Members may bring that specific skill. However, we remain of the view that recently elected members are less likely to be perceived as being able to leave their party affiliations at the door and, with little by way of Parliamentary experience, may lack self-confidence or the ability to *“command the respect of the whole House”*. **We recommend** that the great majority of Committee members should be of senior standing in the House. The few recently elected Members who form the remainder of the Committee should have relevant experience outside the House which would contribute to the work of the Committee.

RECOMMENDATION

R16 The Committee on Standards and Privileges should be composed of a majority of members with senior standing in the House. The Chairman should continue to be drawn from the Opposition parties. The inclusion of any recently elected Members should be based on their having relevant experience outside the House which would contribute to the work of the Committee.

Parliamentary Private Secretaries

- 7.23 A specific aspect of the debate was highlighted by some witnesses questioning whether it was appropriate for Parliamentary Private Secretaries (PPSs) to be members of the Committee. The case in favour of PPSs was put to us in written evidence from Tom Levitt MP, who is both a serving PPS and a member of the current Committee on Standards and Privileges. He said:

*I understand the lazy assumption that PPSs have “friends” and therefore might want to see a case have a “pro-government” outcome. But what is a “pro-government” outcome? In fact, the government, in exactly the same way as the House and public life as a whole, benefits from a Standards system which identifies wrong-doers and punishes them appropriately, exonerates effectively those who have been wrongly or unfairly accused and advises on consequent changes in rules or procedure.*¹⁷⁹

- 7.24 David Maclean MP, the Opposition Chief Whip, pointed out that it is the rules that are applied, rather than the status of the individual that is important: *“I am not averse to PPSs on the Committee provided they follow the same rules of integrity as anyone else.”*¹⁸⁰
- 7.25 The other side of the argument was put equally forcefully. The former Chairman of the Committee, Lord Sheldon noted:

*Detachment is of crucial importance. We had up to three PPSs on the Committee and I saw no evidence of any attempt to decide the way they were going to act as a result of being PPSs. So, I have no complaint whatever. In principle, though, one would wish to see a greater detachment if possible.*¹⁸¹

Baroness Boothroyd noted, *“PPSs, to my mind, are young, thrusting people who are very keen to become junior ministers. ... I do not see them being of that type of person that I would envisage on this Committee.”*¹⁸² David Hencke of *The Guardian* pointed out that:

¹⁷⁷ Day 1, am.

¹⁷⁸ Day 3, pm.

¹⁷⁹ Written evidence 20/21.

¹⁸⁰ Day 8, am.

¹⁸¹ Day 3, am.

¹⁸² Day 5, am.

*I do think the point Baroness Boothroyd made about the fact that they have a separate career plan must make them, even if they are really robust and independent minded, just vulnerable to that little word in the ear from their sponsor that perhaps you need not do too much. It would be more what you did not do rather than what you did do.*¹⁸³

7.26 While we appreciate the point being put by Mr Levitt, the authority of the Committee and of its decisions rests to a considerable degree on the way in which it is perceived. We have, therefore, sympathy with the argument that the membership of PPSs on the Committee leaves it vulnerable to challenge about its detachment.

7.27 On balance, therefore, we believe that the Committee on Standards and Privileges should follow the practice of Departmental Select Committees and that PPSs should be excluded from its membership. We extend this exclusion to membership of the Investigatory Panel. We should emphasise, however, that, in making this recommendation, we mean no personal criticism of those PPSs who have been or are currently members of the Committee.

RECOMMENDATION

R17 Parliamentary Private Secretaries should be excluded from membership of the Committee on Standards and Privileges and from membership of the Investigatory Panel.

Legal advice to the Committee

7.28 Robin Cook MP suggested that we consider whether the Committee might benefit from what he described as “an independent legal assessor”.¹⁸⁴ We can see particular merit in this suggestion. The issues with which the Committee deals are not necessarily straightforward and many have a complexity which would be aided by legal advice, e.g. the interpretation of the Code in a disputed case, or the consequences of an amendment to the Code.

7.29 Our own preference would be for an outside legal adviser who would be able to assist in providing an interpretation of the Code where that was in question, could reassure the

Committee over questions of process, including an appropriate standard of proof and would be able to assist in setting down in full the reasons for the Committee’s decisions. On this basis, **we recommend** the appointment of an outside legal adviser to assist the Committee. We would expect the adviser to attend Committee meetings regularly and that his or her advice would be taken not only in dealing with cases but also when reviewing the Code of Conduct.

RECOMMENDATION

R18 The Committee should appoint an outside legal adviser in order to assist it with its work on a regular basis.

Relationship between Committee members and MPs

7.30 A number of witnesses told us that members of the Committee on Standards and Privileges were sometimes lobbied by Members or friends of Members against whom a complaint had been made. Eric Forth MP said:

*I can tell you that the way it works at the moment is that if a Member is subject to a complaint which has been dealt with by the Commissioner and will go to the Committee, then those Members feel free to lobby Members of the Committee and to try to put their case to them.*¹⁸⁵

7.31 He also talked of the “intimacy of the House of Commons” and the fact that physical proximity increased the opportunities for lobbying. Similarly, the Chairman of the Committee, Sir George Young MP told us, “you cannot stop people talking to you in the House of Commons, by the geography of the place”.¹⁸⁶

7.32 We also heard that information about cases could sometimes be leaked. Mr Forth, when talking about his own time as a member of the Committee, spoke of occasions:

... when we felt that there had been leaks from the then Committee and we were never certain how these had arisen. It can often come from the person complained against, it can often come from their friends.

¹⁸³ Day 5, am.

¹⁸⁴ Day 1, am.

¹⁸⁵ Day 1, am.

¹⁸⁶ Ibid.

He thought, however, *“that the Committee was probably as leak-proof as any House of Commons Committee can ever be”*.¹⁸⁷ Lord Campbell-Savours, also a former member of the Committee told us, *“there are periods when leaks do take place”*.¹⁸⁸

7.33 We consider that a dual approach is needed to tackle these issues. It is wholly inconsistent with membership of the Committee that Committee members themselves should talk about cases outside the Committee meetings; not only may it affect the outcome of a case but it undermines the integrity of the process. Similarly, all MPs should respect the process of investigation rather than seeking to lobby Committee members. We recommend that there should be requirements both on MPs and Committee members to prevent any discussion of cases outside the formal processes for handling complaints.

RECOMMENDATION

R19 (a) It should be a requirement of the Code of Conduct that no MP shall lobby a member of the Committee on Standards and Privileges with the intention of influencing their view of a case.

(b) Until the Committee’s report on a case is published, there should be an explicit requirement that no member of the Committee on Standards and Privileges should discuss the case outside Committee meetings.

(c) The recommendations at (a) and (b) should apply equally to members of the Investigatory Panel.

Implementing our recommendations

7.34 We set out in Chapter 8 (para 8.61) how recommendations 18 and 19(b) and (c) should be implemented.

¹⁸⁷ Day 1, am.

¹⁸⁸ Day 8, pm.

CHAPTER 8 STRENGTHENING THE POSITION OF THE COMMISSIONER

8.1 In Chapter 5 we considered the concerns relating to the processes of investigation and adjudication. In this chapter we address other concerns relating to the Commissioner’s post. Our evidence has suggested that there is some confusion about both the status of the post and the Commissioner’s power to investigate and report without let or hindrance. There is also some doubt about the extent to which the Commissioner can, or should, communicate with the media about his or her work.

8.2 Many of our witnesses saw the confusion about the Commissioner’s status as an issue of his or her independence and various descriptions were given to us including semi-independent, partially independent and quasi-independent. However, we believe that the issue is best defined as the ability of the Commissioner to carry out his or her responsibilities independently. His or her relationship with the Committee on Standards and Privileges is also crucial given their complementary roles in the process of reinforcing standards, investigation and adjudication.

8.3 As in the other areas which have been identified in earlier chapters we believe that clarity in relation to the Commissioner’s position is essential. Indeed we do not believe it is overstating the case to say that had the Commissioner’s operational independence been clearly defined during the tenure of the previous Commissioner, many of the difficulties experienced then could have been avoided, or at the very least minimised.

8.4 Sir Gordon Downey, the first Parliamentary Commissioner for Standards, spoke about the role in these terms:

*I would say that the essence of the Commissioner’s role is to be independent: he must be able to decide what to inquire into, he must be able to decide how to inquire into it, and he must decide what he is going to report.*¹⁸⁹

Sir Philip Mawer, the current Commissioner, also saw this independence as crucial; it was important that the role was clearly perceived to be independent to engender confidence in the system:

*... the issues for you are all really around the degree to which there is demonstrable independence in the system.*¹⁹⁰

8.5 We considered the Commissioner’s role in some detail in Chapter 5. It consists essentially of reinforcing high standards, investigating complaints and reporting conclusions to the Committee on Standards and Privileges. The recommendations we make in this chapter are intended to provide a clear framework within which the Commissioner can discharge these functions with authority, working with the Committee on Standards and Privileges within the overall process of upholding and maintaining high ethical standards.

Status

8.6 Sir Philip Mawer summed up the problems relating to the Commissioner’s position as follows:

¹⁸⁹ Day 5, pm.

¹⁹⁰ Day 3, am.

*The ground rules for the Commissioner's existence, office etc, are arguably not as clear cut as they might be.*¹⁹¹

8.7 At present Standing Order No 150¹⁹² provides for a Commissioner who will be an Officer of the House; there is nothing more on the terms of the appointment, save the provision that the Commissioner may be dismissed by resolution of the House. However, Robert Rogers, Secretary to the House of Commons Commission, informed us that: *"the role and the job description [are] set out in the annex to the Commission's report recommending Sir Gordon Downey to the House"*.¹⁹³ We are not persuaded that this is the most suitable means of making the information known, and this may have contributed to the lack of consensus which emerged from the evidence of our witnesses.

8.8 As noted in Chapter 3, when the post of Commissioner was originally conceived, analogies were drawn with the Comptroller and Auditor General and the Parliamentary Commissioner for Administration. The status of these two posts is enshrined in statute. The Comptroller and Auditor General is defined in the National Audit Act 1983 as an officer of the House of Commons who has complete discretion in the discharge of his functions. The post of Parliamentary Commissioner for Administration was established by the Parliamentary Commissioner Act 1967. The appointment is made by the Crown and the Act refers to the 'office' of the Commissioner. The then holder of the office, Sir Michael Buckley said:

*Strictly speaking I am an independent statutory office holder....I am not for example, in a situation of an Officer of the House, like, say, the Clerk, who can be given instructions by the House as to the way in which he conducts himself.*¹⁹⁴

However, Baroness Boothroyd, a former Speaker, defined the Parliamentary Standards Commissioner as *"an Officer of the House and the servant of the [Standards and Privileges] Committee"*.¹⁹⁵

8.9 The term 'Officer of the House' is not precisely defined but the Principal Permanent Officers of the Commons are set out in Erskine May's *Parliamentary Practice*.¹⁹⁶ They are the Clerk of the House and the Clerk Assistant, both of whom are appointed by the Crown; the Serjeant at Arms whose appointment is in the gift of The Queen; and the Parliamentary Commissioner for Standards who is appointed by the Commons.

8.10 There appears to be no clear distinction between these Officers of the House, who are generally regarded as employees of the House, and other holders of public office such as the Comptroller and Auditor General who is also an Officer of the House. Sir John Bourn, the current Comptroller and Auditor General said:

*I am afraid there does not seem to be any really clear legal definition separating Officers of the House from employees of the House. As it has worked out in my time, it is a title which has a certain resonance. Of course, so far as payment is concerned, my pay is provided in the 1866 Act. It is from the Consolidated Fund ... [not] the Vote of the House of Commons. So that certainly is one difference between the employees of the House and me.*¹⁹⁷

8.11 We believe that the use of analogies like this has had the unfortunate effect of contributing to the confusion surrounding the Commissioner's role. All the posts described above are different and no analogy is exact. Perhaps the most significant difference is that, alone of the Officers of the House, the Commissioner is appointed by the House itself. This in turn affects perceptions of the Commissioner's status. Archy Kirkwood MP, speaking on behalf of the House of Commons Commission and describing its function in relation to employees of the House, said: *"The Commission is thus the employer of the Parliamentary Commissioner for Standards"*.¹⁹⁸ Elizabeth Filkin, the second Commissioner, said that she regarded the Commission as her formal employer, but believed that both the Clerk of the House and the Chairman of the Committee on Standards and Privileges were her bosses.

¹⁹¹ Day 3, am.

¹⁹² See Appendix F.

¹⁹³ Day 2, pm.

¹⁹⁴ Day 2, am.

¹⁹⁵ Day 5, am.

¹⁹⁶ *Parliamentary Practice*, Erskine May, 22nd edition, London 1997, pp. 197-200.

¹⁹⁷ Day 8, am.

¹⁹⁸ Day 2, pm.

8.12 This view was echoed by Angela Browning MP, a former member of the Commission, who said:

Certainly it was my understanding, as a new member, that we were the employer and therefore, as a member of that Commission, I felt it appropriate to ask the sort of questions one would ask if one was an employer looking at somebody whose contract was coming up for renewal.¹⁹⁹

There has been no contract of employment for any of the Commissioners to date. They have instead received a letter of appointment, following a Resolution of the House on the recommendation of the House of Commons Commission. Mrs Browning spoke about this too:

The Committee may be interested to know that when I asked for the contract of employment I was told there was not a contract as such, but letters of appointment which incorporated details about conditions and salary.²⁰⁰

8.13 It is essential that the Commissioner's status be clarified because it is basic to the operational independence of the post. Otherwise, there will continue to be questions about the extent to which the Commissioner can bring independence to the regulation of the House of Commons when he or she is in the direct employ of the House.

8.14 We believe that our predecessors, in recommending in the First Report that the Commissioner should be an Officer of the House, intended to underline the independence of the post by making it an office-holder who was an **appointee** of the House, not an employee like regular staff of the House. **We recommend** that this should be clearly defined by the House for future appointments. We consider in paras 8.60 to 8.66 how our recommendations relating to the Commissioner's status can best be achieved.

RECOMMENDATION

R20 The post of Parliamentary Commissioner for Standards should be clearly defined as an office-holder, appointed and paid for, but not employed, by the House.

Tenure

8.15 The issue of the Commissioner's length of tenure was raised by many witnesses. There is no set term of appointment for any of the posts with which the Commissioner's has been compared. Neither the Parliamentary Commissioner for Administration nor the Comptroller and Auditor General is appointed for a fixed term. In the case of the former, the Parliamentary Commissioner Act 1967 states that the Commissioner may only be removed: at his or her own request; by The Queen following addresses from both Houses of Parliament; or on reaching the age of 65. The Exchequer and Audit Departments Act 1866 states that a new Comptroller and Auditor General shall be appointed on the death, resignation or other vacancy in office of the Comptroller and Auditor General.

8.16 A set period of tenure is important in buttressing independence. Sir Philip Mawer believed that a short, renewable tenure could result in the Commissioner looking over his or her shoulder wondering if he or she would be re-appointed at the end of the term. Archy Kirkwood MP said: *"I certainly now think it would be a five-year term".²⁰¹* A long enough period of time also enables the post-holder to plan ahead, which is particularly important in the context of setting up ongoing arrangements for giving advice and for disseminating information about standards within the House. The periods of tenure most often proposed in evidence to us were five or six years. One advantage of six years over five is that the Commissioner's tenancy of the post would always span two Parliaments which could be useful in maintaining continuity, particularly in the case of a significant change in the composition of the House. It is also, of course, the maximum term which a Commissioner could serve under the current arrangements.

8.17 There is a related issue of whether the term of appointment, whatever its length, should be renewable or not. All three Parliamentary Commissioners for Standards were appointed on the basis of a set term, with both Sir Gordon Downey and Sir Philip Mawer (but not Elizabeth Filkin) appointed for a term of three years *"initially".²⁰²* It was precisely the lack of clarity over this which exacerbated, if it did not actually

¹⁹⁹ Day 5, pm.

²⁰⁰ Ibid.

²⁰¹ Day 2, pm.

²⁰² HC 789, 1994-95 and HC 598, 2001-02.

create, the difficulties over Elizabeth Filkin's departure. The advantage of a renewable term, which in most public appointments has tended to be automatic, assuming that the post-holder wishes to continue and that there has been a satisfactory performance appraisal, is that it does give both parties the opportunity to reassess the position. The corresponding disadvantage is that it creates uncertainty both for the post-holder and the organisation, which makes it more difficult to plan for continuity. It should also be noted that in the case of public appointments covered by the Commissioner for Public Appointments, this reassessment is carried out by means of appraisal. For reasons already given, i.e. that the Commissioner is not an employee of the House, we believe that the Commissioner should not be subject to an appraisal process.

8.18 The most appropriate solution may, therefore, be the one suggested by Sir Philip Mawer, who advocated:

*...a longer, non-renewable period ...between five and seven years. I think asking somebody to do a job like this for less than five years would be asking quite a lot. Equally, I am not sure more than seven would be productive for them, let alone for the system as a whole. So, a reasonable period of time, and non-renewable thereafter.*²⁰³

We agree, and **we recommend** that the Commissioner's tenure be for a non-renewable fixed term. We leave it to the House to decide whether five, six or seven years is the best length of tenure. The key is that the period is set clearly in advance and that each individual appointed as Commissioner should be appointed for the same period of time. It is important, and particularly so when the appointment is for a longer term, that the terms and conditions under which the Commissioner is appointed allow for dismissal, by a Resolution of the House, for gross misconduct.

8.19 We should make it clear at this point that we are making recommendations for the future. It is not for us to comment on the terms under which the present Commissioner was appointed, although we anticipate that the House of Commons Commission and the present Commissioner may wish to reflect on this recommendation.

RECOMMENDATION

R21 (a) The Commissioner should in future be appointed for a non-renewable fixed term.

(b) The House should decide on a term of between five and seven years.

Process for appointment of the Parliamentary Commissioner for Standards

8.20 The House of Commons Commission, which is responsible for staffing matters in the House, formally makes the nomination of the Commissioner to the House in a report which also outlines the terms and conditions of the proposed appointment. The Commission is in charge of the selection process which involves public advertisement and an interview.

8.21 Archy Kirkwood MP described to the Committee²⁰⁴ the process adopted for the appointment of Sir Philip Mawer. After an initial sift, a Board of five people (including two external members) interviewed candidates. A short list of three candidates unanimously recommended by that Board were then interviewed by the Commission. An independent assessor recommended by the Commission for Public Appointments attended the later stages of the sifting process, the meetings of the interview Board and the final interviews by the Commission, and reported that the process had been as robust as possible.

8.22 For the first time the Chairman of the Committee on Standards and Privileges joined the Commission for the final interviews as a full member of the Board. This additional element is something which found support from many of our witnesses, including Lord Sheldon, a former Chairman of the Committee, who said: *"...definitely [the Chairman of the Committee should sit on the interview Board]. The Chairman has got so much to give on that".*²⁰⁵ We agree with this view, which recognises the importance of the relationship between the Commissioner and the Committee. **We recommend** that the Chairman of the Committee on Standards and Privileges sit on the interviewing panel for future appointments and

²⁰³ Day 3, am.

²⁰⁴ Day 2, pm.

²⁰⁵ Day 3, am.

participate in any relevant Committee meetings when the appointment is discussed.

8.23 In technical terms the appointment falls outside the remit of the Commissioner for Public Appointments, but it is open to the House of Commons Commission to follow her Code of Practice, something which is increasingly being done by organisations concerned to adhere to best practice in the field of public appointments. The Commissioner for Public Appointments and her staff represent a valuable resource for any such organisation. It should be noted that the appointment process described above did not fully follow the Code of Practice of the Commissioner for Public Appointments to the letter, in that the independent assessor was not involved in the initial sift of applications, although she took part in the subsequent proceedings. **We recommend** that future selection procedures follow the Code of Practice of the Commissioner for Public Appointments at all stages.

8.24 In his evidence to the Committee, Mr Kirkwood admitted that mistakes had been made in the appointment of the current Commissioner. He said:

[We were] *dealing with situations which we, as employers, found very difficult to deal with ... if we had to do it all again I would do it differently ... in retrospect that [some of the procedures used] was completely naïve from my point of view ... this is a learning process for us.*²⁰⁶

He believed, however, that lessons had been learned from this experience and that:

*... we have now got a system...which I think is absolutely robust and for the rest of the duration of this Parliament I am absolutely confident we will deliver the goods in terms of self-regulation, and provide the reassurance that people outside of Parliament I think deserve and require.*²⁰⁷

8.25 Several other witnesses referred to the role of the House of Commons Commission. Angela Browning MP believed that it was unprepared for its role. She was surprised to find that “there

was absolutely no indication that the House of Commons Commission had ever been trained in anything at all”.²⁰⁸ She thought that:

*They [the Commission and its secretariat] would have certainly benefited from more professional advice, both at the beginning when contracts were drawn up and as they experienced difficulties along the way, to decide how they were going to manage these problems.*²⁰⁹

8.26 A similar, but stronger, view was expressed by Tony Wright MP, Chairman of the Public Administration Select Committee, who said:

*... the House of Commons Commission has been revealed in all its shortcomings in recent events. I think it has looked hopelessly amateurish. I think it has failed to meet basic tests about process and procedure.*²¹⁰

Martin Bell, a former MP and former member of the Committee on Standards and Privileges added a further point. He described the Commission as “*singularly unaccountable*”.²¹¹

8.27 These concerns about the House of Commons Commission raise questions about its fitness to carry out the selection of the Commissioner and indicate that there is considerable room for improvement. However, we note that the Commission has itself acknowledged that it has encountered problems in its appointment procedures, and as Mr Kirkwood’s evidence shows, it has learnt from this.

8.28 Subject to our recommendations – that the Commission conform to the Code of Best Practice produced by the Commissioner for Public Appointments and that the Chairman of the Committee on Standards and Privileges continue as a member of the appointing panel and attend meetings about the appointment of the Commissioner – **we recommend** that the Commission continue to act as the selection body for the Commissioner. We envisage that the House will continue to make the appointment.

²⁰⁶ Day 2, pm.

²⁰⁷ Ibid.

²⁰⁸ Day 5, pm.

²⁰⁹ Ibid.

²¹⁰ Day 7, pm.

²¹¹ Day 2, am.

RECOMMENDATION

R22 (a) The House should continue to appoint the Parliamentary Commissioner for Standards on a recommendation from the House of Commons Commission.

(b) The House of Commons Commission should, as best practice, conform with the Code of Practice of the Commissioner for Public Appointments at all stages of the selection process.

(c) The Chairman of the Committee on Standards and Privileges should be a member of the selection panel and attend any relevant meetings of the Commission when the appointment of the Commissioner is discussed.

Powers

8.29 At present the Committee on Standards and Privileges has power under Standing Order No 149(6) to require attendance of witnesses and production of records. Its power to call MPs is unique to the Committee on Standards and Privileges.²¹² In addition, in common with other select committees, the Committee has power to summon non-members to appear and to require the production of papers. Refusal to comply is a contempt of the House and subject to sanction by the House.

8.30 However, the Commissioner has no direct powers and must put a request to the Committee on Standards and Privileges to use its powers in support of the Commissioner's independent investigation. There was a divergence of views as to whether it was necessary for the Commissioner to have the direct power to call for witnesses and papers.

8.31 Baroness Boothroyd, while not being sure that direct powers for the Commissioner were always necessary, believed that:

*If it is felt that this is the case, that the Commissioner can only deal with them [cases where a Member has delayed or obfuscated] by having these powers, then the Commissioner must have them.*²¹³

8.32 Sir Gordon Downey believed that direct powers were desirable, but that:

*Certainly during my three years, I never had any doubt about this and I had the express assurances of the Committee that if I ever needed that power or was not receiving full co-operation from witnesses, then they would exercise that power on my behalf.*²¹⁴

Similarly, Sir George Young MP, Chairman of the Committee on Standards and Privileges, said: *"I cannot see any circumstances in which the Committee would refuse the Commissioner the powers that he asked us for".*²¹⁵

8.33 Sir Gordon Downey did however refer to some concerns, which had prompted him to write to *The Guardian* in May 2001:

*I got the impression at that time [the Vaz case] that the Commissioner was anxious to pursue inquiries further and that she did not get that support from the Committee to do so ... I thought that would be a significant erosion into the independence which I think is required for the Commissioner ... [and] that it might be necessary to consider providing the Commissioner with statutory powers ... I felt that this was a breach in the essential armoury of the Commissioner, or might be.*²¹⁶

8.34 A similar point was made by Kevin McNamara MP, a member of the Committee on Standards and Privileges, referring to:

*... a shameful period ... towards the end of the previous Commissioner's term of office, of mutterings of her having inability always to get the evidence that she wanted.*²¹⁷

8.35 Elizabeth Filkin, who also believed that direct powers could on rare occasions be essential, said:

... if an MP wishes to try and get out of producing information for one reason or another, they will try all sorts of ways of doing that. One of the ways is, if they think the Commissioner does not have the power to call for them, and feel they can persuade the Committee not to call for them. I am absolutely convinced there would

²¹² Members of the House may not be formally summoned to attend as witnesses by any other select committee. (*Parliamentary Practice*, Erskine May, 22nd edition, London 1997, page 648.)

²¹³ Day 5, am.

²¹⁴ Day 5, pm.

²¹⁵ Day 1, pm.

²¹⁶ Day 5, pm.

²¹⁷ Day 5, pm.

*have been other occasions in which people would have got on and produced the relevant documents much more swiftly if they thought the Commissioner had the powers.*²¹⁸

- 8.36 Sir Philip Mawer gave three reasons why he believed these powers were necessary:

*(1) it would be a greater demonstration of the independence of the office, (2) it would allow, I think, for a slicker, swifter process of investigation and enquiry, and (3) it would avoid, conversely, a lot of opportunity for dispute and delay.*²¹⁹

- 8.37 Sir William McKay, the Clerk to the House, on the other hand, sounded a note of caution that if this power were to be devolved there would be a question over what action could be taken if the person who received the summons declined to comply: *“I think we would have an interesting case if the toad under the harrow then said, ‘No, I am not coming’, and the courts had to decide whether that delegation was proper.”*²²⁰

- 8.38 Alan Williams MP, a member of the Committee on Standards and Privileges, suggested an additional provision if the Commissioner were not granted direct powers:

*I think that if we stick with that system [the Commissioner’s relying on the powers of the Committee exercised on his behalf] in future we should say that it must be done in writing and that letter must be included with the report when the report is published, so that you can see whether or not the Committee has blocked.*²²¹

- 8.39 **We recommend** that the Commissioner should have direct powers equivalent to those of the Committee to call for witnesses and papers. This is for two reasons. First, the Commissioner’s independence is strengthened if he or she can act independently of the Committee in this respect. Second, these powers could, to use the words of the Commissioner, *“allow...for a...swifter process of investigation and enquiry.”* in those rare cases when a Member seeks to delay the process of investigation by declining to comply with requests for information. Public confidence in the House would thereby be strengthened, and the Member concerned would benefit from a speedier consideration of the facts of his or her case.

- 8.40 In practice we doubt whether anyone summoned in this way would decline to comply if the summons came from the Commissioner rather than from the Committee if both had equivalent powers. But **we recommend** that if a witness was unwilling to comply with the Commissioner’s use of these powers the Commissioner could refer the case to the Committee on Standards and Privileges, who could then, if so minded, use its own powers. We would expect that this would happen only rarely.

RECOMMENDATION

R23 (a) The Commissioner should be given direct powers equivalent to those of the Committee to call for witnesses and papers.

(b) If a witness was unwilling to comply with the Commissioner’s use of these powers, the Commissioner could refer the case to the Committee on Standards and Privileges, who could then, if so minded, use its own powers.

The Commissioner’s resources

- 8.41 The budget for the Commissioner’s office is held by the Clerks’ Department. The Commissioner bids for resources to that Department and his bid then forms part of their overall bid. There were references in our evidence to a lack of resources due largely, according to Ms Filkin, to the uncertainty about what the workload would be:

*I was promised, by the previous Speaker, when I took up the post, that my office would be staff inspected after about six months because they did not know, and neither did I, what the volume of work would be. We all hoped that the volume of work would fall ... That, sadly, did not turn out to be the case ... the recommendations of the staff inspectors were not implemented, and in my case, were not implemented until a fortnight before I left.*²²²

- 8.42 It is essential that the public is assured that the post is resourced sufficiently and that requests for additional resources will be dealt with promptly. We found it highly unusual that the content of the manpower inspections produced by the House of Commons Commission during Ms Filkin’s tenure were not made available

²¹⁸ Day 5, pm.

²¹⁹ Day 3, am.

²²⁰ Day 1, am.

²²¹ Day 3, am.

²²² Day 5, pm.

either to the Commissioner or to the Committee on Standards and Privileges. In this context we note the written evidence submitted by Sir George Young MP, who said:

*We think it was regrettable that, despite repeated requests, the Commission declined to make available to us the inspection reports on the Commissioner's office.*²²³

8.43 However, he also attached considerable importance to the Commission's recent decision to:

*... give the Committee on Standards and Privileges an opportunity to express its views on the level of resources required by the incoming Commissioner... [we] believe it should become a permanent feature.*²²⁴

8.44 We note with approval that the most recent staffing inspection report has now been published.²²⁵ This recommends that, subject to the workload remaining at current levels, a secretarial post currently held by agency staff should be made permanent from December 2002. It also recommends that a new post of investigative support officer be funded with a further recommendation that the continuing need for, and appropriate grading of, this post be reviewed after a year; the Commission should ensure that these recommendations are implemented without delay. We are also reassured by the statement of the Leader of the House that:

*... we have said to the new Commissioner he can have whatever he asks for, whatever staff he needs we will provide it, and I personally have no objection whatsoever to his bid becoming public.*²²⁶

In para 8.58 we suggest that the Commissioner may wish to make known the details of his budget in his annual report.

RECOMMENDATION

R24 The process for setting the resources for the Commissioner's office should be transparent; the Commissioner and the Chairman of the Committee on Standards and Privileges should be involved in arriving at the budget.

The public face of the Commissioner

8.45 The issue of the relationship between the Commissioner and the media is a complex one. It is also an important one, not least because public perceptions of the Commissioner, as of standards in Parliament generally, depend considerably on what is said in the media. Unfortunately, however, evidence submitted to us suggested a lack of clarity on this issue. It was also evident that relations with the Press and the broadcast media exercised many of our witnesses, often because of the negative publicity surrounding, in particular, the departure of the previous Commissioner. But this should not detract from the need for the Commissioner to have an outward-facing role in certain respects. Some of our witnesses, including the two previous Commissioners, spoke about the benefits of publicising the Commissioner's work more widely.

Publicising the Commissioner's role

8.46 Ms Filkin told us that giving speeches – which she did not do often – was a useful way of “*buttressing the post and the value of the post*”,²²⁷ and we believe that it is appropriate for the Commissioner to speak about his or her office and role. There are two main reasons for this. First, it is essential that the public know about their right to make a complaint and the mechanism for doing so, and the Commissioner is clearly the most appropriate person to do this. Second, giving the public information about how the system works should help to increase public confidence. We envisage that the Commissioner will want to consider the way in which he or she publicises the role as part of the published strategy statement we recommend below in para 8.56.

²²³ Written evidence, 20/17.

²²⁴ Day 1, pm.

²²⁵ Written Answer, *Hansard* (HC) 12 June 2002, col 1246W.

²²⁶ Day 1, am.

²²⁷ Day 5, pm.

Public speculation about complaints

- 8.47 It is inevitable that the Commissioner’s investigations – actual or surmised – will attract media attention. Information in the press about complaints or investigations may come from many different sources, including from the complainant (who may not be a Member of the House) or other people close to either the complainant or to the Member who is the subject of a complaint.
- 8.48 The mere fact, of course, that a complaint has been made does not mean that the Code has been breached. The majority of complaints do not lead to an investigation, still less to a finding that a breach, let alone a serious breach, has occurred. This point came out very clearly in Elizabeth Filkin’s evidence: *“I had over 300 complaints come to me when I was in post and I only investigated 39 of them”*.²²⁸
- 8.49 The key issue is how, against a background of intense and sometimes hostile media interest, the Commissioner should conduct dealings with the media, when even a comment of ‘no comment’ can excite speculation. Most of our witnesses believed that it served little useful purpose to say ‘no comment’ if there was already speculation in the press about the existence of a complaint. Likewise, if Members themselves were discussing a complaint, it would be, as Sir Gordon Downey put it, *“pretty ineffectual”* to say *“I am not going to comment”*. In those circumstances he would: *“confirm that I had received a complaint, and that is all”*.²²⁹ Sir Gordon also thought that: *“In those cases, I felt it was positively beneficial that they should be more knowledgeable rather than less”*.²³⁰
- 8.50 Ms Filkin had followed a similar approach at the beginning of her tenure, but after about 18 months the Committee on Standards and Privileges had proposed that one way to cut down *“the brouhaha of press interest”* would be to neither *“confirm nor deny to the press whether a complaint had been made”*.²³¹ The outcome of this, she felt, was not helpful, because on occasion, others, particularly MPs who were complainants, had already given details to the press.

- 8.51 A similar opinion was expressed by Garry Watson, former adviser to the Standards Committee in the Scottish Parliament. He said:

*I think that it is important that the Commissioner should acknowledge that he or she has received a complaint because I believe that should be a matter of public record. But at that point I think the information flow stops ... I think it would be wholly inappropriate to discuss a particular case with the Press.*²³²

- 8.52 In contrast, Baroness Boothroyd held the view that:

*... a Commissioner must be extremely discreet and not discuss these matters [whether a complaint has been made and is being investigated] with the Press, until that Commissioner has reported to the Select Committee.*²³³

- 8.53 Lord Sheldon, former Chairman of the Committee on Standards and Privileges, took a very similar view in his opening statement to us, making clear that the place for giving detail was in the report on the case:

*I do believe that a Commissioner should say ‘no comment’ on anything until the report. He can be as full as he likes with the report, but until that report is made all one is doing is providing fuel for publicity.*²³⁴

- 8.54 Other witnesses agreed that there was a difference between, on the one hand, the Commissioner’s stating that a complaint had been made and, on the other, giving details about it. The first was acceptable, the second was not. However, Dean Nelson, Scotland Editor of *The Sunday Times*, reinforced the first point of view by adding:

*I think when a Commissioner just says very straightly, ‘yes, I am conducting an inquiry. There is now a case to answer and I am going to pursue it’, I think that sends a good message to the public and potential witnesses, that they may go to her.*²³⁵

- 8.55 The evidence given by Dean Nelson was unusual, in that his interest was not only as a

²²⁸ Day 5, pm.

²²⁹ Day 5, pm.

²³⁰ Day 5, pm.

²³¹ Day 5, pm.

²³² Day 4, pm.

²³³ Day 5, am.

²³⁴ Day 3, am.

²³⁵ Day 7, am.

journalist but also as a complainant in the case of John Reid MP and the former MP, John Maxton. His remarks also show his views on how the Commissioner should behave. In his written evidence he said:

*I certainly did not receive any information from [Ms Filkin] in the course of her inquiry. I passed on any relevant information to her, she took it, asked me questions about it, but she shared nothing. As a journalist it was disappointing (one always hopes for a story), but it was also very heartening. It reassured me that my complaint would be subjected to forensic scrutiny, and she could be trusted to be impartial. Are there any more important qualities in a Standards Commissioner?*²³⁶

- 8.56 As the above evidence shows, there is general consensus that the Commissioner should act with discretion and not discuss the details of cases under investigation. However, the lack of a publicly stated policy on what can be expected of the Commissioner has led at times to confusion over what the media can reasonably expect. **We recommend** therefore, that the relationship between the Commissioner and the media should be more formally defined. The existence of such a published strategy statement, which would set out what is to be expected when enquiries are made of the Commissioner, would give the clarity which has hitherto been lacking.

RECOMMENDATIONS

R25 (a) In relation to all stages of an individual complaint, the Commissioner should confine comments to the media to the fact that a complaint has (or has not) been received, whilst making clear that the existence of a complaint does not mean that the Code has been breached.

(b) After consultation with the Committee on Standards and Privileges, the Commissioner should draw up a statement of his/her strategy towards inquiries from the media. The statement should be published and included in the annual report.

Annual report of the Commissioner

- 8.57 The Leader of the House in his evidence suggested that the Commissioner might produce an annual report. An annual report would also be a way of keeping the public informed about the Commissioner's activities. We agree and **we recommend** that the Commissioner publish an annual report

- 8.58 The report should be published on the Commissioner's own authority. Its exact form and content is a matter for the Commissioner, but it might include the following:

- review of activities during the year;
- details of the Commissioner's budget;
- statistics on number of cases;
- summaries of cases which might form precedents;
- information on induction and training;
- guidelines issued for communications with the press;
- a forward look.

- 8.59 Some comparators in respect of annual reports are the Parliamentary Commissioner for Administration and the Lay Complaints Commissioner to the Bar. The latter publishes an annual report which essentially consists of a review of past activities, an outline of projected future activities and statistical and other data on actual complaints. Annual reports are also often the appropriate means of disseminating information on an organisation's performance measured against its objectives. The report of the Local Government Ombudsman, for example, does this, along with detailed analysis of complaints and their outcomes and the Commission's financial accounts.

RECOMMENDATION

R26 The Commissioner should publish an annual report.

²³⁶ Written evidence 20/49.

Implementing our recommendations

8.60 Throughout this chapter, and chapters 5, 6 and 7, we have made a series of recommendations designed to strengthen the system for regulating standards of conduct in the House of Commons. For reasons of clarity and certainty we think it essential that the role, function and activities of the Commissioner, the Committee on Standards and Privileges and the Investigatory Panel are given effect either by statute or by an Order of the House.

8.61 In practice, the use of statute was only raised by witnesses in the context of the Commissioner and we believe that a Standing Order of the House is an appropriate mechanism for implementing our recommendations relating to the Committee on Standards and Privileges and the Investigatory Panel. We therefore **recommend** that recommendations 1(c) and (d), 4, 8, 9, 10, 11, 12(a), (b), (e), (f), (g) (h), (i), (j), 13, 18 and 19(b) and (c) be implemented by Standing Order.

8.62 So far as the Commissioner is concerned, many of our witnesses suggested that Parliament should pass an Act to give the Commissioner the equivalent powers and independence enjoyed by the Parliamentary Commissioner for Administration and the Comptroller and Auditor General. This statutory route would, it was thought, make clear, beyond all peradventure, the Commissioner's powers and terms of appointment.

8.63 Sir Edward Osmotherly, a former Local Government Ombudsman, described the statutory basis for his office as “*crucial in two respects*”. First, because his appointment was statutory, he could say “*I am independent. No-one can get at me, and however unpopular what I have got to say is, I must understand the pressure, and the way in which I am appointed helps to do that*”. Second, the statutory basis left “*no doubt in anyone's mind what powers the Ombudsman have to obtain information*”.²³⁷ Sir Michael Buckley, the then Commissioner for Public Administration, said that his statutory powers were “*very useful to have in reserve*”.²³⁸

8.64 However, there remained major concerns from some parliamentary witnesses that putting the Commissioner's post on a statutory basis could expose the office to judicial review, referred to as “*judicial tanks on the parliamentary lawn*”.²³⁹ That is, the Commissioner's activities or decisions would not enjoy the protection of Article 9 of the Bill of Rights, namely:

That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court of place out of Parliament.

The Clerk to the House also suggested that any exposure to judicial review of the Commissioner's activities might go further: “*I can see a fine line starting in judicial review of what a statutory commissioner does and goes straight into what the Member under charge did in the House*”.²⁴⁰

8.65 While recognising that the statute might bring the problem of judicial review of parliamentary proceedings, other witnesses suggested that much would depend on the terms of any statute. Colin Munro, Professor of Constitutional Law at the University of Edinburgh, told the Committee that an ouster clause could be used “*where the statute itself made it clear that decisions of the Commissioner would remain not subject to review in the courts*”.²⁴¹ In addition, in the case of *R v. Parliamentary Commissioner for Standards, ex parte Al Fayed [1998]* the Court of Appeal held that it would be inappropriate for a court to use its supervisory powers to control what the Parliamentary Standards Commissioner does in relation to an investigation of a breach of the Code. A similar view was expressed by Lord Nicholls who said:

*I think also that one should keep in mind that Judges are going to be very much aware of the now long respected constitutional division between functions of Parliament and the function of the Judiciary. They will look, I think, very hard before they would wish to intervene in what would be regarded in substance as essentially parliamentary matters.*²⁴²

²³⁷ Day 6, am.

²³⁸ Day 2, pm.

²³⁹ Sir William McKay, Clerk to the House of Commons, Day 1, am.

²⁴⁰ Ibid.

²⁴¹ Day 4, pm.

²⁴² Day 6, pm.

8.66 On balance, however, we have concluded that, provided a Standing Order of the House can achieve our recommendations on appointment and powers, statute is an unnecessary step at this stage. In practice, statute is rarely a speedy or particularly flexible means of implementation. A Standing Order has the advantage of being both. However, depending on the practicalities of using a Standing Order we would not rule out statute in the long term. We therefore recommend that recommendations 1(a) and (b), 20, 23 and 26 be implemented by Standing Order.

RECOMMENDATION

R27 The House should implement the following recommendations by Standing Order:

- **Chapter 4: R1(a), (b), (c), (d);**
- **Chapter 5: R4, R8, R9;**
- **Chapter 6: R10, R11, R12(a), (d), (e), (f), (g) (h), (i), (j), R13;**
- **Chapter 7: R18, R19(b) and (c);**
- **Chapter 8: R20, R23, R26.**

CHAPTER 9 DELIVERING CONFIDENCE

9.1 The continued maintenance of high standards of conduct in the House of Commons is essential if the public is to have confidence in the institution at the heart of our constitutional arrangements. At a time when the scrutiny of our public institutions is intense, the public trust on which so much depends must be renewed by successive Parliaments.

9.2 We have set out elsewhere in this report our belief that the current system for regulating standards of conduct has fallen short of delivering confidence in certain respects. In particular, we have been concerned by the considerable lack of clarity and by the perception that some elements of the system may be overly sensitive to external interests or pressures.

9.3 We therefore believe that a number of key changes are needed to the current system if it is to meet our twin objectives of delivering **public confidence** in the House while carrying **the confidence of the House** itself. We see the two objectives as mutually reinforcing; both for the public and for MPs it is crucial that the system for regulating standards of conduct is clear and impartial, and perceived to be so.

9.4 We have been aware throughout this inquiry of the direction in which systems for regulating standards of conduct in organisations outside the House are being developed. This was described by Lord Nicholls as the *“ongoing march of outside participation in disciplinary and regulatory processes”*. As a result, he concluded that, *“the public feels that self-regulation is not 100 per cent reliable”*.²⁴³

9.5 It is natural that the public should compare the regulatory processes in the primary political institution of the country, the House of Commons, with those of outside organisations.

We expect that the *“ongoing march”* will continue and there may come a time when fundamental change becomes necessary. In the words of David Heath MP, a member of the Committee on Standards and Privileges:

*It may be that radical surgery, at some stage, is required in order to ensure that confidence is maintained. My view, for what it is worth, is that at the moment that radical surgery is not justified, but I am open to persuasion that unless we see a growing confidence in the system at some stage, then it will be required.*²⁴⁴

Such fundamental change could include putting the system for regulating standards of conduct in the House on a statutory basis and introducing external members into the decision-making process.

9.6 However, we are of the view that alternative methods of strengthening the current system are preferable at this stage. The package of recommendations we have developed is founded on the five overall characteristics of an effective system of self-regulation which we identified in Chapter 2. They are:

- **an independent or an external element or both;**
- **clarity and transparency;**
- **fairness to those being regulated;**
- **the right cultural outlook;**
- **the responsibility of leadership.**

Our recommendations are listed in full at the beginning of this report (pages 1-3). The paragraphs below set out our main areas of emphasis.

9.7 The post of Parliamentary Commissioner for Standards was recommended by this Committee

²⁴³ Day 6, pm.

²⁴⁴ Day 3, pm.

in 1995 as a response to a recognised need for an independent element in the system. We consider that the ability of the Commissioner to carry out his responsibilities independently needs now to be underpinned and clearly identified. The House itself noted in 1995 that it “*might wish to return to it [the status of the Commissioner’s post] in the light of practical experience at some future time*”.²⁴⁵ To this end we have made specific recommendations (R20-26) about the Commissioner’s status, tenure, appointment, powers and resources.

- 9.8 Seven years after our original proposal for a Commissioner, we are also of the view that, to deliver public confidence now, the post of Commissioner alone is an insufficient representation of **an independent or external element** in the House’s system of regulation.
- 9.9 We have therefore recommended three measures. First, in recommending an Investigatory Panel for serious or contested cases (referred to in para 9.11 below), we have recommended that it should have an independent Chair who is external to the House. Second, we have recommended that the Committee on Standards and Privileges should draw on external legal advice when it decides on the more serious cases. Third, we have recommended that the Committee on Standards and Privileges should seek the views of relevant external organisations when it reviews the Code of Conduct for MPs (which we are recommending should occur in every Parliament). Taken together our recommendations would introduce an external element at every stage of the process (development of standards on conduct, investigation and adjudication of complaints.)
- 9.10 We have remarked on the lack of clarity in the current system and many of our recommendations are intended to introduce **clarity and transparency**. In particular, we have looked at the status of the Commissioner’s findings and the status of the Committee on Standards and Privileges itself. The Committee is the pivotal player in the system of regulation in the House. But we believe that its role has been insufficiently defined and its status needs greater emphasis. We have made a number of specific recommendations to this effect. In particular, we recommend that the Committee should take

evidence in public and should explain in full its reasons for a decision.

- 9.11 It is of fundamental importance that **those subject to a system of regulation should regard it as fair**. We have identified in the report the concerns expressed by witnesses, including MPs, that the current system is vulnerable to the criticism that it is neither fair nor impartial. The inability of the current process to offer an MP the chance to call and cross-examine witnesses is a serious weakness and one which damages the suitability of the process to handle serious, contested cases. We have recommended an Investigatory Panel to deal with such cases, undertaking the specific task of cross-examination of evidence but reserving the final adjudication to the Committee on Standards and Privileges.
- 9.12 We have also been considerably troubled by the perception that there were occasions in the past when the Committee on Standards and Privileges was overly sensitive to interests and pressures external to the Committee, especially in cases involving Ministers. It is not our purpose to review the rights and wrongs of such cases. But we believe that such perceptions may always arise while the Committee on Standards and Privileges reflects the party balance in the House. We have recommended, therefore, that no party should have an overall majority on the Committee and that, in line with the practice for departmental select committees, Parliamentary Private Secretaries should not be members of the Committee. We have also recommended that the Committee should be composed of a majority of members with senior standing in the House and that the Chairman should continue to be drawn from the Opposition parties. Taken together, these recommendations will reinforce and distinguish the unique position of the Committee so that it commands the respect of the whole House.
- 9.13 A number of the recommendations already mentioned are intended to contribute to a positive **cultural outlook**. Culture is as much a matter of perception as it is of practice. We believe that the current system is vulnerable to the charge that “*to the observer, the emphasis is still upon defending the ancient traditions of the House, defending the rights of members,*

²⁴⁵ House of Commons Select Committee on Standards in Public Life, First Report, HC 637, para 10.

defending the principle of self-regulation".²⁴⁶ The development of a clearer, demonstrably fair and impartial system, combined with the ready co-operation of all those regulated by it, will both create and reinforce the right cultural outlook. Sir Donald Irvine, in speaking of the medical profession, said, "*Where we need to get to, of course, is that people in practice see this as a positive enhancement of their professionalism, rather than an imposed duty from outside*".²⁴⁷ In essence, all MPs should – and should feel able to – feel the same.

9.14 Finally, all those involved in the Commons' system of regulation – individual MPs, the House, the Government of the day, the political parties, the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards – share responsibility for its effective operation and for the way in which it is perceived by the public. The actions of one will contribute to the confidence of another in the system and their degree of co-operation with it. This is **the responsibility of leadership** and, as one of the Seven Principles of Public Life, it is a feature of both the MPs' and the Ministerial Codes.

9.15 We believe that adoption of the measures that we have recommended will enable the House to maintain, and enhance in these challenging times, the highest standards of conduct which are so essential for the institution at the heart of our constitution.

²⁴⁶ Brian Taylor, Political Editor, BBC Scotland, Day 4, am.

²⁴⁷ Day 7, pm.

APPENDIX A

FIRST AND SIXTH REPORT RECOMMENDATIONS ON MPs

First Report

- 1 Members of Parliament should remain free to have paid employment unrelated to their role as MPs.
- 2 The House of Commons should restate the 1947 resolution which places an absolute bar on Members entering into contracts or agreements which in any way restrict their freedom to act and speak as they wish, or which require them to act in Parliament as representatives of outside bodies.
- 3 The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services.
- 4 The House should set in hand without delay a broader consideration of the merits of Parliamentary consultancies generally, taking account of the financial and political funding implications of change.
- 5 The House should:
 - require agreements and remuneration relating to Parliamentary services to be disclosed;
 - expand the guidance on avoiding conflicts of interest;
 - introduce a new Code of Conduct for Members;
 - appoint a Parliamentary Commissioner for Standards;
 - establish a new procedure for investigating and adjudicating on complaints in this area about Members.
- 6 On disclosure of interests we recommend:
 - the Register should continue broadly in its present form, and should be published annually. However, the detailed entry requirements should be improved to give a clearer description of the nature and scope of the interests declared;
 - updating of the Register should be immediate. The current updated version should be made more widely available electronically;
 - from the beginning of the 1995-96 session (expected in November) Members should be required to deposit in full with the Register any contracts relating to the provision of services in their capacity as Members, and such contracts should be available for public inspection;
 - from the same time, Members should be required to declare in the Register their annual remuneration, or estimated annual remuneration, in respect of such agreements. It would be acceptable if this were done in bands: for example, under £1,000; £1,000-5,000; £5,000-10,000; then in £5,000 bands. An estimate of the monetary value of benefits in kind, including support services, should also be made;
 - Members should be reminded more frequently of their obligations to Register and disclose interests, and that Registration does not remove the need for declaration and better guidance should be given, especially on first arrival in the House.
- 7 Members should be advised in their own interests that all employment agreements which do not have to be deposited should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved.
- 8 The rules and guidance on avoiding conflict of interest should be expanded to cover the whole range of business pertaining to Parliament, and particular attention should be paid to Standing Committees.

- 9 The House should draw up a Code of Conduct setting out the broad principles which should guide the Conduct of Members; this should be restated in every new Parliament.
- 10 The Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament.
- 11 On procedure the Committee recommends:
- 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;
 - the Committee considers that a sub-committee of the Committee of Privileges, consisting of up to seven very senior Members, would be the best body to take forward individual cases recommended by the Commissioner for further consideration; the Committee recommends that such a sub-committee should be established;
 - in view of the fact that there would be a *prima facie* case to investigate, the Committee recommends that hearings of the proposed sub-committee should normally be in public. The Committee also recommends that the sub-committee should be able to call on the assistance of specialist advisers and that a Member who so wishes should be able to be accompanied by advisers before the sub-committee;
 - the sub-committee should be given discretion to enable an adviser to act as the Member's representative at hearings;
 - as the sub-committee would report to the full Privileges Committee this would have the practical effect of giving the Member a right of appeal to that Committee. Only the most serious cases should need to be considered by the whole House.

Sixth Report

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.

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.

3 'Trial' procedure in serious, contested cases

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 both 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.

4 Appeal procedure in serious, contested cases

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.

5 'Trial' and appeal procedure in other contested cases

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.

6 Disciplinary procedure in non-contested cases

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.

7 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).

8 The House of Commons should take measures in relation to the Committee on Standards and Privileges, with a view:

- (a) to ensuring that a substantial proportion of its members are senior MPs; and
- (b) to exempting the Committee from the convention that its chairman should be drawn from the government benches.

9 The ban on paid advocacy should be retained.

10 The guidelines relating to the ban on paid advocacy, set out in the Guide to the Rules relating to the Conduct of Members, 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:

- 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
- 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.

APPENDIX B

LIST OF SUBMISSIONS

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all submissions can be found on the CD-ROM which is included with this report. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

Charter 88	Rt Hon David Maclean MP
Mr Martin Allen	Sir Philip Mawer
Association of Professional Political Consultants	Mr Donovan McClelland MLA
Mr James A Attwood	Mrs Maggie McCourt-Mooney
Dr John H Beaven	Sir William McKay KCB
Mr Martin Bell OBE	Professor Colin Munro
Professor Vernon Bogdanor CBE FBA	Mr David Murray
Rt Hon Baroness Boothroyd	Mr Dean Nelson
Mr Peter Bottomley MP	Mr Andrew Newton
Mr C J Bourbour	Professor Dawn Oliver
Sir Michael Buckley	Sir Edward Osmotherly CB
Mr Robert Burgoyne	Mr Matthew Parris
Lord Campbell-Savours	Mr Peter Preston
Mr Ross Cranston QC MP	Mr Christopher Price
Ms Gill Cutress	Mr Peter Riddell
Mr Tam Dalyell MP	Mr Ross Robertson
Mr Conrad Dehn QC	Ms Simone Rogers
Sir Gordon Downey KCB	Mr Mike Rumbles MSP
Ms Julia Drown MP	Professor Michael Rush
Lord Falconer	Mr Alex Salmond MP
Mr Rob Fenwick	Major General Michael Scott CB CBE DSO
Ms Elizabeth Filkin	Rt Hon Lord Sheldon
Mr Michael Jabez Foster DL MP	Mr William A Spence QPM
Rt Hon Sir Archie Hamilton Kt	Mr Andrew Stunell OBE MP
Mr Gordon Harrison	Mr Brian Taylor
Mr David Heath CBE MP	Transparency International (UK)
Mr David Hencke	Mr Paul Tyler CBE MP
Institute of Business Ethics	Mr M W Vallance MA FRSA
Sir Donald Irvine Kt CBE FRCGP	Mr Keith Vaz MP
Ms Rhoda James and Dr Richard Kirkham	Mr Simon Webley
Mr Robert Kaye	Rt Hon Alan Williams MP
Mr Richie Keen	Mr Barry K Winetrobe
Mr Archy Kirkwood MP	Mr David Winnick MP
Mr Tom Levitt MP	Dr Tony Wright MP
Dr (Mrs) H P Livas	Rt Hon Sir George Young Bt MP
Mr Geoffrey Lock	

APPENDIX C

LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

A

Jonathan Acton Davis QC, Chair of the Bar Council's Professional Conduct and Complaints Committee (Day 6, am)
Rt Hon Hilary Armstrong MP, Government Chief Whip (Day 7, pm)

B

Martin Bell OBE, former MP and member of the Committee on Standards and Privileges (Day 2, am)
Rt Hon Baroness Boothroyd, former Speaker of the House of Commons (Day 5, am)
Peter Bottomley MP, former member of the Committee on Standards and Privileges (Day 2, am)
Sir John Bourn KCB, Comptroller and Auditor General (Day 8, am)
Angela Browning MP, former Shadow Leader of the House of Commons and former member of House of Commons Commission (Day 5, pm)
Sir Michael Buckley KBE, former Parliamentary Commissioner for Administration (Day 2, pm)

C

Lord Campbell-Savours, former MP and former member of the Committee on Standards and Privileges (Day 8, pm)
Rt Hon Charles Clarke MP, former Minister without Portfolio and former Chair of the Labour Party (Day 1, pm)
Rt Hon Kenneth Clarke QC MP, former Cabinet Minister (Day 6, am)
Rt Hon Robin Cook MP, Leader of the House (Day 1, am)
Ross Cranston QC MP, member of the Committee on Standards and Privileges (Day 7, am)

D

Tam Dalyell MP, Father of the House (Day 2, pm)
Rt Hon David Davis MP, former Chair of the Conservative Party, and a former Chair of the Public Accounts Committee (Day 1, pm)
Sir Gordon Downey KCB, former Parliamentary Commissioner for Standards (1995-1998) (Day 5, pm)

F

Ms Elizabeth Filkin, former Parliamentary Commissioner for Standards (1998-2002) (Day 5, pm)
Rt Hon Eric Forth MP, Shadow Leader of the House (Day 1, am)

Michael Jabez Foster DL MP, member of the Committee on Standards and Privileges (Day 3, pm)
Tom Frawley, Assembly Ombudsman for Northern Ireland and Commissioner for Complaints (Day 8, am)
Dame Rennie Fritchie, Commissioner for Public Appointments (Day 5, pm)

H

Rt Hon Sir Archibald Hamilton, former MP (Day 2, pm)
James Hardy, Political Editor, *The Mirror* (also Lobby Journalists' Chairman) (Day 3, pm)
David Heath CBE MP, member of the Committee on Standards and Privileges (Day 3, pm)
David Hencke, *The Guardian* (Day 5, am)

I

Sir Donald Irvine CBE FRCGP, former President of the General Medical Council (Day 7, pm)

J

Ms Rhoda James, Faculty of Law, University of Sheffield (Day 8, am)
Dr Samantha Jones, Clerk to the Standards Committee (Day 4, am)

K

Trevor Kavanagh, Political Editor, *The Sun* (Day 3, pm)
Robert Kaye, London School of Economics (Day 6, pm)
Dr Richard Kirkham, Faculty of Law, University of Sheffield (Day 8, am)
Archy Kirkwood MP, Spokesperson for the House of Commons Commission (Day 2, pm)

M

Rt Hon David Maclean MP, Opposition Chief Whip (Day 8, pm)
John MacQuarrie, Deputy Assembly Ombudsman for Northern Ireland (Day 8, am)
Iain MacWhirter, Broadcaster and Chief Political Commentator, *The Sunday Herald* (Day 4, pm)
Iain Martin, Editor, *The Scotsman* (Day 4, pm)
Sir Philip Mawer, Parliamentary Commissioner for Standards (Day 3, am and Day 9, pm)
Donovan McClelland MLA, Chairman of Northern Ireland Assembly Committee on Standards and Privileges (Day 8, am)
Sir William McKay KCB, Clerk of the House (Day 1, am)

Kevin McNamara MP, member of the Committee on Standards and Privileges (Day 5, pm)
Colin Munro, Professor of Constitutional Law, University of Edinburgh (Day 4, pm)

N

Dean Nelson, Scotland Editor, *The Sunday Times* (Day 7, am)
Lord Nicholls of Birkenhead, Lord of Appeal in Ordinary (Day 6, pm)

O

Dawn Oliver, Professor of Constitutional Law, University College London (Day 3, pm)
Sir Edward Osmotherly CB, former Chair of the Commission for Local Administration in England and former Chairman of the British and Irish Ombudsman Association (Day 6, am)

P

Matthew Parris, journalist and former MP (Day 1, pm)
Peter Preston, *The Guardian* (Day 5, am)

R

Peter Riddell, Assistant Editor (Politics), *The Times* (Day 6, pm)
Robert Rogers, Secretary to the House of Commons Commission (Day 2, pm)
Mike Rumbles MSP, Convenor, Standards Committee (Day 4, am)

S

Alex Salmond MP, SNP Parliamentary Group Leader (Day 7, pm)
Major General Michael Scott CB CBE DSO, Lay Commissioner of the Bar Council (Day 6, am)
Rt Hon Lord Sheldon, former Chairman, Committee on Standards and Privileges (Day 3, am)
William Spence QPM, Adviser to the Standards Committee, Scotland (Day 4, am)
Andrew Stunell OBE MP, Liberal Democrat Chief Whip (Day 7, pm)

T

Brian Taylor, Political Editor, BBC Scotland (Day 4, am)
John Torney, Senior Clerk of Northern Ireland Assembly Standards Committee (Day 8, am)
Paul Tyler CBE MP, Shadow Leader of the House (Day 2, am)

V

Keith Vaz MP (Day 7, am)

W

Garry Watson, former Adviser to the Standards

Committee, Scotland (Day 4, pm)

Rt Hon Alan Williams MP, member of the Committee on Standards and Privileges (Day 3, am)

Barry Winetrobe, Parliamentary and constitutional consultant (Day 4, pm)

Dr Tony Wright MP, Chairman, Public Administration Select Committee (Day 7, pm)

Y

Rt Hon Sir George Young Bt MP, Chair of the Committee on Standards and Privileges (Day 1, pm and Day 9, pm)

APPENDIX D

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** (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 inquiries into new areas of concern about standards in public life but also, having reported its recommendations following an inquiry, it can later revisit 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 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.

APPENDIX E

STANDING ORDER No 149

- 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 F

STANDING ORDER No 150

- (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 G

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.

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

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.

LIST OF ABBREVIATIONS AND ACRONYMS

Bt	Baronet
C & AG	Comptroller and Auditor General
CB	Companion, Order of the Bath
CBE	Commander, Order of the British Empire
Cm	Command Paper
CSPL	Committee on Standards in Public Life
DL	Deputy Lieutenant
DSO	Companion of the Distinguished Service Order
EC	European Community
FBA	Fellow, British Academy
FRSA	Fellow Royal Society of Arts
FRCGP	Fellow, Royal College of General Practitioners
GMC	General Medical Council
KCB	Knight Commander, Order of the Bath
LSE	London School of Economics
MLA	Member of Legislative Assembly
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NDPB	Non-Departmental Public Body
OBE	Officer, Order of the British Empire
PPS	Parliamentary Private Secretary
Q&A	Question and Answer
QC	Queen's Counsel
QPM	Queen's Police Medal
Rt Hon	Right Honourable
SNP	Scottish National Party

ABOUT THE COMMITTEE

Terms of Reference

The then Prime Minister, the Rt Hon John Major, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 25 October 1994 with the following terms of reference:

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 office 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.

(Hansard (HC) 25 October 1994, col 758)

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements”.*

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for up to three years. Sir Nigel Wicks succeeded Lord Neill as Chairman on 1 March 2001. Lord Neill succeeded Lord Nolan, the Committee’s first Chairman, on 10 November 1997.

Sir Nigel Wicks GCB, CVO, CBE		
<i>Chair</i>		
Ann Abraham ¹		Frances Heaton
Professor Alice Brown		Rt Hon Lord MacGregor of Pulham Market OBE
Sir Anthony Cleaver		Rabbi Julia Neuberger
Rita Donaghy OBE		Rt Hon Chris Smith MP
Lord Goodhart QC		

The Committee is assisted by a small Secretariat: Sarah Tyerman (*Secretary*), Vivien Brighton (*Assistant Secretary*), Colin O’Donoghue (*Assistant Secretary*) (from 10 June 2002), Trudy Payne (*Assistant Secretary*) (from 10 June 2002), Andrew Brewster, Steve Pares, Stephen Barnes (from 20 May 2002), Rani Dhamu (to 4 July 2002), Victoria Williams (from 14 October 2002), Piara Ali (from 20 May to 9 August 2002), and Fiona Dick (*Press Secretary*).

Advice and assistance to the Committee for this study was also provided by: Oonagh Gay, of the Constitution Unit of University College London who was commissioned to provide comparative research information on other systems of regulating parliamentary standards; Radio Technical Services Ltd for the provision of sound recording and WordWave for the provision of transcription services during the public hearings; and Giles Emerson of Words for editing the draft report.

¹ Ann Abraham stepped down from the Committee shortly before this report was published upon her appointment as the Parliamentary Commissioner for Administration and Health Service Commissioner for England

Expenditure

The estimated gross expenditure of the Committee on this study to the end of October 2002 is £245,296. This includes staff and administrative costs; the cost of printing and distributing (in February 2002) over 2,200 copies of a paper setting out the key issues and questions which the Committee would address; costs associated with public hearings which were held at the Thistle Westminster and One Great George Street, London from 7 May to 18 September 2002 and at the Holyrood Hotel, Edinburgh on 16 May 2002; and estimated costs of printing, publishing and distributing this report.

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

Tel: 020 7276 2595
Fax: 020 7276 2585

Email: nigel.wicks@gtnet.gov.uk
Internet: www.public-standards.gov.uk

The Eighth Report of the Committee on Standards in Public Life on CD-ROM

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