Seventh Report of the Committee on Standards in Public Life

Chairman: Lord Neill of Bladen QC

Standards of Conduct in the House of Lords

Volume 1: Report Cm 4903-I

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Presented to Parliament by the Prime Minister
by Command of Her Majesty
November 2000
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Committee on Standards in Public Life

Standards in Public Life

Chairman:
Lord Neill of Bladen QC

November 2000

Dear Prime Minister,

I am pleased to present the Seventh Report of the Committee on Standards in Public Life. It is unanimous.

In reviewing the present arrangements governing the declaration and registration of Peers' interests, the Committee has completed a task that was first proposed in 1995.

In the intervening years, there have been many developments in the setting of ethical standards in both the public and business sectors. In the evidence which the Committee gathered for the present report, we found agreement that the public now expects clear and explicit undertakings on conduct and conflict of interests from holders of public office. Our recommendations for changes to the present arrangements in the House of Lords should be seen in that context. It will now be for the House of Lords to decide what action it should take in the light of these recommendations.

My colleagues and I commend this report to you.

Yours sincerely,

Patrick Neill

LORD NEILL OF BLADEN QC

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A Code of Conduct

R1. The House of Lords should adopt a short Code of Conduct.

R2. The Code should incorporate both the Seven Principles of Public Life and the principles adopted by the House of Lords in its 1995 Resolution, viz.

1. Members of the House should act always on their personal honour; and
2. Members should never accept any financial inducement or reward for exercising parliamentary influence.

R3. The Code should also incorporate the principles which the House of Lords adopts concerning the registration of members' interests.

Declaration and Registration of Interests

Reference is made in the recommendations which follow to the three categories of the present Register of Lords' Interests. The categories are:

(1) Consultancies or similar arrangements, involving payment or other incentive or reward for providing parliamentary advice or services. *[Registration mandatory]*

(2) Financial interests in businesses involved in parliamentary lobbying on behalf of clients. *[Registration mandatory]*

(3) Other particulars relating to matters which members consider may affect the public perception of the way in which they discharge their parliamentary duties. *[Registration discretionary]*

R4. The registration of all relevant interests should be made mandatory.

R5. The test of 'relevant interest' for registration under category (3) should be whether the interest may reasonably be thought to affect the public perception of the way in which a member of the House of Lords discharges his or her parliamentary duties.

R6. Category (3) should cover both financial and non-financial interests and such interests should be distinguished in the lay-out of the Register.

R7. The Register should be supplemented by brief written guidance setting out a list of those interests which clearly fall within the test of 'relevant interest'.

R8. A member of the House of Lords who registers a relevant financial interest under category (3) should not be required to disclose in the Register the remuneration derived from that interest.

R9. The mandatory Register should apply to all members of the House of Lords. [A]

R10. Rules on private financial interests akin to those in the Ministerial Code should not be applied to opposition spokesmen and women.

[A] Save those members of the House of Lords who have taken Leave of Absence.

Lobbying and the Ban on Paid Advocacy

R11. Members of the House of Lords should continue to be allowed to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy.

R12. The guidance on the operation of category (2) should be amended. It should be made clear that the requirement to register is not confined only to those members with interests in lobbying firms, narrowly defined.

R13. The guidance on the operation of category (2) should also be amended so as to make it clear that members who register under that category should refrain from participating in parliamentary business only when that business relates to their own personal clients.

R14. A member of the House of Lords who has an agreement for a consultancy or any similar arrangement under category (1) should deposit a copy of that agreement with the Registrar of Lords' Interests.

R15. The House of Lords should ensure that deposited agreements and details as to the remuneration derived from parliamentary services under category (1) be made available for public inspection.

Compliance

R16. The House of Lords should reconsider the existing induction arrangements for new members of the House with a view to providing more detailed guidance about the scope and operation of the conduct rules.

R17. The general advice of the Sub-Committee on Lords' Interests on the application of the guidance on the declaration and registration of interests should be reported, through the Committee for Privileges, to the House.

R18. Members should be encouraged to raise in the first instance any allegation about breaches of the rules in a private communication with the member about whom the complaint is made.

R19. Thereafter, if the complaining member chooses to pursue the matter, that member should, in accordance with the Griffiths Committee's recommendation, refer the allegation directly to the Sub-Committee on Lords' Interests, through its Chairman.

R20. The Committee sees no need for the appointment of a standing Parliamentary Commissioner for Standards in the House of Lords but recommends that the Sub-Committee on Lords' Interests should be able, in appropriate cases, to appoint an *ad hoc* investigator.

R21. The Sub-Committee on Lords' Interests should continue to be responsible for the adjudication of allegations relating to the conduct of members.

R22. In serious cases, the procedures adopted should meet the *"minimum requirements of fairness"* set out by the Nicholls Committee for such cases.

R23. A member of the House of Lords who receives an adverse ruling from the Sub-Committee on Lords' Interests should have a right of appeal to the Committee for Privileges.

INTRODUCTION AND BACKGROUND

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 MP. The Committee's Terms of Reference were then prescribed as follows:

> *To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*
>
> *For these purposes, public life should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.* [1]

1.2 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.

1.3 The present Chairman, Lord Neill of Bladen QC, succeeded the first Chairman, the Rt Hon Lord Nolan, in November 1997. The Committee has produced six reports. They are listed in Appendix F to this report. They cover not only standards of conduct in the House of Commons and the Executive, but also in the Civil Service, local government, local public spending bodies (such as higher and further education institutions, housing associations and training and enterprise councils) and quangos such as non-departmental public bodies and national health service trusts.

The purpose and scope of the present enquiry

1.4 Following publication in January 2000 of the Committee's Sixth Report, which included a review of the operation of the Commons' disciplinary procedures, the Committee decided to turn its attention to the arrangements in force in the House of Lords relating to conduct, registration of interests and related matters.

1.5 As explained in Chapter 4, the Committee had intended to conduct an enquiry in 1995 into these topics, but deferred consideration of them until the Griffiths Committee (appointed by the House of Lords in December 1994) had completed its work. [2]

1.6 In the event, this Committee further postponed its consideration of the House of Lords in order to make time for other pressing areas of study, such as local public spending bodies, local government and the funding of political parties.

1.7 This Committee's decision, taken in early 2000, to undertake an enquiry into the House of Lords was not prompted by any scandal or crisis. The House of Lords was, however, one of the remaining public bodies under the Committee's formal Terms of Reference, which had yet to be

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[1] *Hansard* (HC) 25 October 1994, col 758.

[2] Paras 4.10 to 4.12. Although the Committee chaired by Lord Griffiths was technically a sub-committee, it has usually been referred to as 'the Griffiths Committee'. Its report is hereafter referred to as 'the Griffiths Report' (HL paper 90 (1994-95))

examined. The Committee concluded that an enquiry into the House of Lords would be timely and appropriate, having regard in particular to the changes in the membership of the House and its possibly higher public profile following those changes.

1.8 When on 13 March 2000 an announcement was made to the House of Lords as to our forthcoming inquiry the Rt Hon Viscount Cranborne questioned the power of the Committee to undertake any such inquiry. [3] Shortly afterwards, on 10 April, Lord Rees-Mogg published an article in *The Times* that also challenged the authority of the Committee. Correspondence followed. [4] Lord Rees-Mogg then tabled a motion in the following terms: *"To move to resolve, That the House asserts its responsibility for the conduct of its own affairs and that the Sub-Committee of the Committee for Privileges should investigate the effectiveness of the House of Lords' Register of Interests"* . [5] To the foregoing motion the Rt Hon Lord Archer of Sandwell tabled an amendment. The motion as amended read as follows: *"That the House welcomes the enquiry into Standards of Conduct in the House of Lords by the Committee on Standards in Public Life, and asserts the House's ultimate responsibility for the conduct of its own affairs."* [6] After a debate in the House on 10 May 2000 the House passed the amended form of the Motion. [7]

1.9 Meanwhile, in April 2000, the Committee had published an Issues and Questions paper setting out the principal areas on which the Committee intended to focus and raising 16 questions relating to those areas. We asked whether the present arrangements governing the declaration and registration of peers' [8] financial and other interests in the House of Lords were satisfactory, bearing in mind the constitutional and political changes that have taken place since the debate on the Griffiths Report on 1 November 1995 and having regard also to the increase in expectations concerning standards of conduct of public office-holders. We also raised, more generally, questions about the rules relating to the conduct of peers (including those governing paid advocacy) and as to whether the House of Lords should adopt a Code of Conduct. Finally, we considered what sanctions the House of Lords can impose on those found to be in breach of any rule relating to conduct and whether the range of penalties should be extended.

1.10 The present composition of the House of Lords is an interim arrangement. We do not speculate on the possible future composition of the second chamber in the long term. Our aim is to make recommendations which we believe to be appropriate to the present chamber, and which will provide a framework for self-regulation that can be adjusted to meet the needs of a future reformed House. [9] The recommendations we make may need to be reviewed when the House of Lords is further reformed.

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[3] *Hansard* (HL) 13 March 2000, col WA 196; ibid., col 1285.

[4] Letters to *The Times* from Lord Grabiner QC, Mr Roderick Hall, Mr John A May and the Earl of Sandwich dated 11 April 2000; Lord Neill QC dated 12 April 2000; and the Rt Hon Viscount Cranborne dated 13 April 2000. These may be viewed on *The Times* website at www.thetimes.co.uk .

[5] *Hansard* (HL) 10 May 2000, col 1657.

[6] Ibid., cols 1659-1660.

[7] Ibid., cols 1657-1714.

[8] Throughout the report we use the term 'peer' and 'member of the House of Lords' interchangeably to denote a person who has a seat in the House of Lords.

[9] Issues relating to the future function, composition and mechanism of appointment of members of the House of Lords are not part of our present remit. These are matters about which the Wakeham Commission has made recommendations. It is now for the Government and for Parliament to take forward the work of the Wakeham Commission. The terms of reference of the Wakeham Commission were: *"Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act 1998 and developing relations with the European Union:*

- *to consider and make recommendations on the role and functions of the second chamber;*
- *to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions;*
- *to report by 31 December 1999."*

The Committee

1.11 This Committee is an advisory body. It is independent of Government. It has no legal powers. In particular, it has no powers of enforcement and has, therefore, no power to impose any of its recommendations.

1.12 We should draw attention to the fact that three members of the Committee are themselves members of the House of Lords - the Chairman, and Lords Shore and Goodhart QC. They have each been members of the House for three years. These members participated fully in the preparation of this report, which was agreed unanimously by all members.

Evidence gathering

Written evidence

1.13 Our consultation paper was circulated widely within both Houses of Parliament and to members of the Northern Ireland Assembly, to members of the Scottish Parliament and the National Assembly for Wales and to a wide range of organisations (including national libraries and national and local newspapers). The paper was also distributed to a number of academics and other political commentators as well as to members of the public who showed an interest in our work. In addition to making the consultation paper available on the Committee's website, the consultation paper was made available, free of charge, to anyone requesting a copy. Almost 100 written submissions were received.

1.14 All written submissions (save those which we were advised might be considered defamatory) can be found on the CD-Rom which is included in Volume 2 of this report. A list of those submitting written evidence is at Appendix A.

Research

1.15 The Committee commissioned preliminary research into the question of comparable second chambers but concluded that the House of Lords has unique characteristics as a public institution and that no real assistance can be derived from overseas comparisons.

Public hearings

1.16 Between 26 June and 17 July 2000 the Committee took evidence at six days of public hearings. A list of witnesses who gave oral evidence, either on their own behalf or in a representative capacity, is set out in Appendix B. The transcripts of evidence given at the public hearings are published in Volume 2 of this report (and in the CD-Rom accompanying Volume 2). References in this report to the transcript are in terms of the day of the public hearing and indicate whether the evidence was taken at the morning or the afternoon session (for example, 'Day 2 (pm)'). [10]

Acknowledgements

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

[10] On Day 3 and Day 4, the Committee took evidence only in the morning, so no sessions are named.

Chapter 2

PRINCIPLES OF PUBLIC LIFE

2.1 One of the key aims of the First Report was *"to rebuild public confidence"* in holders of public office. [1] Another was *"to restore some clarity and direction wherever moral uncertainty had crept in"* .[2] The Committee felt that these aims would be assisted by a restatement of the general principles of conduct which underpin public life. They drew up the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. (We set them out fully on the inside front page of this Report.)

2.2 The Seven Principles were designed to ensure that everyone in public life knew what was expected of them. They also served to tell the public how they could expect public office holders to behave. To reinforce the Principles and to ensure that they were applied in practice, the Committee also proposed three mechanisms or 'Common Threads': [3]

- **Codes of Conduct.** These should be based on the Seven Principles but be drawn up within each organisation so that they were appropriate to their individual circumstances.
- **Independent Scrutiny.** Internal systems should be supported by independent scrutiny and monitoring as an additional safeguard to maintaining public confidence.
- **Guidance and Education.** More should be done to inculcate high ethical standards through guidance, education and training, particularly induction training.

2.3 The Seven Principles and the Common Threads were formulated as being relevant to all sectors of public life. However, the Committee recognised that, when applied to different organisations, some adaptations might be necessary to make them fit the individual organisation's circumstances and culture. In the context of public appointments to quangos, the Committee proposed an additional test of 'proportionality'. [4] This was primarily a reflection of the very different sizes and levels of responsibility within quangos. However, having regard to developments since the First Report, the Committee now sees proportionality as a test to be kept constantly in mind by any body drawing up rules for conduct. Such rules will command more respect and adherence if they are comprehensible, simple and proportionate.

2.4 The Seven Principles have come to be widely regarded as the touchstone for ethical standards in public life and have continued to inform every aspect of the Committee's thinking. Reports of the Committee have led to their being adopted, in complete or modified form, by the following public sector organisations:

- House of Commons (code of conduct)
- Executive Non-Departmental Public Bodies (model code of practice for board members)

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[1] Committee on Standards in Public Life, *Standards in Public Life,* Cm 2850 (May 1995), para 7. Referred to hereafter as the *'First Report'.*
[2] Ibid.
[3] Ibid., paras 13-17.
[4] In the public appointments context, we have defined 'proportionality' as *"the principle that the length and complexity of an appointment procedure should be commensurate to the nature and responsibilities of the post being filled"* (Committee on Standards in Public Life, *Reinforcing Standards* , Cm 4557 (January 2000), para 9.3). referred to hereafter as *'Reinforcing Standards'.*

- Advisory Non-Departmental Public Bodies (model code of practice for board members)
- Governing Bodies of Universities and Colleges in England, Wales and Northern Ireland (guide for members)
- Training and Education National Council Framework for Local Accountability
- Governing Bodies of Scottish Higher Education Institutions (guide for members)

There are also proposals for model codes of conduct for councillors and senior local government employees which will build on the Seven Principles.

2.5 In addition, the devolved institutions - the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly - have chosen to incorporate the Seven Principles into their Codes of Conduct, sometimes with additions or modifications related to their own requirements.

Developments in other sectors

2.6 As several of our witnesses pointed out, there have been similar developments in the setting of ethical standards in other sectors. Lord Simon of Highbury referred to his membership of the Hampel and Greenbury Committees and his involvement over the past seven or eight years with issues of standards and declaration in the private sector. [5] Lord Chadlington said: *"Up until very recently, it depended on how you felt you should behave: there was no compliance role. A series of initiatives over the past 10 years have come up with the notion of telling the chairman or director of a public company how to behave."* [6]

2.7 The developments to which Lord Simon and Lord Chadlington referred arose from the growth of interest in corporate governance throughout the 1990s. The Cadbury Committee on 'The Financial Aspects of Corporate Governance' was set up in May 1991 because of *"the perceived low level of confidence both in financial reporting and in the ability of auditors to provide the safeguards which users of company reports sought and expected."* [7] Such concerns had been *"heightened by some unexpected failures of major companies and by criticisms of the lack of effective board accountability for such matters as directors' pay."* [8] The Cadbury Committee's Report, which was published in December 1992 was, in some senses, similar to our First Report in that it was commissioned as a response to several scandals and made recommendations which, had they been in place earlier, might have prevented such scandals occurring. [9] The principal recommendation was for a non-statutory Code of Best Practice on financial governance for all listed companies. [10]

2.8 The Cadbury Report was followed by another report in July 1995 by the Study Group on Directors' Remuneration chaired by Sir Richard Greenbury. Again the Study Group was set up in response to immediate concerns about *"unjustified compensation packages in the privatised utilities"* .[11] Its principal recommendation was for a Code of Best Practice

[5] Day 6 (pm).
[6] Day 4.
[7] *Report of the Committee on the Financial Aspects of Corporate Governance* (the Cadbury Committee), 1 December 1992, para 2.1.
[8] Ibid., para 2.2.
[9] Ibid., para 1.9.
[10] Ibid., chap 7 for summary of recommendations.
[11] Quoted by the Committee on Corporate Governance, *Final Report* (the Hampel Report), January 1998, para 1.7.

based on the fundamental principles of accountability, transparency and linkage of rewards to performance. [12]

2.9 Both the Cadbury Committee and the Greenbury Group had called for their recommendations to be reviewed after a number of years. This task was carried out by the Hampel Committee which was established in November 1995 and reported in January 1998.[13] In reviewing the implementation of the prior two reports, the Hampel Committee also wanted to take a fresh look at the issues. Indeed the Committee saw its approach as being from a somewhat different perspective. It noted that the Cadbury and Greenbury reports *"were responses to things which were perceived to have gone wrong ... We are equally concerned with the positive contribution which good corporate governance can make"* .[14] With this in mind, the report emphasised that accountability to stakeholders was as much an objective as the prevention of malpractice and fraud.

2.10 The report also stated the need for principles as well as guidelines: the Committee felt that the Cadbury and Greenbury codes had been treated too often as *"sets of prescriptive rules"* , leading to the practice of *"box ticking"* , i.e. an observance of the letter, rather than the spirit, of the rules. In the Committee's view, box ticking could be *"seized upon as an easier option than the diligent pursuit of corporate governance objectives".* [15] The Hampel Committee therefore recommended a set of principles and a code of practice which embraced the work of the Cadbury and Greenbury Committees as well as its own. [16] This Combined Code on Corporate Governance was published in June 1998 and is non-statutory, although some of the Greenbury recommendations on the disclosure of individual directors' remuneration have been implemented as formal requirements in the Stock Exchange's Listing Rules. [17]

2.11 We have gone into some detail in order to draw attention to some of the parallels with our Committee's work in the public sector. We particularly note the emphasis on principles such as accountability and transparency and the view that principles are required as well as guidelines. We also note that the Hampel Report was a review of conduct and disclosure requirements that did not arise from immediate instances of misconduct but from a wish to make a positive virtue of good governance.

2.12 There have been similar developments in professional bodies. For example, the preamble to the Royal Institution of Chartered Surveyors' rules of conduct and disciplinary procedures requires its members to *"adopt personal and professional standards ... by demonstrating the qualities of integrity, honesty, objectivity, openness and accountability"* . The rules *"provide a positive statement of professional values and standards of conduct against which members are accountable to the institution, to their clients and to the general public."* [18] Other examples can be cited.

Members of the legislature

2.13 These developments in public, professional and corporate life have led to a reinforcement of public expectations that holders of public office should set for themselves

[12] *Report of the Study Group on Directors' Remuneration* (Greenbury Group) (July 1995).
[13] The Hampel Report, see fn.11.
[14] Ibid., para 1.7.
[15] Ibid., paras 1.12-1.14.
[16] Ibid., chap 7.
[17] For the latest developments and proposals see the DTI Company Law Review Consultation Paper *"Developing the Framework"* , March 2000.
[18] *Professional Conduct - Rules of Conduct and Disciplinary Procedures* , Royal Institution of Chartered Surveyors, 2nd edn, 1998, p.vii.

the highest possible standards of conduct. Nowhere is this more true than in connection with members of the legislature. As a submission from a member of the public put it:

> *Our democracy requires us to devolve our powers to a small number of people in the expectation, amongst other things, that they will behave honourably and not misuse their positions in their own interests.* [19]

2.14 In our Terms of Reference set out in Chapter 1 above, Members of Parliament are included within the definition of 'holders of public office'. The then Prime Minister, the Rt Hon John Major MP, made it clear that all members of the Westminster Parliament were included. In response to a Written Question, he stated:

> *It is open to the Committee to examine the standards of conduct to be observed by peers as parliamentarians, as Ministers and, indeed, as holders of other public offices.* [20]

2.15 This view was also expressed when the issue was raised in the House of Lords in 1994. Following the statement announcing the Committee, the Rt Hon Lord Richard, the then Leader of the Opposition in the House of Lords, indicated that he assumed that members of the House of Lords fell within the Committee's terms of reference. In reply, the Rt Hon Viscount Cranborne, then Lord Privy Seal and Leader of the House of Lords, said:

> *The noble Lord, Lord Richard ... asked whether peers would come within the scope of the Committee's activities. So far as I am aware, your Lordships are Members of Parliament. I therefore have to conclude that your Lordships are indeed within the scope of the investigations of the Committee. I am sure that your Lordships would not wish it to be any other way.* [21]

No dissent was expressed from that view.

2.16 Nevertheless, when our enquiry was announced, some qualifications were expressed. The Rt Hon Lord Strathclyde, the Leader of the Opposition, in his written evidence, quoted the remark in our consultation paper that the Committee's remit *"applies to the House of Lords as to other bodies in public life".* He continued: *"This is a profound misconception. The Houses of Parliament are unlike other bodies. The Crown in Parliament is sovereign and has authority over all other bodies."* [22] In oral evidence to us, he drew a further distinction between the House of Lords specifically, as contrasted with the House of Commons and other public bodies which we have studied. Alluding to those studies, he said: *"it may look unusual but the House of Lords is an unusual body. Even in its current state, shorn of its hereditary peers, it is a very unusual body"* .[23]

2.17 It is certainly true that in many ways, even amongst other second chambers, the House of Lords is a unique body in terms of its composition and powers. [24] We draw attention to its unusual characteristics in Chapter 3. This point is of great relevance when considering the scope and detail of any rules that the House may wish to adopt. But we do not accept that the unusual nature of the House of Lords leads to the conclusion that it should be exempt from the general principles that should apply to public bodies, and particularly to the legislature.

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[19] Written evidence of Edward J Armstrong (19/93)
[20] *Hansard* (HC) 31 October 1994, WA 913.
[21] *Hansard* (HL) 25 October 1994, col 471.
[22] Written evidence (19/68).
[23] Day 5 (pm).
[24] See oral evidence of Professor Robert Hazell and Meg Russell (Day 1 (am)).

2.18 The constitutional rights and privileges of members of the House of Lords are very considerable. The right to participate in the enactment of legislation by debating, amending and voting is one of the most important rights available to a public office holder. Peers also have a duty to hold the Executive to account, which they may do through membership of House of Lords Select Committees and by such procedures as tabling motions and Parliamentary Questions. As the Rt Hon Baroness Jay of Paddington, Leader of the House, said in a debate in the House: *"Let us not forget that ... this place is a working House of Parliament ... it is not a private club. We are parliamentarians: we have influence over matters of national and international importance"* .[25]

2.19 In the House of Commons, the duty upon Members of Parliament to act in the public interest is reinforced partly by electoral accountability and partly by a system of self-regulation which was significantly tightened following the recommendations in this Committee's First Report.

2.20 In the House of Lords, although electoral accountability does not apply, there is a proud tradition of self-regulation based on the central tenet of 'acting always on personal honour'. The origin of the principle of honour is so far back in time that the 1994 edition of the House's procedural guide referred to it simply as *"a long-standing custom"* .[26]

2.21 We were left in no doubt by our witnesses that the principle of honour is considered of fundamental importance by members of the House of Lords. The Rt Hon Lord Mayhew of Twysden, in quoting the evidence of the Rt Hon Lord Carr of Hadley to an earlier enquiry, suggested that there was *"no code of discipline that was more demanding or stringent than the code of personal honour"* .[27] The Rt Hon Earl Ferrers said that the House of Lords *"has always worked on the basis that a person's honour is sacrosanct"* .[28] Honour has been described as being *"the kernel"* of the House's procedures. [29] We describe more fully in Chapter 4 how honour is woven into the procedural rules governing disclosure of interests.

2.22 We share our witnesses' respect for the principle of 'acting always on personal honour'. The critical issue is whether the concept of honour on its own is sufficient today to maintain public confidence. In our view it would be a highly desirable development if the House of Lords were to build on the foundation of honour. Any resulting system of standards should be readily understood by the public and reflect the position of the House of Lords as one of the most important of public institutions. We set out in detail in Chapter 4 the case for this, but focus at this point on the concept of 'acting in the public interest' which is at the heart of the duty of any public office holder.

[25] *Hansard* (HL) 10 May 2000, col 1709.
[26] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (1994), p 69. This edition has recently been superseded by the 18th edition (October 2000) and the phrase no longer appears.
[27] Day 5 (am).
[28] Day 6 (am).
[29] Unpublished Report of the Select Committee on Procedure of the House Sub-Committee on Registration of Interests (1974), para 28(5). The 1974 Report is more fully discussed in Chapter 4.

2.23 The phrase, 'public interest', recurs throughout the Seven Principles of Public Life. It may be useful to rehearse how the Seven Principles might be seen to apply to the House of Lords.

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 material 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.

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.

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.

2.24 These principles already underlie the approach behind the House of Lords' regime for disclosure of interests. However, as we explore further in the chapters below, there are aspects of the procedural system that may require review in order to ensure that they provide a thorough safeguard.

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.

2.25 Many witnesses suggested that openness - or transparency - about the personal position and interests of the legislator was the key ethical requirement in the legislature. The importance of this principle is held to be so paramount when relevant to parliamentary proceedings that it outweighs arguments based on personal privacy.

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.

2.26 The decisions and actions taken by peers when acting as legislators are of the highest importance to the public. It is important that the public has access to information that enables them to understand the interests, financial and non-financial, that may inform those decisions and actions.

Leadership

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

2.27 Members of the legislature are amongst the holders of the highest form of public office. It is therefore all the more important that they operate at the highest level of ethical probity as currently perceived and indeed set an example throughout the public sector.

2.28 We now turn to examine in detail the present position in the House of Lords.

THE HOUSE OF LORDS: COMPOSITION AND STRUCTURE

3.1 The House of Lords has undergone considerable institutional change in the past two years, and is widely regarded as being in a transitional state. This chapter describes the most significant recent developments in the composition and structure of the House, while the next chapter explores some of the possible implications for our study.

3.2 Despite recent developments, many of the House of Lords' chief characteristics have remained unaltered. Some of them serve to make the House a unique form of second chamber. [1]

3.3 Amongst these features are:

- A large number of members with no political allegiance (the cross-benchers, for example, made up 23.7 per cent of the House in September 2000).
- There is no fixed limit to the term of service (except for bishops, who leave the House on retirement).
- Members are almost all unsalaried.
- Members commonly have outside interests.

Terms under which members of the House serve

3.4 Two main documents describe the terms under which a member of the House of Lords serves. The first are the Letters Patent, which, among other things, set out the peer's title and the grant of certain rights. The second is the Writ of Summons, which calls on the member to attend on the Sovereign in Parliament and carry out certain functions.

3.5 The Letters Patent state the Sovereign is:

> *Willing, and by these presents granting, for Us, Our heirs and successors, that he may have, hold, and possess a seat, place, and voice in the Parliaments and Public Assemblies and Councils of Us, Our heirs and successors, within Our United Kingdom amongst the Barons, and also that he may enjoy and use, all the rights, privileges, pre-eminences, immunities, and advantages to the degree of a Baron duly and of right belonging, which Barons of Our United Kingdom have heretofore used and enjoyed, or as they do at present use and enjoy.*

3.6 An excerpt from the text of the Writ of Summons reads thus:

> *Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:*
>
> *To our right trusty and well-beloved [name of peer], greeting: Whereas Our Parliament, for arduous and urgent affairs concerning Us, the state and defence of Our United Kingdom, and the Church, is now met at Our city of Westminster: We, strictly enjoining, command you upon the faith and allegiance by which you are bound to Us, that*

[1] Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000), details some of the differences between the House and other second chambers.

considering the difficulty of the said affairs and dangers impending (waiving all excuses), you be personally present at Our aforesaid Parliament with Us, and with the prelates, nobles, and peers of Our said Kingdom, to treat and give your counsel upon the affairs aforesaid: and this as you regard Us and Our honour, and the safety and defence of the said Kingdom and Church, and dispatch of the said affairs in nowise do you omit.

3.7 These documents have different functions. The Letters Patent state the rights, privileges and other benefits being **granted** by the Sovereign to the new peer. The Writ of Summons is a **command** to attend and advise and *"give counsel"*, and lists the services which the peer must provide to the Sovereign.

3.8 The references in the Letters Patent to *"rights, privileges, pre-eminences, immunities and advantages to the degree of a Baron duly and of right belonging"* need to be borne in mind in discussing what kind of penalties can properly be imposed by the House in case of a breach of its rules. In particular, there is an issue whether the suspension of a member from the House is an infringement of any of these rights or privileges. [2]

3.9 Peers can be granted Leave of Absence. This is a provision that is used very infrequently, particularly with the departure of the hereditary peers. [3]

Reimbursement of members of the House of Lords

3.10 Members of the Lords are not paid; none of them receives a salary apart from a small number of members who are salaried by virtue of the office they hold. Nor do they receive an allowance: the principle behind the arrangements is that expenses such as travel, subsistence and secretarial costs should be met.

3.11 The claim for expenses is related to daily attendance in the Chamber, the voting lobbies or in committee rooms during meetings. This is consistent with the fact that many members attend on a part-time basis.

3.12 Apart from travelling expenses, peers are entitled to reimbursement of a number of other expenses. The Annual Report of the House sets out the position in this way:

Members of the House may also recover certain expenses certified by them as incurred for the purpose of parliamentary duties at sittings of the House or of Committees of the House within the following maxima for each day of attendance:

(a) **Night Subsistence** - *Members of the House who incur the expenses of overnight accommodation in London away from their only or main residence may claim for such expenses within a daily limit of £81.50* [recently increased to £84].

(b) **Day Subsistence and incidental travel** - *Members of the House may claim day subsistence and travel costs not separately recoverable within a daily limit of £36* [recently increased to £37].

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[2] See para 7.13 below.

[3] The latest edition of the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (18th edition, October 2000) contains this passage (para 1.26): *"Members of the House are to attend the sittings of the House. If they cannot attend, they should obtain leave of absence"*. This compares with the wording of the requirement contained in the previous, 1994 edition of the Companion, which says: *"Lords are to attend the sittings of the House as often as they reasonably can"* (p 9). For a full discussion of this point, see para 3.25 below. Only three peers are currently on leave of absence.

(c) **Secretarial costs, postage and certain additional expenses** - *the cost of secretarial help and, where appropriate, the cost of providing necessary equipment may be claimed, together with the cost of postage and certain additional expenses (eg domestic costs, purchase of books and periodicals and professional subscription charges that arise out of parliamentary duties) may be claimed within a limit of £35* [recently increased to £36] *for each day of attendance.* [4]

Legislative changes

3.13 The last two years have seen significant change in the composition and status of the House of Lords. The 1997 Labour Manifesto contained the following proposal:

> *As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.* [5]

3.14 The Government published a White Paper on House of Lords' reform in January 1999 [6] and, at the same time, announced the establishment of a Royal Commission. On 8 February 1999 the Royal Commission, chaired by the Rt Hon Lord Wakeham, was appointed to consider the role and functions of the second chamber and the method or combination of methods of its composition. Its report, *A House For the Future* ,[7] was published on 20 January 2000. The Government has made an initial response to the report, welcoming it in principle, [8] but the exact form of their proposals has not been announced. The Government *"aim to establish a Joint Committee of both Houses to consider the parliamentary implications of the Royal Commission ... proposals for the composition of the second chamber"* .[9]

3.15 The House of Lords Bill, which embodied the self-contained initial changes, received its Second Reading in the Lords on 30 March 1999. An amendment to except 92 hereditary peers from the exclusion provisions was accepted at Committee Stage on 11 May 1999.

3.16 The amendment provided for 75 hereditary peers to be elected from their own party or cross-bench groups (42 Conservatives, 28 cross-benchers, three Liberal Democrats and two Labour). Fifteen hereditary peers were also to be elected to act as Deputy Speakers or

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[4] *House of Lords Annual Report and Accounts* 1999-2000, HL104 (1999-2000), pp 45-6.

[5] 1997 General Election Manifesto: *New Labour - Because Britain Deserves Better* , p 32.

[6] *Modernising Parliament: Reforming the House of Lords* , Cm 4183 (January 1999).

[7] Cm 4534 (January 2000).

[8] The Leader of the House of Lords, the Rt Hon Baroness Jay of Paddington, said in a Lords debate on the Wakeham Report, *Hansard* (HL) 7 March 2000, col 912:

> *The Government accept the principles underlying the main elements of the Royal Commission's proposals on the future role and structure of this House, and will act on them. That is, we agree that the second Chamber should clearly be subordinate, largely nominated but with a minority elected element and with a particular responsibility to represent the regions. We agree that ther e should be a statutory appointments commission.*
>
> *The principles that underlie the Royal Commission's recommendations, and the Government's acceptance of them, are these. First, the second Chamber must be clearly that - a second Chamber, subordinate to the House of Commons. If both Houses were of equal authority that would be a recipe for gridlock. Secondly, it should have the powers and the authority to act as one of the check s and balances within the constitution. It should be equipped to make a significant and distinctive contribution to the legislative p rocess. It should foster independent judgement. Thirdly, following devolution, it should provide a parliamentary voice for the nations and regions at the heart of the nation's affairs.*

[9] *Hansard* (HL) 3 July 2000, col WA122.

Committee Chairmen. Two hereditary royal appointments, the Earl Marshal and the Lord Great Chamberlain, were also retained. The elections took place in October and November 1999.

3.17 The House of Lords Act received Royal Assent on 11 November 1999 and came into effect and was implemented on the same day, the last day of the Session. On that day, 654 hereditary peers were removed from membership of the House.

Compositional changes

3.18 Since the Labour Government came to power in May 1997, 202 life peers have been created — a larger number than in any equivalent period since 1958, when the first life peers were created (save for those granted under the Appellate Jurisdiction Act 1876 to Law Lords). This, together with the removal of all but 92 hereditary peers [10] has changed the composition of the House of Lords markedly.

The composition of the House of Lords in October 2000

Archbishops and bishops	26
Life peers under the Appellate Jurisdiction Act 1876	28
Life peers under the Life Peerages Act 1958	549
Peers under House of Lords Act 1999	92
TOTAL	**695**

3.19 Another development will to a certain degree alter the composition of the House - the House of Lords Appointments Commission, whose membership and remit were announced by the Prime Minister in May 2000. [11] This is a non-statutory advisory body which will make recommendations to Her Majesty the Queen on non-party-political life peers and also vet for propriety all future recommendations for peerages. It has advertised widely for nominations from the public.

A changed house - a changed ethos?

3.20 We heard a considerable range of views as to whether these changes in composition had altered the ethos and atmosphere of the House. Some felt that they had made little difference. Among those who took this view was the Rt Hon Lord Trefgarne, the Chairman of the Association of the Conservative Peers, who said of the new composition:

> *We do not think that has changed the ethos of the House. Peers were always guided by the Seven Principles of Public Life ... and we think they still are.* [12]

3.21 The Rt Hon Earl Ferrers, developing this thought, said:

> *One of the arguments that I think is a terrible one is that we ought to tighten up the regime because of the new influx of people who have come in the last few years. It is a most appalling slur on the people who have come in: that they are of such doubtful character that we have to alter all the rules. I think that is intolerable.* [13]

[10] There are provisions for filling vacancies.
[11] *Hansard* (HC) 4 May 2000, col 181W
[12] Day 5 (am).
[13] Day 6 (pm).

3.22 Baroness Turner of Camden saw little alteration as a result of the removal of most hereditary peers:

> *I do not think that the recent changes that have arisen as a result of the House of Lords Act 1999 have made that much difference - not from my perception anyway - for the simple reason that the 92 people who were elected from among the hereditary peers were mostly people who were active anyway.* [14]

3.23 Other witnesses perceived partial change only, or regarded the differences as transitional, and the result of a temporary upheaval. Among these was Lord Wakeham, who believed that:

> *We are in the middle of a transitional period. There is a high level of political fervour and activity, partly based on the size of the Government's majority. I do not look upon any of those as normal. Things are likely to settle down.* [15]

3.24 A number of witnesses felt on the contrary that change in the ethos of the House was both significant and irreversible. The Rt Hon Lord Richard QC, for example, described the House of Lords as *" moving from a wholly amateur House, as at one stage it was, to a House that is much more professional, and all sorts of problems will arise as a result of that"*.[16] Lord Lipsey, in a *New Statesman* article describing his experiences as a new 'working' peer, said that earning a living outside was made *" practically impossible"* by the life of the House and *"the attentions of the Whips"* .[17]

3.25 The impression of a House whose members are now expected to attend regularly is reinforced by very recent amendments to the wording of the passage on leave of absence in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, issued under the authority of the Procedure Committee. In this case, indeed, the changes apply to all members, whether or not they take a party whip. As we noted above,[18] the 18th edition of the *Companion*, published in October 2000, requires members to *"attend the sittings of the House"* . If they cannot attend, members should obtain leave of absence. The language of the previous, 1994, edition was noticeably less emphatic, requiring members only *"to attend the sittings of the House* **if they reasonably can***"* (emphasis added). It could perhaps be said that the changed wording tracks, or at least foreshadows, the development of a more *'*professional *'* House.

3.26 The Rt Hon Lord Rodgers of Quarry Bank said that *"the House has become a much more professional place. It always claimed to be very expert but its expertise was limited. It has been greatly broadened by the new people who have come into the House."* [19]

3.27 The changes in composition have led to claims on several sides that the decisions of the House have acquired greater legitimacy. The Rt Hon Baroness Jay of Paddington, writing in September 1999, said that: *"The House of Lords without the hereditary peers will be more legitimate, because its members have earned their places, and therefore more effective in playing its part in our bicameral constitution."* [20] In June 1999, the Rt Hon Lord

[14] Day 3.
[15] Day 4.
[16] Day 1 (am).
[17] *New Statesman*, 7 August, 2000, p 21.
[18] See footnote 3 to this chapter.
[19] Day 5 (am).
[20] *The House Magazine* , 27 September 1999 p 20.

Strathclyde, Leader of the Opposition in the House of Lords, referred to the *"authority [that] will be given to representative peers in respect of the Weatherill amendment"* (a reference to the amendment to the House of Lords Act 1999 that allowed for the election of hereditary peers). [21]

3.28 The effect of the party composition within the House is that the political balance of power lies with neither the Government nor with the main Opposition party but with the Liberal Democrats (9 per cent) and the independent cross-benchers (24 per cent).

Analysis of membership by party strength - 27 September 2000

PARTY	LIFE PEER (A)	HEREDITARY: ELECTED BY PARTY	HEREDITARY: ELECTED OFFICE HOLDER	HEREDITARY: APPOINTED ROYAL OFFICE HOLDER (B)	BISHOP	TOTAL
CONSERVATIVE	180	42	9	1		232
LABOUR	196	2	2			200
LIBERAL DEMOCRATS	58	3	2			63
CROSS BENCH	133	28	2	1		164
ARCHBISHOPS AND BISHOPS					26	26
OTHER	7					7
TOTAL	**574**	**75**	**15**	**2**	**26**	**692**

(A) Table excludes three life peers on leave of absence

(B) The two are the Duke of Norfolk, Earl Marshal (Conservative) and the Marquess of Cholmondeley, Lord Great Chamberlain (cross-bench)

Impact on political activity

3.29 We heard evidence that the level of party political activity and division had increased since the removal of the hereditary peers. The Rt Hon Lord Biffen judged that there had been *"some almost measurable change"* in this area since their exclusion. In what he considered *"perhaps ... an irony", he sensed that because of the removal, "there has been more of a combative spirit in the House of Lords and more frequent defeats of the Government."* [22]

3.30 Professor Robert Hazell developed this line of thinking, seeing the potential for such *"combative spirit"* on several sides. He felt that the Lords might become a more important House as it became more willing to vote down the Government, and that consequently, *"the Government, increasingly, may challenge or criticise the Lords for, in effect, daring to*

[21] *Hansard* (HL) 15 June 1999, col 228.
[22] Day 6 (pm).

obstruct the will of the elected chamber. We have already seen the occasional remark of that kind by frustrated Ministers. That may lead in future to a more sophisticated analysis than in the past of a breakdown of votes in the Lords." [23]

3.31 Peter Riddell saw recent changes as highly significant:

> *The central question is the position of the House of Lords as a legislative chamber of Parliament. The days when the House was a largely amateur body with an idiosyncratic membership and status are fast disappearing ... its constitutional position has altered. Leaving aside the bishops, all members are there out of choice, whether hereditaries or life peers. Moreover, the new House, albeit a transitional one for at least a few years, is, in the words of Baroness Jay, more 'legitimate' and is behaving accordingly by being willing to defeat the Government more regularly and pressing its objections. If the House is to become more assertive then, like the Commons, it must be seen to be more transparent and accountable.* [24]

3.32 Recently, there has also been the first defeat of a Statutory Instrument since 1968 - when the Lords voted down such an Instrument on the grounds that it did not provide a free mailing for candidates in the 2000 election for Mayor of London. [25]

3.33 Whether or not the House is more legitimate, evidence given to us suggests that its perceived entitlement to exercise its own independent judgement on the merits of Government legislative proposals, whether or not already approved by the Commons, is leading to a greater degree of journalistic interest and external observation. The votes of the House are likely to come under greater scrutiny, especially as the numbers of the two main parties become more equal and the possibility of closely-contested divisions increases. The effect of the highly publicised selection of candidates by the Appointments Commission may also be to strengthen public interest in the rules which govern the House, its members and their activities.

3.34 Although there has been no fundamental alteration in the powers of the House of Lords, the structural changes described in this chapter are potentially profound. In the light of them, the Committee believes that the time is right for an examination of the rules that govern the conduct of the House's members.

[23] Day 1 (am).
[24] Written evidence (19/87).
[25] *Hansard* (HL) 22 February 2000, col 136.

Chapter 4

REGULATING CONDUCT IN THE HOUSE OF LORDS

4.1 This chapter outlines the history of recent developments in conduct issues in the House of Lords before considering whether any change in approach may be desirable.

Recent developments in the House of Lords

4.2 In 1974, the Sub-Committee on Registration of Interests was appointed by the House of Lords Procedure Committee following a decision in principle by the House of Commons to establish a compulsory register of interests for Members of Parliament. The Sub-Committee had a large and distinguished membership of 22 peers, including the then Lord Chancellor, Lord Elwyn-Jones.

4.3 The background to the action by both Houses was, as the Sub-Committee's report put it, *"the suspicion that all is not well in public life"* , which must have been a reference to the Poulson scandal. [1] The Sub-Committee's report continued:

> *Both Houses have therefore decided to review their practice, in order to ensure that they do their business openly and honourably and to pursue the common aim of honest, wholesome government in which people can trust. For honest, wholesome government to be achieved the motives of the country's legislators must be overt; it must be possible to draw a line between the 'public interest' of members of Parliament and their 'personal interest'; and Parliament should make plain when the public actions of its members might be influenced by their personal interests.* [2]

4.4 In reading the 1974 Report, the Committee was struck by the similarities with the circumstances of our enquiry, and the arguments presented. As with our enquiry, the Sub-Committee's report was not stimulated by *"any fear of abuse within"* [3] but by a recognition that it was very important *"that the procedures of the House should be accepted as open and honest by the public as well as by Peers"* . [4]

4.5 The 1974 Report reviewed the procedures for declaring an interest during a debate and the arguments for introducing a mandatory register of interests. We draw on the detail of the 1974 Report in the chapters below. However, we record here the principal arguments that were then adduced for and against a mandatory register. They bear many similarities to the evidence we heard:

Arguments in favour:

- It was wrong in principle for the House of Lords, as one half of the legislature, not to follow the Commons' lead and adopt a similar procedure. The (then) Leader of the Opposition, the Rt Hon Lord Windlesham, said in evidence: " *that would put the House in a position of exceptional privilege which I think it would be difficult to justify"* . [5]
- It was important that the procedures of the House should be accepted as open and honest by the public as well as by peers.

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[1] Mr Poulson was convicted on 11 February 1974. A full account of the Poulson Affair is given in the *Report of the Royal Commission on Standards of Conduct in Public Life* (the Salmon Report), Cm 6524 (July 1976), chap 2.

[2] Report of the Select Committee on Procedure of the House Sub-Committee on Registration of Interests (1974), para 8. The report is unpublished (see para 4.8 below).

[3] Ibid., para 7.

[4] Ibid., para 25.

[5] Ibid., para 25.

- The major advantage to the House was to overcome the problem of voting with an undeclared interest.
- The major advantage to the public and press was that a register provided *"a checklist by which the impartiality of a Peer's action can be judged"* .[6]

Arguments against:

- The differences between the two Houses, the most important of which was the House of Lords' unique tradition of managing its own affairs without recourse to rules of order: *"it relies and thrives on self-discipline, and the honour of its members is the kernel of its procedures"* .[7]
- Following from that point, and because of the terms of the Writ of Summons, the House of Lords had no sanctions against a member who refused to abide by a compulsory register.[8]
- Many peers were members of the House 'involuntarily' (by virtue of heredity) and so could not choose *"to guard their privacy by remaining outside the House"* .[9]

4.6 Having put the arguments for and against a compulsory register, the Report concluded:

> *that a register is unnecessary for the* **internal** *requirements of the House and that a non-statutory compulsory register is not feasible.* **External** *considerations following on the decision of the House of Commons to institute a compulsory register must be weighed in the balance against this ... the decision is left to the House.*[10]

4.7 The Report also made various recommendations to improve the procedure on declaring interests during debates.

4.8 In the event, despite the eminent membership of the Sub-Committee responsible for the 1974 Report, it was neither published nor debated. So the House did not reach a conclusion on the arguments raised in the Report.[11] *De facto* the outcome was that no register, either compulsory or voluntary, was introduced at that stage. The emphasis continued to be on declaration during debate as the principal instrument of disclosure of interests, but without the improvements suggested in the 1974 Report.

4.9 It was to be another 16 years before the issues raised in the 1974 Report were considered by the House. In response to *"a series of incidents"* in the previous session,[12] in 1990 the Procedure Committee again addressed the issue of the practice of the House in relation to members' interests. Following the report of the Committee,[13] the House of Lords adopted revised guidance in relation to the declaration of interests.[14] This guidance followed very closely the text suggested in paragraph 23 of the 1974 Report. The opening sentence read: *"It is a long-standing*

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[6] Ibid., para 26.

[7] Ibid., para 28(5).

[8] Ibid., para 28(6).

[9] Ibid., para 28(3).

[10] Ibid., para 41(xii) (emphasis added).

[11] The Griffiths Report, para 8. The 1974 Sub-Committee agreed to leave further consideration of the Report *"until after it was known how the House of Commons were to deal with the problem"* . It agreed that no reference to the Report should be made in the Procedure Committee's Report to the House.

[12] *Second Report from the Select Committee on Procedure of the House,* HL Paper 50 (1989-90), para 3. The incidents in question concerned the adequacy of declarations of interests during debates (*Hansard* (HL) 3 April 1989 cols. 964 and 972, 2 May 1989 cols. 58 and 61, 11 October 1989 cols. 403 - 406).

[13] Ibid.

[14] 10 May 1990.

custom of the House that Lords speak always on their personal honour" . The full text is set out in Appendix C to this Report.

Establishment of Committee on Standards in Public Life

4.10 This was how matters stood in the House of Lords when the Committee on Standards in Public Life was established in October 1994. [15] The Rt Hon Lord Nolan, the first Chairman of this Committee, had originally intended that the Committee's first enquiry should extend to the House of Lords and he wrote to the Leader of the House in November 1994 with that purpose in view. However, in December 1994, a sub-committee of the Procedure Committee of the House of Lords, under the chairmanship of the Rt Hon Lord Griffiths, was appointed by the House *"to consider the practice of the House in relation to financial and other interests of members, and in particular the case for a register of interests"* . The sub-committee was called the Sub-Committee on Declaration and Registration of Interests.

4.11 Given the overlap between the work of this Committee and the Griffiths Committee, in February 1995, Lord Nolan wrote to Lord Griffiths suggesting that the Committee on Standards in Public Life should defer consideration of issues relating to the House of Lords until the Griffiths Committee had completed its work. Once the Griffiths Committee had reported, the Committee on Standards in Public Life could take its conclusions into account, before submitting any recommendations for the consideration of the House. [16]

4.12 The Griffiths Committee agreed with this course of action. The Committee on Standards in Public Life was the first to complete its task: its report (dealing *inter alia* with standards of conduct in the House of Commons) was published in May 1995. [17] The Griffiths Committee published its report two months later. [18]

The Griffiths Report

4.13 The Griffiths Committee considered issues relating to conduct in the Lords and a register of peers' interests. It also sought to address the concerns arising from the growth of parliamentary lobbying and of parliamentary consultancies. Their recommendations were based on the guiding principles that:

1. *Lords should act always on their personal honour; and*
2. *Lords should never accept any financial inducement as an incentive or reward for exercising parliamentary influence.*

4.14 The Report went on to recommend:

- The establishment of a register of interests containing three categories: two 'mandatory' and one 'discretionary'.
- Members who held paid parliamentary consultancies or who had financial interests in a business involved in parliamentary lobbying on behalf of clients would be subject to strict limits on how they could participate in parliamentary proceedings. [19]

[15] See para 1.1.
[16] Letter from Lord Nolan to Lord Griffiths dated 13 February 1995, and issued with a press notice dated 17 February 1995.
[17] First Report.
[18] The Griffiths Report was published on 5 July 1995.
[19] Ibid., para 60.

4.15 The Report of the Griffiths Committee was debated in the House of Lords on 1 November 1995 [20] and its recommendations were accepted. These were expressed in Resolutions agreed to by the House on 7 November 1995 and have been incorporated into the 18th edition of the *Companion* .[21] We reproduce the text of the Resolutions in Appendix D.

4.16 These Resolutions currently constitute the code of conduct for the House in respect of disclosure of interests. The Resolutions make provisions for the investigation of allegations of failure to register by a sub-committee appointed by the Committee for Privileges. This sub-committee, entitled the Sub-Committee on Lords' Interests, includes a number of Lords of Appeal as does its parent committee. [22] To date, there have been no alleged failures to register and no allegations of any failure to abide by the rules governing peers' activities in the House following registration of their interests.

4.17 In fact the Sub-Committee has met only twice. These meetings took place soon after it was established in 1995 to provide advice on the operation of the register. At one of those meetings, in January 1996, the Sub-Committee considered a draft of the first edition of the register and the suggestion that *"some peers had made excessive use of category (3)"* . It gave a ruling that *"though the Registrar should discourage [long] entries, the Resolution left each Lord free to enter in category (3) whatever he chose"* .[23] The outcome of the meetings was not reported to the House but was reflected in the procedures adopted by the Registrar. [24]

The operation of the Griffiths Report

4.18 Lord Griffiths, who was Chairman of the 1995 Committee, gave us some of the background to the production of its report:

> *We had a very long-ranging debate ... it ranged from those who thought that there should be a compulsory Register ... and those who said 'I would go to the stake against such a Register'.... I was given clearly to understand ... that if we had attempted to introduce a compulsory registration system ... that a number of peers would have left the House rather than make their whole interests public ... I am pretty sure we went as far as we could, then.* [25]

4.19 It is clear from this evidence that the Griffiths Report matched the mood of the House at the time. Given that it introduced a register, albeit partly voluntary, for the first time, it was a major development in the procedural regime. Many members of the House of Lords told us that it had been successful. For example, the Rt Hon Lord Trefgarne, representing the Association of Conservative Peers, said:

> *it has worked very well. Those arrangements have been in place for several years and I know of no public disquiet that they have not been adequately observed. I know of no concern within the House that anybody has abused those arrangements and has not ... declared an appropriate interest.* [26]

4.20 As we have made clear from the beginning of our enquiry, we agree that there has been no general public disquiet concerning members of the House of Lords. The procedural

[20] *Hansard* (HL) 1 November 1995, cols. 1428 to 1488.
[21] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* , 18th edition (October 2000), paras 4.60 - 4.71.
[22] The chairman of the Committee for Privileges is the Rt Hon Lord Griffiths. The chairman of the Sub-Committee is the Rt Hon Lord Nolan.
[23] Written evidence of Michael Davies, Clerk of the Parliaments (19/75).
[24] Day 2 (am).
[25] Day 2 (pm).
[26] Day 5 (am).

mechanism to deal with allegations of individual misconduct has never been used. We also note that Mr Vallance White, the Registrar of Lords' Interests, was reported as saying that *"there is no interest in [the Register] whatever"* .[27]

4.21 The maxim that was frequently put to us was 'if it ain't broke, don't fix it'. However, as the Attorney General, the Rt Hon Lord Williams of Mostyn, commented: *"I would say that we do not know whether it is broken or not",* adding that it is often only when a crisis emerges that a system appears to be faulty. [28] Lord Dixon-Smith pointed out the dangers of leaving remedies until after such a crisis: *"no purpose will be served if no mechanisms of public re-assurance are put in place until after damage is done by lax behaviour".* [29] A similar point was made by Lord Biffen: *"I think we still have something which is to be treasured. It is precisely because of that that one has to take the pre-emptive step ... and not be chivvied and chased by some miserable incident that is then blown up by those who have no faith, no interest and no affection for the institution"* . [30]

The principle of honour

4.22 Lord Biffen also said: *"I plead that the House of Commons and the second chamber have long and very honourable reputations in public service and I contrast that with what happens in many neighbouring countries where there is a great deal of corruption"* .[31] We ourselves commented in our last report on the high standards in public life in this country and on the resulting greater freedom from corruption and malpractice. [32] However, in the same report we also drew attention to another factor, namely *"the deep natural scepticism"* of the British public towards their politicians. [33]

4.23 Although we received few submissions from members of the public during our enquiry, [34] one spoke of the continuing need to counteract the *"low level of regard ... for politicians in general."* [35] Another said *"that good men and women exist in the Houses of Parliament is not in dispute. The assumption that the members of the Houses of Parliament show a higher sense of morals and behaviour than the wider public is".* [36]

4.24 As outlined in Chapter 2, the test of personal honour is a longstanding and revered one in the House. The Rt Hon Lord Mackay of Ardbrecknish, Deputy Leader of the Opposition, said: *"peers are on their honour to make a disclosure if they take part [in a debate]. That may be an old-fashioned approach, but it seems to have worked"* .[37] Indeed, some witnesses thought that reliance on the principle of honour could be harmed by the introduction of more detailed rules. [38] We see great force in the related point that too many rules interfere with the duty resting on an individual to exercise his or her own judgement. The Rt Hon Lord Owen, for example, suggested:

> *it is much better, in my experience in public life, to put people on notice of good behaviour, and I think they then exercise it, whereas if you have everything done by rules, they start getting away with it.* [39]

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[27] Oral evidence from Lord Griffiths (Day 2 (pm)). The Clerk to the Parliaments provided some statistics showing access sought to the internet version of the Register (see his written evidence). For technical reasons common to all websites, it is difficult to make any inference s from these statistics.

[28] Day 6 (pm).

[29] Written evidence (19/19).

[30] Day 6 (pm).

[31] Ibid.

[32] *Reinforcing Standards* para 2.13. Cf. *Year 2000 Corruption Perceptions Index* , Transparency International, 21 September 2000.

[33] Ibid. para 2.6.

[34] Nine were received.

[35] Written evidence of Graham Wood (19/9).

[36] Written evidence of E J Armstrong (19/93).

[37] Day 5 (pm)

[38] For example, Lord Wakeham (Day 4).

[39] Day 1 (am).

4.25 Other witnesses, while respecting the House's adherence to the code of personal honour, felt that it could be too subjective and imprecise a term on its own for regulating standards of conduct. It was suggested that other important principles needed stating explicitly. In particular, the key principle of transparency was mentioned. Baroness Young of Old Scone, for example, said: *"the issue of transparency is so important in allowing people to understand what informs what we say and what predispositions and interests might shape it"* .[40]

4.26 The view that members of the House of Lords, as parliamentarians, are holders of public office cannot be gainsaid. We agree that the principle of openness is paramount in ensuring high standards of conduct in public life. We have also drawn attention in Chapter 2 to similar principles operating in the business and professional sectors. It is now everyday practice for codes of ethical conduct to be adopted in both public and private institutions. We would find it difficult to formulate any justification for the House of Lords today being different from such public and private bodies. As Lord Tugendhat put it: *"one has to ensure that one is operating according to the standards that are prevalent within society at a given time ... it would appear to me odd if standards of disclosure in the legislature of our country were based on significantly different principles than those required in a great many other walks of life"* .[41]

4.27 As we said in Chapter 2, we respect the principle of 'acting always on personal honour'. At present, however, the 'honour' principle seems only to be expressed in the context of the rules governing Members' interests (in the form in which they were recommended by the Griffiths Committee and adopted by the House in 1995). Thus, in the House's procedural guide, the *Companion* , the term appears only in the chapter entitled 'Rules of Debate' and under the sub-heading 'Financial Interests' where the 1995 Resolutions are set out. [42] Our witnesses often spoke of 'honour' as part of the governing ethos of the House. We suggest it would be a logical extension for the principle of honour to provide the foundation for a somewhat more wide-ranging code of conduct, and, as Lord Simon of Highbury put it, *"it might be helpful to give people a little background on what is meant by 'honour'"* .[43]

A code of conduct

4.28 In suggesting this, we return to the framework established by the First Report in setting out key principles and reinforcing them with mechanisms such as codes of conduct. There are two principal reasons for a code of conduct:

- To provide clarity for, and ensure consistency between, members of an institution as regards standards of conduct;
- To provide the openness and accountability necessary to ensure public confidence.

Clarity and consistency

4.29 The philosophical argument for clarity was put by the Archbishop of Canterbury in a speech in the House of Lords when the establishment of this Committee was debated in 1994:

> *But since the right motivation is not enough by itself, all of us need guidelines and codes to help us realise the good intentions in practice. Such codes are vital for institutions as well*

[40] Day 6 (am).
[41] Day 4.
[42] See footnote 21 to this Chapter.
[43] Day 6 (pm).

as individuals, mobilising authority and peer pressure behind ethical norms and translating general values into specific expectations. [44]

4.30 In that context, it is noteworthy that many of our witnesses, including some senior and experienced peers, were concerned about the possible confusion and lack of clarity under the present system. Lord Plant of Highfield told us of a difference of interpretation that he had experienced over the need to register a grant from a charitable foundation. He said *"it seems to me ... a mistake that the criteria are sufficiently broad to allow something that seemed so obvious to me to be a matter of interpretation"* . [45] Both Lord Tugendhat [46] and the Lord Bishop of Portsmouth[47] spoke of their uncertainty as to whether it was desirable to register their positions on university councils. The Rt Hon Lord Wakeham agreed that *"there should be some consistency. There is no reason for not achieving it and it would be an advantage."* [48]

4.31 The force of the call for consistency does not lie in a preference for bureaucratic tidiness. Its primary purpose is to ensure similar application of the rules by all members of the House and thereby to safeguard the reputation of the House. Witnesses were largely of the view that the reputation of the House was high. As we have asserted from the beginning of our enquiry, there has been no evidence of misconduct in the House of Lords. There were however some references made by witnesses to inadvertent slips or omissions in the past, particularly in the matter of declaration. [49] In a situation where an inadvertent mistake can arise from a lack of clarity in the guidance, it makes sense, as the Rt Hon Baroness Jay of Paddington put it, *"to get a more transparent and more precise system ... to enable people as individuals to feel more comfortable with their own situation and therefore not [to be] remotely exposed to any potential criticism that might arise."* [50]

Public confidence

4.32 The notion of twin audiences - externally the public and internally the members - for a code of conduct was foreshadowed by the introduction in the Griffiths Report of the formula concerning voluntary registration which reads: *"any other particulars which members of the House wish to register relating to matters which they consider may affect* ***the public perception*** *of the way in which they discharge their parliamentary duties"* . [51]

4.33 It may be that the rules for disclosing interests have tended to become, in some members' minds, more a matter of internal perception and regulation than a part of the House's relationship with the public. Witnesses often spoke of their concern to let other peers 'know where I am coming from', particularly during debates. This is obviously of great importance. It is also true, as the Rt Hon Lord Mayhew of Twysden pointed out, that with televised proceedings and increased media coverage of Lords' debates, *"there is accountability to the public in the sense that they know what is going on"* .[52]

4.34 Nevertheless, other witnesses argued that more explicit steps were required to reassure the public. For some peers, this was bound up with the concept of themselves as 'public servants': for example, the Rt Hon Lord Rodgers of Quarry Bank said: *"All members of the House*

[44] *Hansard* (HL) 22 November 1994, col 175.
[45] Day 3.
[46] Day 4.
[47] Day 6 (pm).
[48] Day 4.
[49] For example, Baroness Young of Old Scone (Day 6 (am)) and Earl Ferrers (Day 6 (pm)). As explained in para 4.9 above, there we re also some incidents in 1989.
[50] Day 6 (pm).
[51] The Griffiths Report, para 60(4) (emphasis added).
[52] Day 5 (am).

of Lords are parliamentarians ... in this capacity they are public servants" .[53] The emphasis on the duty owed to the public was reiterated by Lord Williams. [54] Earl Russell suggested that even though the House of Lords' procedures may produce *"very good answers, the trouble is that it does not persuade the public that justice is seen to be done"* .[55]

4.35 We suggest that a code of conduct provides just such a mechanism whereby those outside an institution - the wider public and the media - can judge how standards are met. The resolutions adopted by the House following the Griffiths Report constitute a form of code of conduct. They are available for public scrutiny inasmuch as the relevant paragraphs of the *Companion* [56] are on the House of Lords website and available in printed form. However, it would require quite detailed knowledge of procedure in the House of Lords to be able to find such paragraphs and recognise them for what they are.

4.36 As explained in Chapter 2, most public institutions have found it useful to make their Code of Conduct wide-ranging in its terms and accessible to the public by publishing a simple outline. The objective is to define principles and minimum standards, without becoming over-prescriptive. As Lord Simon put it:

> *I am in favour of codes of conduct that define territory but are not bureaucratic ... A code of conduct should give you principles by which you should operate, minimum standards you would like to see applied, but ... certainly a prescriptive document is not what is required.* [57]

The House of Commons Code of Conduct

4.37 Reference was made throughout the enquiry to the House of Commons *Code of Conduct* .[58] As noted in Chapter 2, this document, which is just over two pages long, incorporates the Seven Principles of Public Life and includes other aspects of conduct such as the ban on paid advocacy and compliance with the requirement to register interests. We reproduce the Code in Appendix E.

4.38 The Code is published with a Guide to the Rules which runs to 73 paragraphs. The operation of the rules is scrutinised by an Officer of the House, the Parliamentary Standards Commissioner, who reports to the House's Standards and Privileges Committee. The creation of the post of Parliamentary Standards Commissioner was one of the recommendations of our First Report. There has been a considerable increase in the Commissioner's workload over the past five years.

4.39 It is not the purpose of this report to review the operation of the Commons' conduct rules. We touched on aspects of this in *Reinforcing Standards* [59] and made several recommendations, some of which have been accepted by the Standards and Privileges Committee. Some of the evidence we received in the course of this enquiry did however suggest concerns about the volume and nature of the allegations that were being reported to the Parliamentary Commissioner and the Standards and Privileges Committee. The Chairman of that committee, the Rt Hon Robert Sheldon MP, himself told us *"[it] is a very complicated code. Our task is to try to simplify it"* . He went on to speak of his concerns about *"the tit-for-tat situation - people are now looking for ways of tripping up a member from the other side of the House".* [60]

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[53] Day 5 (am).
[54] Day 6 (pm).
[55] Day 1 (pm)
[56] See footnote 21 to this chapter.
[57] Day 6 (pm).
[58] *The Code of Conduct together with the Guide to the Rules relating to the Conduct of Members* , House of Commons, 1997
[59] *Reinforcing Standards* , chap 3.
[60] Day 6 (am).

4.40 He did, however, emphatically reiterate the important function of the Register (and thereby the Code). In answer to a question whether the Register existed for the benefit of the Members, the wider public, the media or all three, he said:

> *The public, undoubtedly, in my view, without question. It is the perception of high standards in Parliament. When I came in to Parliament ... people trusted each other ... people no longer have that sort of trust. The members themselves still have very high standards but that is not how it is perceived by the public and my task was to improve that perception.* [61]

4.41 This goes to the heart of the matter. Regrettable though the reduction in trust in public office holders may be, it is a common factor throughout public institutions and it is a perception that needs to be addressed. Although we accept the view of many of our witnesses that the public reputation of the Lords is high, we were persuaded by the view of those who urged that the same principles should apply to the Lords as to the Commons because members of both Houses are parliamentarians:

> Lord Blake: *"I have a clear view that the two Houses should be treated in the same way as regards Standards of Conduct. Differentiation would be incomprehensible to the public and impossible to defend".* [62]
>
> The Rt Hon Lord Richard: *"I think that people are entitled to have similar standards, objectivity and transparency from each House, because the obligation to be open arises from the fact that you are a legislative chamber and not from anything else".* [63]
>
> Baroness Jay: *"It is the first principles that we feel are applicable and should be applied to both Houses of Parliament".* [64]
>
> Member of the public: *"I think it not only appropriate but essential that the rules regarding conduct in the House of Commons should apply similarly to the House of Lords. Moreover they should be seen to do so as honesty and transparency in government is highly esteemed"* . [65]

4.42 We revert to the House of Lords' 1974 Sub-Committee report, quoted in paragraph 4.3 above, which spoke of both Houses *"[pursuing] the* **common** *aim of honest, wholesome government in which people can trust"* . [66] This, in our view, remains the key objective. There is no requirement on either House to achieve the objective by the same mechanism: what is required is that the same **principles** of conduct should be discernible by the public. We believe this would be best achieved by the House adopting a short Code of Conduct as recommended below. We go on in Chapter 5 to consider how the code might be applied in a way appropriate to the traditions and standing of the House of Lords.

R1. The House of Lords should adopt a short Code of Conduct.

[61] Ibid.
[62] Written evidence (19/24).
[63] Day 1 (am).
[64] Day 6 (pm).
[65] Written evidence of Pamela J. Kennedy (19/65).
[66] Unpublished report of Select Committee on Procedure of the House Sub-Committee on Registration of Interests (1974) para. 8 (emphasis added).

R2. **The Code should incorporate both the Seven Principles of Public Life and the principles adopted by the House of Lords in its 1995 Resolution, viz.**

1. **Members of the House should act always on their personal honour; and**
2. **Members should never accept any financial inducement or reward for exercising parliamentary influence**

R3. **The Code should also incorporate the principles which the House of Lords adopts concerning the registration of members' interests.**

DECLARATION AND REGISTRATION OF INTERESTS

5.1 Rules governing the declaration and registration of personal interests are central to any regulatory system designed to ensure high standards of propriety. In the present context, by *'registration'* we mean the recording of interests in the House of Lords Register of Interests, and by *'declaration'* we mean the disclosure of interests in the course of parliamentary proceedings and other circumstances where, in a communication, members of the House of Lords are using their influence as members of the House. [1]

5.2 Arrangements relating to the declaration and registration of interests have a direct bearing on the practical implementation of the Seven Principles of Public Life [2] - in particular, on the principles of Openness and Honesty. Effective disclosure of relevant interests also provides a mechanism for ensuring that the principles of Selflessness, Integrity and Accountability are being upheld.

5.3 One of the most important issues considered by the Committee has been whether the current rules in the House of Lords relating to the declaration and registration of interests are satisfactory as they stand or are capable of improvement.

Present rules on declaration and registration

Declaration

5.4 The practice in relation to the **declaration** of interests is based on a long-standing custom that members of the House of Lords speak on their personal honour and where a member has a **direct** pecuniary interest in a subject being debated in the House, he or she should declare it.

5.5 Subsequent guidance has extended the rule to include interests other than direct pecuniary interests. In the 1974 Report of the Lords' Sub-Committee on Registration of Interests, the Sub-Committee took the view that the original rule, limited to direct pecuniary interests, *"[did] not go far enough"* .[3] The report stated:

> *the Sub-Committee are aware of many indirect or non-pecuniary interests which may act as a profound influence, e.g. hospitality received, gifts in kind, membership of an interested organisation, the promotion of a relation's interest, or assistance to a friend. A Peer's audience should know as much about these interests, if they influence his speech, as they should know about a small number of shares which he holds in a company concerned in the subject under discussion.* [4]

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[1] The Select Committee on Procedure of the House Sub-Committee on Registration of Interests, in its (unpublished) 1974 Report , took the view - from which this Committee does not dissent - that declaration is not only relevant to proceedings in Parliament but also, for example, to a meeting with a Minister which a member of the House of Lords is able to obtain by virtue of that membership (para 12). Under the present Resolutions governing the House of Lords, the rule on declaration is described as applying additionally *"where Lords are using their influence as a member of the House in a communication with a Minister, Government department, local authority or other public body outside the House"* . The extension of conduct rules to meetings between Ministers and Members of Parliament was recently raised in a report by the House of Commons Standards and Privileges Committee (published on 11 July 2000), in which it was recommended that the ban on paid advocacy should cover such meetings (*Fifteenth Report of the Committee on Standards and Privileges* , 710 (1999-2000), p ix, paras 25-26).

[2] These are set out in full in the inside front cover of this report.

[3] 1974 Report, para 15.

5.6 The 1974 Sub-Committee suggested that the House of Lords *Companion to the Standing Orders* should be redrafted to include the following statement:

> *If a Peer has a direct pecuniary interest in a subject on which he speaks he should declare it, and he should declare any kind of interest of which his audience should be aware in order to form a balanced judgement of his argument. Such interests may be indirect or non-pecuniary, e.g. the interest of a relation or friend, hospitality or gifts received, trusteeship, unpaid membership of an interested organisation etc., and they may include past and future interests.* [5]

5.7 No action was taken by the Procedure Committee on the Sub-Committee's report and, as noted in paragraph 4.8 above, it was never published or debated. In 1990, however, the Procedure Committee again considered the practice of the House in relation to interests and, following its report, [6] the guidance on the declaration of interests was revised and the rule extended to include indirect and non-pecuniary interests as well as direct pecuniary interests. These revisions closely followed the recommendation of the 1974 Report quoted in the paragraph above. The current Resolutions (adopted in 1995 on the recommendation of the Griffiths Report) [7] have retained the broad scope of the declaration rules:

> *Lords who have a direct financial interest in a subject on which they speak should declare it, making clear that it is a financial interest. They should also declare any non-financial interest of which their audience should be aware in order to form a balanced judgment of their arguments. Such interest may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or unpaid membership of an interested organisation, and they may include past and future interests.* [8]

5.8 It is of interest to note that whereas paragraph 15 of the 1974 Report (quoted in paragraph 5.5 above) stated that many indirect or non-pecuniary interests *"may act as a profound influence"* and should be declared to a peer's audience *"if they influence his speech"*, this language about potential and actual influence was omitted from the recommendation finally made by the 1974 Sub-Committee and from the formula adopted in 1990 and 1995.

5.9 The conclusion which may legitimately be drawn from this is that in the case of the indirect and non-pecuniary interests mentioned, it was thought to be vain to invite enquiry in an individual case into whether any such interest had the potential to exercise *"a profound influence"* or did in fact influence what the speaker said in the House. Instead, the test adopted has been: is the interest of such a character that the peer's audience needs to be aware of it in order to form a balanced judgement of the arguments advanced? This approach contemplates the possibility that a peer might have an indirect or non-pecuniary interest (such as, say, being an unpaid office-holder in an 'interested organisation') where the peer would say: *"This office has absolutely no effect on anything which I say in this debate or on how I vote"*, but where none the less the audience

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[5] 1974 Report, para 23.

[6] The relevant extract of the 1990 report is set out in Appendix C to this report.

[7] The Resolutions were adopted on 7 November 1995.

[8] The relevant Resolution is set out in full in Appendix D to this report.

(including those who have access to the record) needs to be put into the position of being made aware of this interest so that not only the listening peers but also other persons outside the House can themselves form *"a balanced judgement"* about the motivation of the speaker.

Registration

5.10 Rules relating to the *registration* of interests are relatively recent. They are the result of the recommendations of the Griffiths Committee and they were adopted in November 1995.

5.11 The 1974 Sub-Committee considered the arguments for and against a register and concluded that they did not *"feel able to advise that a register should or should not be adopted, and that this is a decision which must be left in the first place to the Procedure Committee and ultimately to the House."* [9] However, they took the view that *"in terms of practical necessity"*, the case for a register had not been proved. They gave the following reasons:

- the present practice had worked satisfactorily without one;
- a register would be difficult to operate and keep up to date;
- its contents would be liable to misuse;
- its purpose would be easily avoided by anyone who wished to do so. [10]

5.12 The 1974 Sub-Committee also cited the 'involuntary' character (in most cases) of membership of the House of Lords:

> *To what extent a register is an invasion of privacy is hard to say, and as the Commons have demonstrated this may be the necessary price for being a legislator. But in a House where many Peers are not members by choice it could be undesirable to require them to reveal private financial concerns in a general register and not to leave them the alternative of remaining silent in a debate and thus remaining silent about the interest.* [11]

5.13 The Sub-Committee rejected the argument that the Lords should necessarily follow the practice of the House of Commons in introducing a register of interests:

> *So the question is this: do the practical difficulties of a register and the differences between the two Houses of Parliament outweigh the possible political desirability of a register and the need for the two Houses to keep in step? The Sub-Committee on the whole believe this to be the case, but they recognise that the decision is one for the judgement of the whole House.* [12]

5.14 The Griffiths Committee, in 1995, reviewed the case for and against introducing a register of interests. Whilst appreciating the force of the arguments against such a development, the Committee took the view that *"the time has come when the House should*

[9] 1974 Report, para 24.
[10] Ibid., para 24.
[11] Ibid., para 33.
[12] Ibid., para 34.

have a register" .[13] It did not, however, favour a comprehensive, mandatory register, on the grounds that:

> *for those members who attend the House infrequently, the burden of compliance with comprehensive registration requirements, and the consequential invasion of privacy, would not be counterbalanced by any comparable benefit to the public interest.* [14]

5.15 The Griffiths Committee drew a distinction between, on the one hand, parliamentary consultancies and financial interests in firms engaged in lobbying and, on the other, all other relevant interests. Whereas the view was taken that the latter should be registrable on a discretionary basis, the former were *"directly relevant to the manner in which Lords discharge their Parliamentary duties"* and should be subject to a mandatory registration requirement. The Committee therefore recommended that the Register of Lords' Interests should have three categories, two 'mandatory' and one 'discretionary':

- *Consultancies or similar arrangements, involving payment or other incentive or reward for providing parliamentary advice or services* [mandatory].
- *Financial interests in businesses involved in parliamentary lobbying on behalf of clients* [mandatory].
- *Other particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties* [discretionary].

5.16 This recommendation was embodied in a Resolution of the House of Lords in November 1995 which remains in effect. [15]

5.17 In addition to the rules on declaration of interests, this chapter will focus on category (3) of the Register. (Categories (1) and (2) are considered in the following chapter, Chapter 6, on lobbying and the ban on paid advocacy.)

Relationship between declaration and registration of interests

5.18 The Committee heard different opinions about the relative importance of declaration and registration. For example, the 1974 Sub-Committee took the view that: *"Registration can ... be contemplated as a supplement to declaration but not as an alternative to it"* .[16] This view was endorsed by the Griffiths Committee: *"registration should be supplementary to declaration"* .[17]

5.19 Mr Michael Davies, the Clerk of the Parliaments, took a similar view in his evidence to us:

> *Declaration of interest is in my opinion a more valuable safeguard than registration. The Register is inevitably a resource of last resort for ensuring compliance with the Resolution of the House.* [18]

[13] The Griffiths Report, para 44.
[14] Ibid., para 44.
[15] The relevant Resolution is set out in full in Appendix D to this Report.
[16] 1974 Report, para 9.
[17] The Griffiths Report, para 48.
[18] Day 2 (am) (quoted).

And the Rt Hon Lord Wakeham told us that *"the most important thing is a declaration of interest at the time of debate"* .[19]

5.20 Other witnesses, by contrast, argued that declaration and registration fulfilled different functions: whereas declaration is essentially inwardly focused, registration informs the external audience. For example, Lord Flowers said:

> *I am fairly content with the arrangements we have in the Lords already, for internal purposes. Each peer needs to know, when he listens to another peer speaking, whether or not there are hidden interests. On the whole, I think we deal with that fairly well. But I think that arrangement breaks down when one asks the public what they think.* [20]

And Baroness Young of Old Scone said:

> *There are a number of problems with declaration. It gives nobody any advance notice of where one is coming from ... It is useful to have a public record so that people can judge at times other than when we are standing on our feet, because we take part in a range of activities that do not involve formally recorded speeches.* [21]

5.21 Peter Riddell argued that registration was necessary because not every member of the House of Lords who participated in a vote would have had occasion to declare his or her interests prior to the vote: *"The point about declaring in speeches is all very well, but ... what matters as much is votes, and there you have to have a register"* .[22]

Purpose of declaration and registration of interests

Purpose of disclosure of interests

5.22 Disclosure of interests - whether by declaration or registration - can be said to serve two broad purposes:

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

5.23 In the 1974 Report, emphasis is placed on the second of these purposes:

> *It is well recognised that many declarations of interest are given not as an apology for speaking, but in order to demonstrate the speaker's qualifications, and in these circumstances the only important condition for speaking is that the House should know the standpoint from which they are being addressed so that they are able to make a fair assessment of the Peer's argument.* [23]

5.24 Lord Marlesford, in his evidence to us, took a similar view: *"The value of declaration of interest is not just to prevent concealment but to emphasise the focus of views expressed"* .[24]

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[19] Day 4.
[20] Day 3.
[21] Day 6 (am).
[22] Day 5 (am).
[23] 1974 Report, para 5.
[24] Day 2 (pm).

Difference between declaration and registration of interests

5.25 The 1995 Resolution governing **declaration** describes the purpose of declaration in a way which encompasses both the elements identified above: members of the Lords are required to declare those interests *"of which their audience should be aware in order to form a balanced judgement of their arguments"* .

5.26 Declaration, when made in the course of parliamentary proceedings, is oral and, by its nature, transitory and ad hoc. It informs those participating in, or observing, proceedings in the House [25] and the content of the declaration will be specific to the subject of debate.

5.27 It is self-evident that a declaration in Parliament can only be made by those who speak in proceedings and that members of the Lords who vote but do not speak cannot fall within the scope of the rules on declaration. It is interesting to note that prior to the 1995 Resolution on declaration, the House of Lords' guidance advised that:

> *If a Lord wishes to vote on a subject in which he has an interest that is direct, pecuniary and shared by few others, it is better that he should first have spoken in the debate so that his interest may be openly declared.* [26]

The Griffiths Report recommended, on practical grounds, that this advice should be discontinued:

> *While we support the principle underlying this, we do not recommend retaining this guidance in this form, because it will not always be practical for all Lords in this position to take part in a debate before voting.* [27]

We agree with the view of the Griffiths Committee.

5.28 **Registration**, in contrast to declaration, provides a consolidated public record of interests, available to members of the public and to the media. Under the present rubric of the voluntary part of the Register (category (3)), members are invited to register *"particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their parliamentary duties"* . Members therefore are required to make a judgement about which interests are sufficiently significant as to warrant including in a standing register (if they choose to make an entry under category (3)), that significance being determined by reference to what members *"consider"* (possibly 'speculate' would be a more appropriate word) would be the public perception of their conduct as legislators.

5.29 Unlike declared interests, registered interests will tend to be more general because a declaration of interest will be made in response to a specific issue before the House. The need to make a declaration may arise quite suddenly in the course of debate: as where, for example, an earlier speaker raises some new - possibly unexpected - point which a following speaker thinks that he can support or destroy (as the case may be) but needs to declare a relevant interest.

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[25] And those who have access to the record.

[26] See para 5 of the Griffiths Report where the guidance, of which this is an extract, is set out.

[27] The Griffiths Report, p 9, para 29.

Key issues

5.30 The Committee has considered whether the present rules governing declaration and registration in the House of Lords are satisfactory, both in their practical operation and in the context of a developing culture of transparency and accountability throughout public life.

Declaration

5.31 The Leader of the Opposition, the Rt Hon Lord Strathclyde, described the rule on the mandatory declaration of interests as *"enormously powerful and strong ... a tough regime"*.[28] We received few adverse comments about the declaration rules, save that it was said that on occasions the extent of declaration could be distracting and time-consuming.[29] This latter issue is a procedural rather than a standards issue and a matter for the House itself. We make no recommendations for changes to the guidance on declaration of interests.

Registration

5.32 As regards registration and in particular the voluntary element (category (3)) of the Register, the key issue is whether that element should be mandatory and, if so, what sort of interests members of the House of Lords should be required to register.

Whether the Register should be mandatory or voluntary

5.33 We received evidence both for and against making category (3) a mandatory category.

Arguments for maintaining a voluntary register

5.34 The following arguments were advanced in favour of maintaining the current voluntary status of the Register:

> **(a) The current Register works well: there have been no complaints under the present system.**

The current Register has been in effect since 1995 and no references have been made to the Sub-Committee on Lords' Interests alleging that an individual member of the House has breached the terms of the Resolution on declaration or registration.

> **(b) Given that members of the House of Lords are unsalaried and, therefore, part-time, it would be unduly burdensome and intrusive to require members - some of whom may only attend very infrequently - to participate in a comprehensive register of interests.**

The Griffiths Committee found this argument persuasive when it was considering whether there should be a mandatory register.[30] The Rt Hon Lord Strathclyde, the Leader of the

[28] Day 5 (pm).

[29] Lord Craig of Radley GCB OBE, Convenor of the Cross-Benches, for example, said: *"I think personally ... that if you could skip the declaration of interest at the beginning of each speech, it would speed things up"* (Day 1 (pm)).

[30] The Griffiths Report, para 44.

Opposition in the House of Lords, made a similar point in his written evidence:

> *Peers are not professional politicians, prepared to put personal ambition or membership in the House before all else. For most, membership of the House is a part-time duty, additional to other professional work. Many value their privacy for no reason more sinister than a reasonable belief that their personal affairs - and the private affairs of other citizens - are entirely that.* [31]

(c) Some members of the House of Lords will be deterred from participating in the House of Lords proceedings at all if required to register their interests, and, similarly, some potential candidates for peerages will be deterred from accepting a peerage.

Lord Strathclyde told us that he was aware that *"some existing members of the House - not many"* would not wish to continue in the House if the rules on the registration of interests were to change. Lord Griffiths recalled that this had been an issue in 1995 as well (see paragraph 4.18 above). [32]

(d) A mandatory register would make members less vigilant as regards the requirement to declare.

This argument was advanced by Lord Strathclyde. He took the view that *"a written register might well tempt peers to forget about giving a declaration during the course of the debate"*.[33] Lord Wakeham agreed that a mandatory register could create such a risk: as to whether a peer ought to declare an interest, he said, *"If it is all registered, one would not necessarily think so carefully about it."* [34]

(e) There is no enforcement mechanism for ensuring that members act in accordance with a mandatory register.

The 1974 Sub-Committee drew attention in its report to a significant distinction between the House of Commons and the House of Lords: the Commons, unlike the Lords, has power over its members to the point of expulsion whereas *"the scope for disciplining a recalcitrant peer is small"*.[35] The Sub-Committee took the view that this difference between the two Houses was *"of the first importance"* and fundamental to the argument against a compulsory register. The Clerk of the Parliaments, in his evidence to us, said that the absence of sanctions remained *"a fundamental difficulty"*.[36]

[31] Written evidence (19/68).
[32] Day 2 (pm).
[33] Day 5 (pm).
[34] Day 4.
[35] 1974 Report, para 28.6.
[36] Day 2 (am).

(f) A mandatory register might encourage the development in the Lords of the concerns which now are alleged to exist or are perceived to exist in the House of Commons. These include extensive guidance on the operation of the Register and the making of politically-motivated 'tit-for-tat' allegations of failure to register.

The Chairman of the House of Commons Standards and Privileges Committee, the Rt Hon Robert Sheldon MP, expressed to us his concern about what he described as the *"tit-for-tat situation"* in the Commons. He said:

> *People are now looking for ways of tripping up a Member from the other side of the House. This is becoming serious ... What we are now seeing is trivial matters being put forward, some of which meet the requirements of the rules and some of which are doubtful.* [37]

Sir Archibald Hamilton MP said that he thought the Commons' regime was *"getting very intrusive"*.[38] He urged that this Committee should *"not put their lordships in the same straitjacket which we [Members of Parliament] put ourselves in"*.[39] Lord Strathclyde tentatively sounded a similar warning:

> *We do not presume to comment on internal affairs of the House of Commons, but note reports of some cross-party concerns over whether the present disciplinary system in that House is, in fact, working sensibly, or becoming excessively intrusive. If those concerns were widespread or substantiated, they would themselves argue against replication of the Commons' arrangements in the Lords.* [40]

Arguments for recommending that the Register should be mandatory

5.35 The following counter-arguments were advanced:

(a) There is a growing culture, and public expectation, of openness in public life; the House of Lords is a vital part of public life and its members perform an important and influential public function.

The 1974 Sub-Committee acknowledged that it was important *"that the procedures of the House should be accepted as open and honest by the public as well as by Peers"*.[41] Speaking in the House of Lords, the Leader of the House, the Rt Hon Baroness Jay of Paddington, has also commented on the need for openness:

> *this place is a working House of Parliament ... It is right that we should be open about those matters which might affect or, it is true, be thought to affect the way in which we conduct ourselves.* [42]

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[37] Day 6 (am).
[38] Day 3.
[39] Day 3.
[40] Written evidence (19/68).
[41] 1974 Report, para 25.
[42] *Hansard* (HL) 10 May 2000, col 1709.

Baroness Hilton of Eggardon in evidence to us expressed the same thought:

> *... one has a responsibility, if you are in the public world, to undertake certain responsibilities including revealing sources of your income.* [43]

(b) The House of Lords is one element of a bicameral legislature and, as such, should adopt principles of openness similar to those of its legislative partner and other public bodies.

A number of witnesses urged the view that the same principles governing standards of conduct should be applied in the two chambers. Comments about this issue by some of those witnesses are set out in paragraph 4.41 above.

The Griffiths Committee also recognised the force of this argument:

> *The public may not readily understand why the House of Lords, given its parallel responsibilities for legislation and other aspects of the democratic processes of Parliament, should assume that any lesser safeguard is appropriate.* [44]

(c) The very fact that the House of Lords is unsalaried reinforces the need for a register of interests since there is a greater likelihood that members will have substantial outside interests.

This is the counter-argument to the argument for maintaining a voluntary register set out in paragraph 5.34(b) above. It was put by a number of witnesses. For example, Earl Russell took the view that the fact that members of the House of Lords will normally have other sources of income arguably made a case for more regulation rather than less. [45]

Similarly, the Rt Hon Lord Rodgers of Quarry Bank said: *"If more members of the House of Lords rely on outside interests to pay their way, there is a strong reason for being wary of the possibility of conflict"* .[46]

(d) It would overcome to some extent the problem of voting with an undeclared interest.

In the 1974 Report it was suggested that the *"major"* practical advantage of a register was that it overcame *"the problem of voting with an undeclared interest"* .[47] We have already indicated that we share the view of the Griffiths Committee that this 'problem' cannot, for practical reasons, be surmounted by requiring peers with relevant interests to speak (and therefore be given an opportunity to declare) on any occasion on which they wished to vote.

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[43] Day 1 (pm).
[44] The Griffiths Report, p 13, para 43.
[45] Day 1 (pm).
[46] Day 5 (am).
[47] 1974 Report, para 26.

A register would, of course, only meet the problem part way. This is because registrable and declarable interests are not always of the same character: there will be occasions on which a member votes on an issue about which he or she has a declarable interest (had that member spoken in the preceding debate), but the interest is not one which he or she would have been expected to register (see paragraph 5.27 above).

(e) It would remove the inconsistency and uncertainty created by the present Register where the absence of an entry can be construed as either an absence of interests or a decision not to disclose relevant interests.

The Clerk of the Parliaments' Foreword to the 2000 edition of the House of Lords' Register makes clear that the absence of an entry in the Register cannot be a basis for speculating about a peer's interests:

> *The absence of a declaration [in the Register] does not indicate the absence of any outside interest. For the same reason, the absence of an entry for a member with well-known interests is not a 'failure to declare', but a legitimate choice exercised by that member.*

Baroness Young of Old Scone found this situation unsatisfactory:

> *Nobody knows from reading the Register whether one has nothing to disclose, chosen to exercise one's discretion not to disclose, forgotten to register or misunderstood the principles of registering.* [48]

(f) It would provide a protection for members of the Lords.

Contrary to the view that a mandatory register would be an unwarranted intrusion, the argument was put to us that the register would protect members of the Lords and, indeed, the reputation of the institution itself, from allegations of secretiveness. For example, Lord Newby said:

> *We feel that we should be happier if there were disclosure, so that people could not make allegations about peers or generally insinuate that the House of Lords was a rather secretive place.* [49]

5.36 As we have already noted (in paragraphs 4.5 and 5.12 above), an argument against a mandatory register which was identified by the 1974 Sub-Committee was that many peers - the hereditary element of the House - were members of the House 'involuntarily'. This is no longer true. The House of Lords Act 1999 has removed all but 92 of the hereditary peers (and, of those 92, 90 have with their full consent been elected from their own political party or cross-bench group). [50]

5.37 The Committee has considered the countervailing arguments set out above with care. We have concluded that the balance is strongly in favour of a fully mandatory register. We

[48] Day 6 (am).
[49] Day 4.
[50] See paras 3.15 and 3.16 above.

take this view principally on the ground that the House of Lords, as a vital institution in public life (and one in which the public at large and the media are likely to show a growing interest), should adopt rules requiring greater transparency in order to reassure those outside the House that the highest standards of conduct are being maintained within.

5.38 We find unconvincing the argument that the absence of complaints demonstrates that the current system is working well: not only is a voluntary system unlikely, by its nature, to generate many complaints but, in our view, the absence of complaints does not preclude the possibility that the system is capable of improvement.

5.39 We have no firm evidence about whether or how many members might be deterred by a mandatory register. In contrast to Lord Strathclyde's evidence, the Rt Hon Lord Williams of Mostyn, the Attorney General, said that he knew of no member who would be deterred (although he speculated that there might be *"one or two"*).[51] We have already noted (in paragraph 3.9) that peers who do not wish to attend the House may apply for Leave of Absence: those, therefore, who hold very strong views against complying with a mandatory register and, on that ground do not wish to attend the House, have that option available to them.

5.40 As for the risk that the House of Lords system might be exposed to the mischief of 'tit-for-tat' allegations, we believe that measures could be taken by the House to reduce the likelihood of such a development. We consider what these measures might be in Chapter 7 below. In the same chapter, we also consider the question of sanctions. We shall not therefore deal with the issue here, save to make the following points: first, that the rules on declaration and categories (1) and (2) of the Register have been mandatory for five years without any problems having arisen and, secondly, that the weight of the evidence we received was that the informal sanction of 'naming and shaming' is likely to be an effective one.

R4. The registration of all relevant interests should be made mandatory.

The content of the mandatory register

5.41 The Committee is aware that the issues relating to the content of a mandatory register are likely to be at least as contentious as the debate on whether or not the register should be mandatory or voluntary.

The importance of 'proportionality'

5.42 In Chapter 2, we emphasised the importance of 'proportionality' in drawing up rules for conduct.[52] As we have said already, in Chapter 4, during this enquiry we have considered the relevance of the *Code of Conduct and Guidance* for the House of Commons. In that context our attention was drawn to the increasing detail of the Commons' rules. Although we believe that the same *general principles* of conduct should be applied in both Houses of Parliament, we do not think that those principles need to be applied by the same mechanisms. In particular, we do not believe that it would be proportionate to suggest that the detail of the Commons' Register is, currently, necessary in the House of Lords.

[51] Day 6 (pm).
[52] Para 2.3.

5.43 The Rt Hon Lord Richard, former Leader of the House of Lords, shared this view. He said:

> *I think that the House of Commons has probably gone a bit too far ... To try and import something as draconian as that into a chamber whose ethos, in a sense, is based on self-regulation and personal honour would not fit.* [53]

5.44 Peter Riddell took a similar line:

> *If you required the same type of financial disclosure as in the Commons, it would deter people ... If everyone is supposed to behave with honour, I cannot see what the objection is to having a looser form of compulsory registration, provided that the requirements of the registration fit the nature of the House as it is, and, as I say, that should be different from the Commons.* [54]

5.45 The present Parliamentary Commissioner for Standards, Ms Elizabeth Filkin, agreed that the extensive guidance governing the House of Commons' Register would not necessarily be needed in the House of Lords.

The test and guidance

5.46 The current test set out in the rubric of category (3) of the Lords' Register is that members should register particulars relating to matters *"which they consider may affect the public perception of the way in which they discharge their Parliamentary duties"*. We received evidence suggesting that this rubric has caused some uncertainty. Lord Plant, for example, told us that the third category *"is, in my judgement, far too vague"*.[55] Lord Tugendhat said: *"Perhaps this is an example of misunderstanding but I have interpreted the interests that I should declare as being those from which I derive earnings"*.[56] Baroness Turner favoured more guidance: *"I think that there is a need to have some very clear guidance, particularly for new peers, about what one should or should not register,"* [57] and Lord Dubs, when asked about the same issue, said: *"If it is left to individual peers to decide, the danger is that we might all behave differently from the best of motives"*.[58]

5.47 However, bearing in mind our concern about 'proportionality', the category (3) test is appealing in its simplicity. We also believe that its focus on *"public perception"* is right. Furthermore, retaining the test accords with our view that it is best to build on the firm foundation of the existing conduct rules.

5.48 We have one significant reservation, however, about the current category (3) test, and this concerns its subjectivity: whether an interest falls within the scope of category (3) is determined by whether or not it is an interest which *the member considers* may affect the public perception. The element of subjectivity has the effect of making the category (3) test a very loose and uncertain one. We believe that it should be amended so that it is a more objective test, measured against what could *reasonably be thought* to affect public perception. If this proposal were accepted, the rubric of category (3) would require the registration of *"other particulars relating to matters which may reasonably be thought to affect the public perception of the way in which they discharge their Parliamentary duties."*

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[53] Day 1 (am).
[54] Day 5 (am).
[55] Day 3.
[56] Day 4.
[57] Day 3.
[58] Day 3.

5.49 In addition, we recommend that the general (category (3)) test should be supplemented by brief written guidance. The purpose of the guidance would be, *inter alia*, to list those interests which the House has decided are unequivocally registrable. It would be a matter for a member's discretion to decide whether to register a non-listed interest, applying the general test (and, if necessary assisted by guidance from the Clerk of the Parliaments and the Registrar).

The range of registrable interests: financial and non-financial

5.50 We now turn to the issue of what the list of clearly registrable interests might include. We begin by considering whether members of the Lords should be required to register financial interests only or both financial and non-financial interests. Some witnesses took the view that if non-financial interests were registered there would be a risk that members would clutter the Register with too much information. For example, Lord Dubs said:

> *What concerns me is that there is a pressure now to register every tiny voluntary organisation, trustee body on which one serves. The Register is devalued if one dilutes it in this way.* [59]

5.51 Others thought non-financial interests were relevant on the ground that they gave a more complete picture of the standpoint of a member. We found this argument more persuasive. As we have already said, [60] in our view, the purpose of the Register is two-fold. It enables a member of the Lords (1) to disclose personal interests which might be perceived as influential and (2) to demonstrate his or her source of expertise. This two-fold purpose would not be served if the Register were confined to financial interests only.

5.52 In order to ensure that only those non-financial interests which are relevant are registered, we suggest that, first, the guidance should clearly set out the two-fold purpose of the Register as regards non-financial interests . Secondly, on the specific issue of participation in voluntary organisations, we suggest that the guidance should state that although most [61] office-holders (including trustees) in voluntary organisations would be expected to register their interest in that organisation, those who are simply members of a voluntary organisation should consider carefully, before registering their membership, whether it does in fact constitute an interest which falls within the (revised) rubric of category (3). Although in some cases membership will be strongly indicative of a peer's position on an issue, we imagine that often it will not be necessary to register simple membership.

5.53 We believe that this approach to the **registration** of interests in voluntary organisations reflects our commitment to the principle of proportionality. We are aware that the guidance on **declaration** of interests (set out in the 1995 Resolutions and quoted in paragraph 5.7 above) refers to a range of declarable interests including *"unpaid membership of an interested organisation"* . Our suggestion that it may not always be appropriate to register simple membership is not intended to derogate from that guidance.

5.54 In order to make the Register more easily understood, we suggest as a practical measure that the Register should be laid out in a format which distinguishes between financial and non-financial interests.

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[59] Day 3.

[60] See para 5.22 above.

[61] We envisage that there will be some circumstances in which it would not be necessary to register an office held in a voluntary organisation. For example, the organisation may be a local group and unlikely to be relevant to any parliamentary proceedings.

The list of interests which are clearly registrable

5.55 The detailed task of framing the list of those interests which are clearly registrable is, of course, a matter for the House of Lords itself to determine (assuming that it elects to adopt a mandatory register). Bearing in mind the general test proposed above, we would expect the list to include all significant financial interests (for example, remunerated directorships, remunerated employment, shareholdings amounting to a controlling interest, other significant shareholdings and substantial landholdings) [62] and, as we have mentioned above, relevant interests in voluntary organisations. We would not expect occasional income from remunerated speeches, lecturing and journalism to be registered.

5.56 A particular concern raised in the evidence we received was whether hospitality in the form of costs-paid overseas visits should be registered. Baroness Turner, for example, told us that she had not been sure whether she should register a visit to Gibraltar which had been at the invitation of the Gibraltar Government. She was advised by the Registrar that she should not. [63] In evidence, Lord Dubs referred to a visit to the United States to examine energy policy when he was on the Opposition benches. He thought that it was important that such visits should be disclosed because *"overseas visits are seen by the public as a great freebie, even if they involve hard work"* .[64] Lord Walton, however, suggested that not all overseas travel should be registered:

> *I was invited to give two guest lectures on neurology in Venezuela and to open a new Neurological Research Unit there. My hosts paid my travel and that of my wife, as well as paid for my accommodation. The benefit was, thereby, considerable, but it had no conceivable relevance to my work in the House of Lords.* [65]

5.57 Our general view is that hospitality and gifts which are received by a peer for a reason unconnected with his or her membership of the House of Lords should not normally be registered. On the specific issue of costs-paid travel, therefore, we suggest that costs-paid visits which are associated with a peer's parliamentary activities should be registered and those which are not so associated should not normally be registered.

5.58 In the House of Commons, MPs are not required to disclose the amount of outside income earned (unless derived from an employment agreement *"which involves the provision of services in his capacity as Member of Parliament"* .[66] We see no grounds on which to distinguish the House of Lords in regard to this issue. We, therefore, recommend that members of the Lords should not be required to disclose how much they earn from their outside interests (save, as we state in paragraphs 6.41 and 6.42 below, the income derived from parliamentary consultancies registrable under category (1) of the Register).

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[62] In the Foreword by the Clerk of the Parliaments to the 2000 edition of the Lords' Register, it is indicated that, if asked, Clerks advise peers that it is recommended that they should not register shareholdings, although they may wish to indicate a controlling interest in a company.

[63] Day 3.

[64] Day 3.

[65] Day 2 (pm).

[66] *The Guide to the Rules Relating to the Conduct of Members* , p 14, para 34.

R5. **The test of 'relevant interest' for registration under category (3) should be whether the interest may reasonably be thought to affect the public perception of the way in which a member of the House of Lords discharges his or her parliamentary duties.**

R6. **Category (3) should cover both financial and non-financial interests and such interests should be distinguished in the lay-out of the Register.**

R7. **The Register should be supplemented by brief written guidance setting out a list of those interests which clearly fall within the test of 'relevant interest'.**

R8. **A member of the House of Lords who registers a relevant financial interest under category (3) should not be required to disclose in the Register the remuneration derived from that interest.**

Treating members of the House of Lords equally

5.59 The House of Lords is comprised of a number of distinct (although in some instances overlapping) groupings:

- Lords of Appeal [67]
- Lords Spiritual
- Ministers
- Opposition spokesmen and women
- back-benchers
- elected hereditary peers
- life peers
- members taking the whip of one of the political parties
- cross-bench (and other politically unaffiliated) members.

[67] The Lords of Appeal include a number of sub-categories: (1) the Lords of Appeal in Ordinary (the 'Law Lords'), (2) retired Law Lords and other Lords of Appeal who are eligible to hear appeals and (3) retired Law Lords and other Lords of Appeal who, having attained the age of 75, are no longer eligible to hear appeals.

5.60 Given the purpose underlying disclosure of interests, it seems reasonable to us that there should be a presumption that all members of the House of Lords should be subject to the same set of rules governing disclosure, unless an overriding reason to the contrary can be found. On this premise, we considered whether there was any justification for exempting any category of peer from the requirement to register relevant interests. We could find no convincing arguments for making any such distinction. We concur with the view of Lord Williams of Mostyn that no exceptions should be made [68] and we agree with Lord Strathclyde, who said:

> *I am a believer in the equality of peers and the only inequality that currently existed, which obviously should continue, is that between Ministers and non-Ministers ... All other peers should be treated the same, whether they are bishops, Law Lords or the rest of the peerage.* [69]

5.61 We envisaged that the position of the Lords of Appeal might require special consideration since the rules relating to them in their capacity as members of the House of Lords could possibly have some bearing on their activities as members of the judiciary and have a wider implication for the judiciary as a whole. We were also aware that in 1995, when the voluntary register was introduced in the House of Lords, the Lords of Appeal in Ordinary took a collective decision not to participate in the voluntary Register. [70] However, the Senior Law Lord, the Rt Hon Lord Bingham of Cornhill, told us that, subject to the specific requirements of a mandatory register, such a register would be unlikely to cause the Lords of Appeal in Ordinary any difficulties:

> *Our final response to any recommendations made by the Committee would of course depend on its content. We would, however, envisage that any rule accepted by the House as binding on its members should be accepted as binding upon us in our capacity as members of the House.* [71]

5.62 We received no collective view from the Lords Spiritual. The Bishop of Portsmouth, however, told us: *"I would not have any difficulty with a mandatory register, provided it does not get out of hand"* [72] and the Bishop of Guildford wrote:

> *I think that it would be a good idea for all of us to have to register the Boards and Bodies on which we sit and serve and for these to be publicly known, so that when we speak in the Lords on matters affecting their areas of interest, there can be no doubt about the connections to be made.* [73]

The Bishop of Wakefield, whilst not arguing for an exemption, stressed the importance of proportionality:

> *for members of the House of Lords, Bishops particularly, the registration of all travel, gifts as well as perhaps the need to register all the organisations or bodies of which*

[68] Day 6 (pm).

[69] Day 5 (pm).

[70] Day 5 (pm).

[71] Written evidence (19/74). In making this statement, Lord Bingham was expressing the collective view of the Lords of Appeal in Ordinary (see fn 67 above). Lord Bingham made a similar point in oral evidence: *"one has a constitutional reluctance to sign a blank cheque and, therefore, until one knows what is proposed one does not give unreserved assent to it. But ... I cannot imagine that this Committee would propose or that the House would accept any rule that would be one that we could not happily comply with if we had to."*

[72] Day 6 (pm).

[73] Written evidence (19/72).

they are Patrons, may be a significantly greater burden than their contribution to the House truly requires. [74]

R9. The mandatory register should apply to all members of the House of Lords.[75]

The Addison Rules

5.63 In our consultation paper, we referred to the specific rules - known as the Addison Rules - which concern members of the House of Lords who are members of a public board. The rules provide guidance in respect of the general rule that:

> *A Lord who is a member of a public board, whether commercial or non-commercial in character, is not by reason of such membership debarred from exercising his right to speak in the House of Lords, even on matters affecting the board of which he is a member; and it is recognised that, in the last resort, only the Lord concerned can himself decide whether he can properly speak on a particular occasion.*

5.64 Similarly, a peer who is employed by a public board or a nationalised undertaking is not debarred from speaking in the House on a subject which affects the board or undertaking; but whether a member or employee of a public board, any peer intervening in a debate relating to the board is expected to declare his or her interest.

5.65 The Clerk of the Parliaments explained the origin and purpose of the Addison Rules:

> *They were drafted after all at a time of nationalised industries where the chairmen or the board members of the nationalised industries might be members of the House of Lords. It was to make clear that the responsibility for nationalised industries rested with the Minister and the Government as a whole rather than with the board members to answer to Parliament. There are very few nationalised concerns left now, but clearly there are other public boards where the members and chairmen are members of the House of Lords.*

5.66 A small number of witnesses referred to the Addison Rules. The Deputy Leader of the Opposition in the House of Lords, the Rt Hon Lord Mackay of Ardbrecknish, for example, expressed his concern that members of the House of Lords who were also members of public boards should *"appreciate the distinction between taking part in a debate on the subject of the board and answering for the detailed work of the board"* .[76] Similarly, the Rt Hon Lord Jenkin of Roding wrote that he was not aware of the general rules on declaration and registration being misapplied *"other than the failure of some Peers recently appointed to public bodies to understand or observe the Addison Rules"* .[77]

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[74] Written evidence (19/81).

[75] Save those members of the House of Lords who have taken Leave of Absence.

[76] Day 5 (pm). Lord Mackay also provided a submission dealing with the Addison Rules (see Appendix 2 to the submission from the Leader of the Opposition in the House of Lords, the Rt Hon Lord Strathclyde (19/68)).

[77] Written evidence (19/62).

5.67 Whilst not wishing to diminish the validity of the concerns raised by witnesses about the application of the Addison Rules, in our view these rules are not principally to do with the maintenance of standards but, rather, they are about ensuring clear lines of Ministerial accountability. For this reason, we do not consider them further in this report.

Opposition spokesmen and women

5.68 In our consultation paper, we also raised the issue whether there should be specific parliamentary rules governing opposition spokesmen and women and their financial interests.[78] Since the issue affected both Houses of Parliament, we posed the following question: *"Should the rules governing members of either House of Parliament make specific provision in relation to those who are opposition spokesmen and women for the divestment (or otherwise) of financial interests similar to that contained in the Ministerial Code?"*

5.69 The Ministerial Code advises that:

> *In order to avoid the danger of an actual or perceived conflict of interest, Ministers should be guided in relation to their financial interests by a general principle that they should either dispose of any financial interest giving rise to the actual or perceived conflict or take alternative steps to prevent it.* [79]

5.70 In raising the issue, we acknowledged that there is a significant difference between the roles of Ministers, who have executive functions, and opposition spokesmen and women, who do not. We were also aware, however, that opposition spokesmen and women are able to exercise influence over parliamentary matters and over the wider political debate as a result of the positions they hold on the opposition front benches.

5.71 We received a great deal of evidence on this issue. The preponderance, by far, was against introducing any special new rule. For example, the Rt Hon Sir George Young, Shadow Leader of the House of Commons, said:

> *I would be concerned if access to our front bench was constrained in a way that was suggested because I think that would mean that some individuals who are at the moment prepared to serve on the front bench leave the party. They might not feel they were able to serve if that meant giving up all their outside interests, including the income that went along with them.* [80]

Lady Saltoun said:

> *Opposition spokespersons are not only unpaid volunteers for the most part, but they may change fairly frequently and the inconvenience and possible financial loss ... would be intolerable and likely to lead to difficulty in finding Peers willing to take on the job"*.[81]

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[78] See paras 3.29 to 3.33 of the Issues and Questions Paper, *Standards of Conduct in the House of Lords* . The issue was drawn to our attention by Mr Fraser Kemp MP. A copy of his letter, dated 14 February 2000, can be found on the CD-Rom in Vol 2 of this report..

[79] *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers* (July 1997), p 38, para 117.

[80] Day 5 (pm).

[81] Written evidence (19/16).

5.72 Baroness Turner of Camden, a former opposition spokeswoman, said that had she been told that she would have to divest herself of her financial interests *"I would not have continued on the front bench".* [82]

5.73 Lord Dixon-Smith thought that opposition front-bench spokesmen and women had *"a margin of more interest in their work from the point of view of future policy"* but, in terms of the need to make a living, he saw no distinction between them and other members of the House. [83]

5.74 Sir George Young Bt MP made a similar point:

> *we are much closer to Members of Parliament than to Ministers ... We do not have an executive role. We are not running the country.* [84]

He feared that restrictions on the permissible outside interests of those on the opposition front benches would reduce the effectiveness of the opposition by narrowing the pool of people from which those on the front benches could be drawn.

5.75 We conclude that there should be no change in the rules governing opposition spokesmen and women. Our decision is based on two points. First, as a matter of principle we do not see why a restriction which is no doubt necessary in the case of those with executive power, namely Ministers, should be extended to persons who have no executive power. Secondly, we are convinced that the proposed change is unworkable in practice, in particular because too many able men and women would be deterred from serving on opposition front benches.

R10. Rules on private financial interests akin to those in the Ministerial Code should not be applied to opposition spokesmen and women.

[82] Written evidence (19/34).
[83] Day 5 (am).
[84] Day 5 (pm).

Chapter 6

LOBBYING AND THE BAN ON PAID ADVOCACY

6.1 The question whether Members of Parliament should be permitted to act as paid parliamentary consultants, advisers and lobbyists for outside clients has been one of the central, recurring themes in the work of this Committee. The First Report described this issue as the *"greatest current concern about the independence of the House [of Commons]."* [1] In the light of allegations that a small number of MPs were failing to uphold the public interest, while holding consultancies, the Report recommended to that House a number of rule changes, with the intention of confirming that *"paid advocacy"* — promoting the interests of a client for a fee in the House — was prohibited. [2] The House made significant changes to its rules following the Report, although it took a different approach from the Committee on certain aspects. [3]

6.2 Another recommendation of the First Report, aimed at increasing transparency, was that the House should *"require agreements and remuneration relating to Parliamentary services to be disclosed"* .[4] The House agreed with this and resolved that Members should deposit with the Parliamentary Commissioner for Standards any such agreement, indicating, in a range of bands, the fees or benefits payable.

6.3 In our Sixth Report, published in January 2000, we concluded that the situation had improved in the House of Commons in the period since the implementation of the new rules. [5] The former Parliamentary Commissioner for Standards, Sir Gordon Downey, said in 1998: *"To the best of my knowledge the financial links with lobbyists have now been broken ... the spectre of cash for influence through this route has fallen away"* .[6]

6.4 Our Sixth Report also set out two principles which have governed, and continue to govern, our approach to this question:

> *In ... the First Report ... we were concerned to avoid a situation in which MPs could be presented as participating in 'a hiring fair'. We retain that concern. On the other hand, we are anxious that the rules should not unnecessarily inhibit the ability of MPs to become well informed and to use their expertise and experience effectively.* [7]

6.5 This chapter examines the present rules in the House of Lords in the light of these considerations, while taking into account the differences between the two Houses. We bear especially in mind the need for rules that are proportionate to the circumstances of the House. Few members of the House of Lords hold paid consultancies by which they provide parliamentary advice or services, and even fewer have connections with parliamentary lobbying businesses. [8]

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[1] First Report, Vol 1, p 24, para 22.

[2] First Report, Recommendations 2 and 3.

[3] One recommendation would have banned Members of Parliament from entering into any parliamentary consultancy agreements with organisations that provide paid parliamentary services to multiple clients. A House of Commons Select Committee did not accept that recommendation, on the ground that it was not the **type of outside body** paying a Member of Parliament that was critical, but rather the **actions** of a Member pursuant to the paid relationship (*Second Report of the Select Committee on Standards in Public Life* , HC 816 (1994-95). The Select Committee therefore recommended that a distinction should be drawn between paid advocacy (which was banned) and paid advice (which was acceptable so long as it was registered and declared). The House of Commons accepted the Select Committe e's recommendation in drawing up its new rules of conduct in 1995 (*The Guide to the Rules Relating to the Conduct of Members* , paras 53-64).

[4] First Report, Recommendation 5.

[5] Sixth Report, p 18, paras 3.3-3.7.

[6] Appendix to the *Nineteenth Report of the House of Commons Select Committee on Standards and Privileges,* (HC 1147 (1997-98)).

[7] Sixth Report, p 39, para 3.96.

[8] The August 2000 Register of Lords' Interests lists 12 peers in category (1) (*"Consultancies, or similar arrangements involving payment or other incentive or reward for providing parliamentary advice or services"*) and 10 peers in category (2) (*"Financial interests in businesses involved in parliamentary lobbying on behalf of clients"*).

The current situation in the House of Lords

6.6 The House of Lords has long endorsed the principle that financial reward should not influence the activity of peers in the House. The Sub-Committee on Registration of Interests, for instance, reporting in 1974, found it

> *... inconsistent with the traditions or proper function of the House that any Peer should act in the House as a paid agent of someone or that he should continue to act in the House in any cause for which he has recently been a paid agent, whether or not his interest is declared.*
>
> *They therefore endorse the entry in the Companion: "It is, however, considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or subordinate legislation, in or for which he is or has been acting or concerned for any pecuniary fee or reward."* [9]

6.7 This basic principle was restated by the House in a Resolution on 7 November 1995 which followed the debate on the Griffiths Report. This Resolution stated that *"Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence."* The detail of the guidance is that *"Lords who accept payment or other incentive or reward for providing Parliamentary advice or services, or who have any financial interest in a business involved in Parliamentary lobbying on behalf of clients, should not speak, vote, lobby or otherwise take advantage of their position as members of the House on behalf of their clients."* It continues, *"This restriction does not extend to matters relating to Lords' outside employment or directorships, where the interest does not arise from membership of the House. Lords should, however, be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others"* . [10]

6.8 Category (1) of the Register, which is mandatory, requires the registration of *"consultancies, or any similar arrangements, whereby members of the House accept payment or other incentive or reward for providing parliamentary advice or services."* Category (2) of the Register (which is also mandatory) requires the registration of: *"any financial interests of members of the House in businesses involved in parliamentary lobbying on behalf of clients."*

6.9 The general prohibition on the exercise of *"Parliamentary influence"* in return for *"financial inducement"* applies to all members of the House of Lords. The more specific prohibition set out in the guidance, however, only applies to that small number of members of the House who include themselves under categories (1) and (2) of the Register. There is no requirement on peers with consultancy agreements to deposit a copy of the agreement with staff of the House or disclose them publicly.

6.10 The Clerks of the House of Lords, who administer the current system and advise on how the rules should be applied, make a clear distinction between the giving of advice by

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[9] (Unpublished) Report of the Select Committee on Procedure of the House, Sub-Committee on Registration of Interests (1974), para 21. See para 4.8.

[10] The full text of the Resolutions relating to declaration and registration of interests passed by the House of Lords on 7 November 1995 is reproduced in Appendix D. The 1990 *Second Report of the Select Committee on Procedure of the House* (reproduced in part in Appendix C and which made recommendations adopted at that time) contains similar language on the undesirability of paid advocacy. See para 4.9 above.

members acting as consultants (permitted) and paid advocacy (not permitted). The Clerk of the Parliaments explained it thus:

> *A parliamentary consultancy is an arrangement reflecting a two-way relationship. On the one hand the client/firm* **receives** *information from the employee/peer (A); and on the other hand, the peer* **is given** *instructions to undertake certain activities in Parliament in the interests of the client (B).*
>
> *(A) The information which the client might expect to receive would include:*
>
> - *information about the progress of legislation*
> - *information about debates and opinions expressed in the House which might be of interest to the client*
> - *information as to which members of the House might be sympathetic to the interests of the client*
> - *indications as to which are the appropriate Ministers to approach for purposes of furthering the interests of the client and how such approaches might be made.*
>
> *(B) The services which the peer might be expected to perform on behalf of the clients might include:*
>
> - *speaking in debates*
> - *tabling, supporting and moving amendments*
> - *asking Parliamentary Questions*
> - *lobbying Ministers and other members of the House*
> - *acting as host at functions in the Palace of Westminster.*
>
> *The effect of the Resolution of November 1995 requiring registration of such arrangements is that a peer may continue to give advice at (A); but he is debarred from carrying out the services set out in (B).*
>
> *In addition, while the ad hoc performance of such services set out at (B) do not require to be registered in Category 1, the provision of such services for money or for money's worth is not permitted under the terms of the Resolution.* [11]

6.11 The Committee, in its First Report, considered that there was some risk that the distinction between advice and paid advocacy would be difficult to sustain in the House of Commons. It believed that agreements to provide parliamentary advice could cause problems: *"the impression can easily be gained, however unfair this may be in individual cases, that not only advice but also advocacy have been bought by the client"* .[12]

Evidence about the operation of the current rules

Evidence in favour

6.12 The Committee recognises the force of the comment by Lord Griffiths that the Lords' ban on paid advocacy is a *"bright line"* rule, clear in theory and exerting a definite

[11] Supplementary written evidence.
[12] First Report, p 29, para 49.

pressure in favour of the public interest. [13] Peers accept that they should not act as a result of a financial inducement from an outsider.

6.13 A particularly clear statement in favour of the current rules was made by the Rt Hon Lord Archer of Sandwell QC. He referred to the principle which prohibits financial inducements for the exercise of parliamentary influence as

> *... absolute, and pretty clear. I would have thought that any member of either House would understand that he ought not to act in a particular way in relation to debates or voting or the conduct of the House in expectation of a specific reward for doing that. I would not have thought that much more guidance than that was needed: everybody should recognise that situation when it arises.* [14]

6.14 This view was echoed by the Rt Hon Lord Jenkin of Roding, who said:

> *I believe the Griffiths Committee got it absolutely plumb bang right and had these two sections of the register where it was compulsory with very firm rules as to what people may do in relation to those interests.* [15]

6.15 The Rt Hon Lord Griffiths explained the operation of the rule as he saw it:

> *There is no reason why you should not have a consultancy. However, if you have taken a position as a consultant, you cannot speak for your clients; you cannot lobby on behalf of your clients, nor can you act politically for your clients ...You can say, 'Well, I think we might get that amendment through'. But, what you cannot do is take any part in helping to get the amendment through.* [16]

Evidence of actual or potential disadvantages

6.16 In contrast, we heard evidence to suggest that there were practical shortcomings in the working of the rules. While the wording of category (2) is clear in itself, it is possible that the net is not cast widely enough. An examination of the Register shows that in almost every case, it is only peers associated with commercial lobbying companies who are actually registered as having financial interests in businesses involved in parliamentary lobbying on behalf of clients. Yet we heard it argued that this does not accurately reflect the full range of peers who are connected with parliamentary lobbying (sometimes known as *"public affairs"* or *"political consultancy"*), which is often also carried out by other types of professional firms. These include some law, accountancy and management consultancy firms. The Association of Professional Political Consultants (APPC) said:

> *lobbying, in the true sense of the term, is carried out by an enormous range of organisations and individuals. As well as the APPC's member companies, political consultancy is offered on a paid-for basis by legal firms; and by in-house teams from trade associations, companies, charities and voluntary sector organisations, trades unions, and so on.* [17]

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[13] Day 2 (pm).
[14] Day 1 (am).
[15] Day 1 (am).
[16] Day 2 (pm).
[17] Written evidence (19/69).

6.17 One peer, Lord Clement-Jones, told us that he was *"by profession, a practising solicitor and a public affairs lobbyist, running the public affairs practice of a major UK law firm"* [18] - a fact which he fully registers in category (2) of the Register.

6.18 Lord McNally urged that it should be made clear that those registering under category (2) should include peers with connections with **all** firms offering lobbying facilities:

> *I think lawyers and accountancy firms, which increasingly offer lobbying facilities, should be encompassed in the declaration. When the register was first put forward, because it was public relations firms that had been perceived as the wrongdoers, I think that public relations was unfairly put on the spot.* [19]

6.19 Another strand of evidence claimed that the rules were too restrictive and were jeopardising the contribution of knowledgeable and experienced people to the deliberations of the House. A distinguished career in a significant field of endeavour, leading to a seat in the House of Lords, brings with it expert knowledge and judgement of a very high order. Especially when the member maintains a paid position after elevation, he or she is in an excellent position to contribute up-to-date expertise and information to debate and the discussion of legislation. Several witnesses were concerned that the current rules could be interpreted in such a way that this could be lost.

6.20 Mr Michael Davies, Clerk of the Parliaments, was among them. He said *"I think perhaps the rigour of the present rule has diminished the way in which certain quite clearly bona fide organisations can get their views across to Parliament"* .[20] Mr James Vallance White, Registrar of Lords' Interests, gave the example of a member who was a paid adviser to the Police Federation, and who wished to continue to represent that body in the House of Lords after the introduction of the rules recommended in the Griffiths Report. The member brought the matter to the Sub-Committee on Lords' Interests, and, according to Mr Vallance White,

> *... felt very strongly that he should be allowed to continue the role which he had been fulfilling for quite some considerable time ... The Sub-Committee reached a compromise whereby he was to be permitted to continue to speak on general matters of law enforcement in the House, but he was to keep off any matter which was to do specifically with what he actually advised the Police Federation on.* [21]

6.21 Lord Newby, who advised the Prince's Trust on a number of issues, including a youth employment initiative, saw the Lords' rules as unfairly restrictive. His interpretation of the rule was extremely and unusually strict:

> *No aspect of my work for this client relates to parliamentary lobbying, yet I am debarred under the rules from speaking in any debate on youth unemployment. This seems to me to be unnecessarily strict and inconsistent with the rule which would apply if I did exactly the same work in an individual consultancy capacity or, say, as a partner in a firm of lawyers or accountants, in which case I would simply have to declare an interest.* [22]

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[18] Written evidence (19/56).
[19] Day 3.
[20] Day 2 (am).
[21] Ibid.
[22] Written evidence (19/61).

6.22 There was also another confusion about the operation of category (2). Witnesses differed in their views about whether peers who are directors or employees of parliamentary lobbying companies should refrain from intervening only in matters related to those clients with whom they had **direct** professional relationships, or whether the prohibition covered matters related to **all** the firm's clients. Advice from the Clerks appeared to be that, where no direct professional relationship existed between a peer and a client, speaking, voting and other participation were allowed. But Lord Newby said *"there are always borderline issues."* [23] Michael Burrell of the APPC believed that the current rule *"places too great a burden on the judgement of the individual."* [24]

6.23 Thus, a number of witnesses felt that, straightforward though it was in theory, the actual operation of the rule had not shown it to be entirely clear and satisfactory. We believe that there is a strong case for some clarification of the rules, to allow the House to benefit from the expertise of members without a direct interest in a matter.

A ban on consultancies

6.24 One suggestion for change was that there should be a ban on parliamentary consultancy agreements involving members of the House of Lords.

6.25 Earl Russell argued for a ban on *"all payment for parliamentary services, including consultancy together with advocacy"* . His view was that *"the taking of outside payment for parliamentary services must carry a permanent risk of conflict of interest"* [25] Taken literally this would prevent peers from acting not only as lobbyists but also as advisers for companies, charities and other organisations, wherever payment was involved. The Rt Hon Lord Naseby expressed support for a ban on members having an association with a public affairs consultancy. [26]

6.26 The lobbyists' organisation, the APPC, urged that the Committee should reiterate for the Lords its original recommendation for the House of Commons to prohibit consultancy agreements with multi-client organisations. Michael Burrell, Chairman of the APPC, said:

> *Legislators have a different role [from lobbyists]. They have a duty to listen, but they also have a duty to work out what is the best thing to do. Those two jobs are quite distinct and should be seen to be distinct. I have never understood how anyone can be a lobbyist and a legislator simultaneously.* [27]

6.27 Lord Dubs said that *"My instinct is to say that nobody who is a member of either House should be a lobbyist"* . He continued:

> *One does not want to get to the position where every organisation that wants a voice in Parliament pays somebody to give effect to it. That undermines the point of Parliament. Members of the Commons should represent their constituencies and members of the Lords should take a broad view based on their knowledge, judgement and experience - not because they are paid to do so.* [28]

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[23] Day 4.
[24] Day 6 (am).
[25] Written evidence (19/21).
[26] Day 6 (am).
[27] Day 6 (am).
[28] Day 3.

6.28 Supporting this line in general terms, the Rt Hon Lord Owen said that:

> *Parliamentarians expect to be lobbied: that is part of your democratic responsibilities, but you should not line yourself up with the lobbyists. There should be a clear-cut and absolute distinction.* [29]

6.29 Professor Dawn Oliver recommended that it should no longer be possible for members to disqualify themselves from participating in the House by entering into such agreements. Her perspective was that *"such arrangements deprive the House of the benefit of the contributions of members."* She continued:

> *In my view such arrangements should be prohibited, so that the House can have the benefit of the contributions of all its members should they wish to contribute and they should all be in a position to exercise their judgments on these matters independently.* [30]

6.30 A number of witnesses, however, gave evidence pointing to the conclusion that a complete ban on consultancies is not needed. For instance, those peers who were connected with lobbying appeared to see the force of the present rules and to act on them.

6.31 Lord McNally was acutely conscious of the need to uphold the rules:

> *I sometimes feel frustrated in that I have been for eight years the adviser to the Corporation of London. As a result, I stay out entirely of debates about London - not just about the Corporation but about London ... But if it became possible for an interest to, as it were, hire a peer and brief him up and for that peer then to participate in debates in the House, I think that does cause problems. Even though the House is undoubtedly denied my wisdom on these matters, I think it is safer to keep it as it is.* [31]

6.32 Another peer who referred to the limitations on participation was Lord Naseby. As a consultant to the Council for Responsible Nutrition, he said he could not speak on nutrition issues:

> *I can honestly claim to be one of the best briefed legislators on the topic, but I may not - and do not - speak on it; nor do I vote on it. There was great excitement about a year ago on B6 and I was not able to take any public part in that, possibly to the detriment of the House's consideration of the issue. Having said that, I do not argue against the ban. I accept it along with the rules that others have laid down. I would not challenge them at this point.* [32]

6.33 The Rt Hon Lord Wakeham argued that consultancy arrangements were in any case ineffective and would tend to die out:

> *Observations have been made over many years about paid consultancies. The truth is that overwhelmingly the people who are 'swindled' over paid consultancies are the companies that are foolish enough to pay these people and think they are effective. They are simply not effective. In my experience, other parliamentarians see them coming a mile off. They are not very good at getting anything for their clients. It will die and become more realistic.* [33]

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[29] Day 1 (am).

[30] Written evidence (19/84).

[31] Day 3.

[32] Day 6 (am). There was controversy in 1998 and succeeding years about claims that vitamin B6, a dietary supplement, could be injurious to health in certain circumstances.

[33] Day 4.

6.34 Among the arguments **in favour** of a complete ban on members of the House holding consultancies are these:

- a ban would draw a clear line between lobbying in support of special interests and the promotion and protection of the wider public interest;
- it would increase public confidence in the House's decisions, because there would be no chance of undue influence via lobbying.

6.35 Among the arguments **against** such a ban are:

- a ban on consultancies would need to be drafted very carefully to avoid disqualifying those with expert knowledge and expertise, who might also be acting as consultants for outside organisations;
- in an unpaid House, it would be unfair to deprive peers of an opportunity of employment;
- the current rules clearly draw a line between the correct and incorrect operation of consultancies. There is no evidence that peers are abusing consultancy agreements to engage in paid advocacy;
- only small numbers of peers are involved with consultancies at present. A total ban would be disproportionate.

6.36 The Committee concludes that the balance of argument is against a ban on consultancies. To prohibit them completely would be disproportionate to the potential problem. The rules on paid advocacy are generally satisfactory.

R11. Members of the House of Lords should continue to be allowed to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy.

Ensuring public confidence in the propriety of consultancies

6.37 However, there are some steps that could be taken by the House to ensure that public confidence in the propriety of consultancies is maintained. Some of the potential weaknesses and failures of clarity identified above could be rectified with modest changes to administrative arrangements and an increase in openness.

6.38 We believe, firstly, that the guidance on the operation of category (2) of the Register should be redrafted. It should be made clear that all peers with a financial interest in parliamentary lobbying businesses must register.

6.39 The opportunity should also be taken by the House to make clear whether or not members who are involved with organisations who lobby on behalf of clients should refrain from participating in Lords' business for **all** clients of that organisation, or only for those clients with whom they are personally working. We conclude that the House authorities should make clear that peers should only refrain from participating in business relating to their direct personal clients.

6.40 We also see merit in one change to provide greater clarity and transparency in the operation of the rules on parliamentary services. We recommend that the relevant agreements should be deposited with the Registrar of Lords' Interests, who would make them publicly available on request. It is important that the public should be aware of the nature of these obligations, and that there is confidence that peers' independence is not fettered by them.

6.41 There is also the question whether the **amount of fees** earned under an agreement should be made public. Lord Tugendhat argued that it was necessary to make public the fees earned from activities *"that arise wholly or largely as a result of being a member of the House"*. He put this in a separate category from amounts received for *"professional business and other earnings derived from activities carried on outside the House,"* where Lord Tugendhat felt that there should be no requirement to divulge income. [34] Baroness Young of Old Scone, on the contrary, said that, although parliamentary services agreements should be lodged with an officer of the House, the quantum of fees was *"immaterial"* and did not need to be made public. [35]

6.42 Since transparency should apply in particular to remuneration received in respect of Parliamentary services, the Committee concludes that such fees should be made public. Some consultancy agreements state the actual fee to be paid annually. Others may provide simply for payment of 'such fees as may be agreed annually', or may provide for payment on a 'time spent' basis. In the latter two instances, peers should be required to make public their earnings when the agreement has operated for more than one year.

R12. The guidance on the operation of category (2) should be amended. It should be made clear that the requirement to register is not confined only to those members with interests in lobbying firms, narrowly defined.

R13. The guidance on the operation of category (2) should also be amended so as to make it clear that members who register under that category should refrain from participating in parliamentary business only when that business relates to their own personal clients.

R14. A member of the House of Lords who has an agreement for a consultancy or any similar arrangement under category (1) should deposit a copy of that agreement with the Registrar of Lords' Interests.

R15. The House of Lords should ensure that deposited agreements and details as to the remuneration derived from parliamentary services under category (1) be made available for public inspection.

[34] Written evidence (19/51).
[35] Written evidence (19/64).

COMPLIANCE

7.1 A successful regulatory system depends, in part, upon the existence of adequate compliance mechanisms. These may include: (1) effective induction procedures explaining the rules; (2) the provision of an authoritative source of advice on their application; (3) machinery for the investigation of alleged breaches; (4) a fair adjudication and appeals procedure, and (5) the availability, when appropriate, of effective sanctions.

Current procedures governing induction, advice and enforcement in the House of Lords

Induction

7.2 New peers are aware of the Register from the outset. Mr Michael Davies, the Clerk of the Parliaments, told us that *"when the Clerk of the Crown in Chancery writes to a new peer, he includes a form for the registration of interests and draws attention to its importance in his letter"*.[1] New peers may meet the Clerk of the Parliaments before their formal introduction into the House and if they require further advice about the Register, they can seek it on that occasion: *"At that meeting, the Clerk of the Parliaments draws particular attention to the need for registration, indicates in general terms what other peers have registered and stresses the need for declaration of interest when speaking in the House, even when an interest is registered"*.[2] The new peer is also given an information sheet about the Register and a copy of the *Companion to Standing Orders*. Not all new peers attend the meeting with the Clerk of the Parliaments, but a meeting with the Registrar can be sought to provide more detailed guidance on the Register.[3]

7.3 In addition, new members of the House of Lords are given the opportunity to attend an induction course about the House and its procedures. It lasts about two hours but, according to Mr Davies, such courses *"do not generally have time to touch on the register"*, although they do cover the rules on declaration.[4] Not all new members attend the induction course.

Provision of advice

7.4 The 1995 Resolution of the House of Lords governing the declaration of interests provides expressly that the Clerk of the Parliaments is available to advise on the interpretation of the guidance *"in a case of uncertainty"*.[5] The Registrar is also available to offer detailed guidance on the application of the rules on registration.[6] The Registrar, in performing that task, is able to draw assistance from three sources: the advice of the Sub-Committee on Lords' Interests; the advice of the Chairman of the Sub-Committee;[7] and the example of what members of the Lords have chosen to register since the inception of the Register in 1995.[8]

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[1] Written evidence (19/75).
[2] Written evidence (19/75).
[3] Day 3.
[4] Day 2 (am).
[5] The relevant Resolution is set out in Appendix D to this report.
[6] Day 2 (am).
[7] See fn 21, Chapter 4, above.
[8] Written evidence (19/75).

Investigative and disciplinary machinery

7.5 The present enforcement arrangements in relation to the investigation and hearing of a complaint have never been put into practice: to date, there have been no allegations of a failure to register nor of a failure to declare causing the disciplinary machinery to be brought into operation. Lord Wigoder QC, a member of the Committee for Privileges for 20 years and a member of the Sub-Committee on Lords' Interests, observed in his written evidence that, during his time on the Committee, *"no allegation of financial impropriety (in its widest sense) has been made against any Peer relating to his Parliamentary conduct"* .[9]

7.6 The 1995 Resolution governing the registration of interests outlines the procedure that would be adopted in the event of an allegation being made against a member of the House:

> *The Committee for Privileges shall investigate, and report to the House on, any allegation of failure to register interests within categories (1) and (2) [of the Register]; provided that the Committee shall first satisfy itself that an allegation has sufficient substance to warrant investigation.*
>
> *The Committee may remit any or all of the matters covered by this order to a sub-committee.*
>
> *In considering any allegation of failure to register interests, the Committee and any sub-committee shall not sit unless three Lords of Appeal be present.* [10]

7.7 The Resolution set out above was passed on 7 November 1995. On 29 November 1995, the Committee for Privileges appointed a sub-committee, the Sub-Committee on Lords' Interests, with the following terms of reference: [11]

> *To investigate any allegation of failure to register interests under categories (1) and (2) [of the Register]; to investigate any allegation of failure to abide by the new rules concerning declaration of interests, and the impact of interests on Lords' activities in Parliament, to which the House agreed on 7 November; and to deal with any general question concerning the application of the new guidance on declaration and registration of interests which might arise after this meeting, reporting to the full Committee as appropriate.*

7.8 In the Lords' debate on the Griffiths Report on 1 November 1995, Lord Griffiths had described in more detail the investigative and disciplinary machinery envisaged:

> *If there was a complaint that a Lord failed to declare an interest or failed to register when he should have done, it would go to the sub-committee which would investigate it; first of all in private to see if a* prima facie *case could be made out, as a lot of damage could be done by purely mischievous allegations. If, however, the committee was satisfied that there was a* prima facie *case, the matter would be investigated in public* [12] *and the noble Lord would have the opportunity of defending himself or of*

[9] Written evidence (19/53).

[10] See Appendix D to this report.

[11] See paras 4.15 and 4.17 above.

[12] The Griffiths Report (p 15, para 57) suggests that although the proceedings in relation to an allegation, in respect of which a *prima facie* case has been made out, should be in public, the investigating sub-committee should have a discretion to conduct hearings in private.

> *being professionally defended if he so chose. We thought that that would be the most satisfactory way of handling procedures.* [13]

7.9 The procedure would conclude with the Committee for Privileges reporting to the House of Lords the facts as found and the Committee's conclusion as to whether the allegations were proved. The Griffiths Committee commented: *"Normally there would be no need for the report to be debated in the House; its publication would conclude the proceedings"* .[14]

7.10 Under the present arrangements, the allegation would initially be referred to the Sub-Committee on Lords' Interests following a motion in the House. (We shall refer later (in paragraph 7.33 below) to the recommendation of the Griffiths Report that allegations should be referred directly to the Sub-Committee, rather than raised on the floor of the House, in order to reduce the risk of unsubstantiated allegations being made in order to cause embarrassment.)

Sanctions

7.11 The Joint Committee on Parliamentary Privilege, chaired by the Rt Hon Lord Nicholls of Birkenhead, [15] published a report in March 1999, [16] in which it asserted that the House of Lords retains the power to imprison indefinitely. [17] It said the following about the availability of other penalties:

> *The House of Lords still retains the power to fine, but it is open to doubt whether, in practice, the means exist to enforce payment ... The House of Lords does not have the power to suspend a member permanently. A writ of summons, which entitles a peer to 'a seat, place and voice' in Parliament, cannot be withheld from a peer. A peer can be disqualified temporarily either by statute or at common law, for reasons such as bankruptcy or being under age. Whether a peer can otherwise be suspended within the life of a single Parliament is not clear.* [18]

7.12 The Clerk of the Parliaments, in a memorandum to the Nicholls Committee, suggested that since the power to imprison had not been exercised during the twentieth century and since the power to fine had not been exercised for nearly 200 years, *"it must be questionable how far in practice either penalty could be invoked today"* .[19] Of the absence of the power to suspend, the Clerk of the Parliaments commented:

> *This seems surprising given that they have power to imprison a member, but the Lords have never purported to suspend a member and a committee of the House concluded in 1956 that it had no power to do so.* [20]

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[13] *Hansard* (HL) 1 November 1995, col 1435. The remit of the Committee for Privileges also covers questions regarding the privileges of the House and claims of peerage and of precedence. We were told by the Clerk of the Parliaments that, in dealing with these questions, the Committee had no difficulty in obtaining the authorisation (of the House) to hear Counsel in appropriate cases (written evidence (19/75), fn 10).

[14] The Griffiths Report, p 16, para 57.

[15] Hereafter referred to as the Nicholls Committee.

[16] Hereafter referred to as the Nicholls Report (HL Paper 43, HC 214 (1998-99)).

[17] The Nicholls Report, p 73, paras 271-2.

[18] Ibid., p 73, para 272 (footnotes omitted).

[19] Ibid., vol 2, p 58, para 19 (footnotes omitted). See also vol 1, p 72, para 276: *"The House of Lords has not found the need to impose any punishment on a member this century"* .

[20] Ibid., vol 2, p 19, fn 20. The report to which reference is made is the *Report by the Select Committee on the Powers of the House in Relation to the Attendance of its Members* , HL 66 (1955-56).

7.13 The Griffiths Committee, relying on the report of the Swinton Committee on Leave of Absence published in 1956, [21] thought it doubtful that the House of Lords had the power either to suspend or expel a member.

7.14 'Naming and shaming' by the publication of the name of the member in the report of the Committee for Privileges to the House may be regarded as a further - informal - sanction. A similar, but harsher, sanction would be formal admonishment following a motion in the House, [22] although we know of no instance when this form of sanction has been used.

Our approach

7.15 In considering whether the present enforcement system is satisfactory, we have taken into account:

- the importance of self-regulation in the House of Lords;
- the fact that the present investigative and disciplinary systems have never been applied;
- the weight of evidence in favour of building on the present system; and
- the fact that the House of Lords has already resolved that at **all** stages in the process the 'accused' will have the benefit of the presence of not less than three Lords of Appeal.

Key issues

7.16 In our view, the key issues in relation to compliance in the House of Lords are:

(a) whether the present **induction arrangements** are capable of improvement;

(b) whether the present arrangements for the **provision of advice** are satisfactory or should be replaced by an independent adviser;

(c) whether rules about the **initiation of a complaint** should be in place to reduce the possibility of politically-motivated, unsubstantiated allegations;

(d) whether the present machinery for the **investigation of allegations** is satisfactory or should be supplemented by the appointment of an independent investigator;

(e) whether the **adjudication procedure** requires modification;

(f) whether there should be an **appeals** procedure and, if so, what form it should take, and

(g) whether a wider range of **sanctions** is necessary.

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[21] See fn 20 above.

[22] The Nicholls Report, p 73, para 272. We have been advised by the Clerk of the Parliaments that 'naming and shaming' could take a number of forms. It appears that the most lenient form would be for the name of the 'accused' peer to appear in the report of the Committee for Privileges, laid before the House but not debated. The Griffiths Committee envisaged that this would be the normal procedure (see para 7.9 above). A harsher sanction would be for the report to be debated on the floor of the House and formally agreed by the House. A yet harsher sanction would be for the report to recommend a formal penalty and for the House to resolve accordingly.

Induction and advice

7.17 As we argued in Chapter 4, the quality of advice, whether at the induction stage or subsequently, about the interpretation of guidance is important to ensure consistency, transparency and fairness. It is also important in that it may play a part in drawing the boundary between conduct which is internally regulated and conduct which falls within the scope of the criminal law.

7.18 In June 2000, the Home Secretary published proposals for the reform of the criminal law of corruption which included a proposal that members of both Houses of Parliament should be subject to the criminal law of bribery. [23] The Home Secretary emphasised the role of the code of conduct and, implicitly, guidance on the interpretation of that code:

> *The intention is not to catch ... those Members who receive payments or benefits which are entirely legitimate and open and in accordance with the rules of the House. These rules, like codes of conduct in other professions, give guidelines as to what is and is not acceptable* .[24]

7.19 The Leader of the House, the Rt Hon Baroness Jay of Paddington, suggested to us that where there were breaches, they were normally inadvertent because of uncertainty about the present conduct rules: *"a good deal of this ... is about inadvertence or a failure to understand ... I emphasise again that what we are looking for is clarity and transparency"* .[25]

7.20 The risk of 'inadvertent' breaching can be reduced not only by the formulation of clearly framed rules, but also by effective induction arrangements and the provision of authoritative advice on the application of the rules.

Induction

7.21 We received evidence from a number of witnesses that more detailed advice about the declaration and registration of interests would be helpful as part of the induction procedure for new members. Baroness Hilton, for example, said that generally *"a rather more elaborate induction system"* was needed. She referred in her evidence to a report of the Group on Procedure in the Chamber, of which she was chairman, which included detailed proposals for a more extensive induction programme for new peers. [26] Baroness Hilton suggested to us that the report's proposed two-stage induction course could include issues relating to standards of conduct. [27]

7.22 Lord Chadlington similarly supported more formal induction, [28] and Baroness Turner said that *"it would be useful to have a clear induction process"* .[29] Baroness Jay, when asked about the issue, said: *"I feel strongly about that. It is something that one has to look at very clearly again in terms of the administration of the House."* [30] She went on to explain how the Labour Party in the Lords dealt with familiarising new Labour peers with the Lords' practices and procedures:

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[23] *Raising Standards and Upholding Integrity: The Prevention of Corruption* , Cm 4759 (June 2000).
[24] Ibid., p 15, para 3.3.
[25] Day 6 (pm).
[26] *Freedom and Function, First Report of the Select Committee on Procedure of the House* (1998-99), paras 71-78.
[27] Day 1 (pm).
[28] Day 4.
[29] Day 3.
[30] Day 6 (pm).

> *We try as a Government group of Ministers and as a political party within the House to help new members. We have, for example, a system of mentors for individual newcomers so that they are taken through some of the more arcane practices within the Lords, both on the floor of the House and in relation to its activities in general.* [31]

7.23 Arrangements for the induction of new members is a matter of internal administration and it is for the House of Lords itself to decide on the detail of such arrangements. We would encourage the House, however, to consider whether new induction arrangements should be devised which would provide more detailed guidance on the resolutions governing the declaration and registration of interests and on any other rules relating to standards of conduct. There will be a particular need for this if this Committee's recommendation for a fully mandatory register is adopted.

R16. The House of Lords should reconsider the existing induction arrangements for new members of the House with a view to providing more detailed guidance about the scope and operation of the conduct rules.

Advice

7.24 We have already noted (in paragraph 7.4) that advice is provided by the Clerk of the Parliaments and the Registrar, supported by the Sub-Committee on Lords' Interests and the chairman of the Sub-Committee and informed by precedent. Peter Riddell argued that, contrary to present practice, the adviser needed to be *"someone who is outside the Lords hierarchy"*.[32] Baroness Young of Old Scone, however, took the view that although *"it is slightly unsatisfactory"* that the Registrar was, at present, *"placed in a position where he has to negotiate or discuss with peers what goes on and what goes off"*, it did not matter who gave the advice *"provided that they, like us, work within a clear framework that the public understand"*.[33]

7.25 We have considered whether we should recommend the appointment of an independent adviser in the House of Lords. We are not persuaded that it is necessary to create such a post. We have no reason to doubt that the Clerk of the Parliaments and the Registrar are able to provide objective and clear advice when it is requested, bearing in mind that in cases where the enquiry is unusual or complex they are able to seek the opinion of the Sub-Committee on Lords' Interests and its Chairman. Should registration become fully mandatory, as this Committee recommends, then it should be part of the task of the Registrar to issue a reminder to peers from time to time of the need to ensure that their entries are up to date.

7.26 It is, of course, the case that advice to individual members about matters relating to the declaration and registration of interests and other conduct issues should be confidential. Part of the remit of the Sub-Committee on Lords' Interests, however, is *"to deal with any* **general** *question concerning the application of the new guidance on declaration and registration of interests ... reporting to the full Committee as appropriate"*.[34] We

[31] Day 6 (pm).
[32] Day 5 (am).
[33] Day 6 (am).
[34] See para 7.8 above.

received evidence that the Sub-Committee has taken on this role on two occasions, although on neither occasion were the conclusions of the Sub-Committee published as a report or debated in the House. We recommend, on grounds of transparency, that when the Sub-Committee has given **general** advice on the interpretation of the guidance on the declaration and registration of interests, that advice should be formally reported, through the Committee for Privileges, to the House. Not only would this enable the advice to be publicised, it would give the House an opportunity to debate it. This action would not be appropriate where it would be obvious which peer had sought advice and in respect of what problem.

R17. The general advice of the Sub-Committee on Lords' Interests on the application of the guidance on the declaration and registration of interests should be reported, through the Committee for Privileges, to the House.

Initiation of a complaint, its investigation and adjudication

7.27 Select Committees in the House of Lords and House of Commons fall into three broad categories: legislative, domestic and investigative. [35] Although the Lords' Committee for Privileges and the Sub-Committee on Lords' Interests are 'domestic' committees, [36] they are analogous to 'investigative' committees in the sense that their function is to *"examine issues ...within their orders of reference and make reports on the basis of the evidence received."* [37] As we have noted the Committee for Privileges and the Sub-Committee on Lords' Interests are empowered to investigate, and to report to the House on, any allegation of failure by a member of the Lords to declare or register an interest.

7.28 We have considered whether the traditional function of the 'investigative' select committee - encompassing both the amassing of facts relating to an issue and drawing conclusions on the basis of those facts - is appropriate where the committee is performing a quasi-judicial function such as the investigation and adjudication of complaints. We have borne in mind, in particular, the view expressed in the Nicholls Report in relation to fairness in disciplinary procedures that:

> *In dealing with specially serious cases ... it is essential that committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies.* [38]

7.29 The Nicholls Report went on to identify the *"minimum requirements of fairness"* for the accused member in serious cases. These were: (1) a prompt and clear statement of the precise allegations against the member; (2) adequate opportunity to take legal advice and have legal assistance throughout; (3) the opportunity to be heard in person; (4) the opportunity to call relevant witnesses at the appropriate time; (5) the opportunity to examine other witnesses; and (6) the opportunity to attend meetings at which evidence is

[35] *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* , 22nd edn (London,1997; hereafter referred to as *'Erskine May'*), p 623.

[36] Falling within the general definition of such committees, namely, *"monitor[ing] and mak[ing] recommendations about procedures and internal administration of the House"* : Erskine May, p 623.

[37] *Erskine May* , p 623.

[38] The Nicholls Report, p 75, para 281.

given, and to receive transcripts of evidence. [39] In addition, we take the view that, on grounds of procedural fairness, it is undesirable for the same individuals to participate in both the investigative stages and the adjudication of a complaint; for the same reason, the same individuals should not participate in both the first instance adjudication and the appeal hearing (if there is one).

7.30 We have similarly borne in mind the view of the Nicholls Committee that although proceedings in Parliament are excluded from the Human Rights Act 1998, [40] the fact that they may be within the jurisdiction of the European Court of Human Rights

> *is a salutary reminder that, if the proceedings adopted by Parliament when exercising its disciplinary powers are not fair, the proceedings may be challenged by those prejudiced. It is in the interests of Parliament as well as justice that Parliament should adopt at least the minimum requirements of fairness.* [41]

7.31 In light of the above, we believe that the mechanism for the investigation and adjudication of complaints envisaged in the Lords' 1995 Resolution needs to be looked at afresh with a view to considering how it might be developed to meet the requirements of fairness.

Stages of a disciplinary process

7.32 Our starting point is to distinguish between what we regard as the basic stages of a disciplinary process. Once a complaint has been lodged, the **first stage** will be a preliminary investigation to determine whether the complaint should be taken forward. [42] If it is decided that it should, then the **second stage** will be the investigation of the complaint, and by 'investigation' we mean the amassing of evidence. If the evidence reveals a *prima facie* case, the **third stage** will then be the adjudication of the complaint by a tribunal which decides both questions of fact and law. The third stage may include both a first instance hearing and an appeal hearing. The **final stage** might be on the floor of the House where the report of the tribunal could be considered together with the appropriateness of any further action.

Initiation of a complaint

7.33 The beginning of the disciplinary procedure is the lodging of a complaint. As we have noted (in paragraph 5.34(f)), we received evidence that in the House of Commons there is a concern about the rise in 'tit-for-tat' allegations. The risk of politically-motivated, unsubstantiated allegations of failure to register was also foreseen by the Griffiths Committee:

> *There is a danger that unsubstantiated allegations could be unfairly used as a means of seeking to cause embarrassment and accordingly we recommend that allegations (whether made by members of the House or by others) should be referred directly to the Sub-Committee, through its Chairman, rather than raised on the floor of the House and referred to the Sub-Committee by the House. The Sub-Committee should satisfy*

[39] Ibid.

[40] Section 6(3) of the Human Rights Act 1998 excludes the Houses of Parliament from the provisions of the Act.

[41] The Nicholls Report, p 76, para 284.

[42] The grounds on which a complaint may not be pursued may include the following: that it is *ultra vires* ; that it involves an allegation of criminal conduct and should be referred to the police; that it is clearly unfounded, or that it is frivolous or malicious.

itself that the allegations have sufficient substance to warrant investigation before proceeding further. [43]

7.34 We think it would be prudent if the House of Lords were to establish measures which would pre-empt the risk envisaged by the Griffiths Committee.

7.35 It is a matter for the House of Lords to decide what measures should be taken. We heard much evidence, however, as to the strength of the culture of personal honour in the Lords and, building on that, would endorse the development of a convention by which each member of the House would be expected initially to raise any question of non-registration of an allegedly relevant interest or other breach of the conduct rules in a private communication with the other member concerned. If the complaining member thereafter still wished to pursue the complaint, this should in our view - as the Griffiths Report suggested - be referred directly to the Chairman of the Sub-Committee on Lords' Interests rather than raised on the floor of the House for referral to the Sub-Committee. We are aware that this proposal can only apply to complaints raised by members and cannot extend to non-members.

R18. Members should be encouraged to raise in the first instance any allegation about breaches of the rules in a private communication with the member about whom the complaint is made.

R19. Thereafter, if the complaining member chooses to pursue the matter, that member should, in accordance with the Griffiths Committee's recommendation, refer the allegation directly to the Sub-Committee on Lords' Interests, through its Chairman.

Investigation

7.36 At present, if an allegation of failure to declare or register an interest were made, the Sub-Committee on Lords' Interests would be responsible for its investigation and adjudication. In straightforward cases, we see no difficulty in that arrangement remaining in place (subject to the qualification that those members involved in the investigation should not participate in the adjudication of the case).

7.37 However, if an allegation of serious misconduct were to be made against a peer and the complexity or sensitivity of it involved a detailed investigation into the underlying facts, then in such a situation the Sub-Committee on Lords' Interests might well wish to consider the appointment of an *ad hoc* independent investigator. This would have the practical advantage of easing the workload of the members of the Sub-Committee. More importantly, however, it would place the impartiality of the adjudicating tribunal beyond doubt.

7.38 We do not believe that it would be necessary to appoint a standing investigatory officer. It is difficult to predict such matters, but the 'track record' so far in the House of Lords does not suggest that there is any need for such an arrangement at this stage. Instead, we envisage the appointment of an investigator on an *ad hoc* basis only.

[43] The Griffiths Report, p 15, para 57.

7.39 We have considered whether the remit of the House of Commons' Parliamentary Commissioner should be extended to include acting as investigator for the House of Lords as well as the Commons. We have concluded against this extension. During the enquiry we heard a great deal of evidence about the very different ethos of the two Houses and we believe that preserving that difference would be best served by enabling the Sub-Committee on Lords' Interests to determine for itself whether to appoint an *ad hoc* investigator and, if so, whom to appoint.

7.40 As in the House of Commons, we would imagine that if the Sub-Committee on Lords' Interests were to be assisted by an *ad hoc* investigator, he or she would be supported in any investigation by formal powers to send for persons and papers conferred by the House on the Committee for Privileges and its Sub-Committee. [44]

7.41 Whether an investigation is conducted by members of the Sub-Committee itself or by the independent investigator, we agree with the view expressed by Lord Griffiths (quoted in paragraph 7.8 above) that the proceedings to ascertain whether or not there is a *prima facie* case should be held in private.

R20. The Committee sees no need for the appointment of a standing Parliamentary Commissioner for Standards in the House of Lords but recommends that the Sub-Committee on Lords' Interests should be able, in appropriate cases, to appoint an ad hoc investigator.

Adjudication at first instance

7.42 Of those complaints for which there is found to be a *prima facie* case, some will be resolvable by either a written or oral dialogue between the Sub-Committee on Lords' Interests and the member concerned. Other cases will require a more formal procedure. As we have noted, the Sub-Committee on Lords' Interests includes three Lords of Appeal and we received no evidence to suggest that that Sub-Committee would be unable or unwilling to hear cases should they arise. The degree of formality of the procedures applied in a particular case and their proximity to court-like procedures will depend on the seriousness, complexity and sensitivity of the case. Given the presence of the Lords of Appeal, we have no doubt that the procedure appropriate to the nature of the case will be adopted.

R21. The Sub-Committee on Lords' Interests should continue to be responsible for the adjudication of allegations relating to the conduct of members.

[44] All House of Lords' Committees are able to call evidence as required and, according to the House of Lords' *Companion to Standing Orders*, *"ordinarily witnesses attend and documents are produced voluntarily"*; the *Companion* continues, however, that *"should it be necessary to compel the attendance of witnesses or the production of papers, an order of the House would be required"* (*Companion to Standing Orders and Guide to the Proceedings of the House of Lords*, (18th edition, 2000), p 191, para 9.18). See also House of Lords SO 66: *"A Select Committee shall call such evidence as it may require, but shall not hear parties by Counsel unless so authorised by Order of the House"*. See also fn 13 above.

R22. **In serious cases, the procedures adopted should meet the "minimum requirements of fairness" set out by the Nicholls Committee for such cases.**

Appeals

7.43 In our Sixth Report we concluded that an accused MP who received an adverse ruling from the first instance tribunal should have a right of appeal. [45] We are unable to see any grounds on which to distinguish the House of Lords in this regard. We suggest that the appellate tribunal should be the full Committee for Privileges excluding those members (if any) who participated in the adjudication at first instance.

R23. **A member of the House of Lords who receives an adverse ruling from the Sub-Committee on Lords' Interests should have a right of appeal to the Committee for Privileges.**

Sanctions

7.44 The Nicholls Committee recommended:

- that the power of the House of Lords to **fine** should be confirmed (noting that *"we expect the occasions calling for the exercise of the power to fine by either House will be few and far between"*);
- that its power to **suspend** should be clarified and confirmed (the justification being that *"the House of Commons has power to suspend its members, and it would be anomalous and undesirable if this were not the position in the House of Lords"*); but
- that the power to **imprison** should be abolished (*"we believe this extreme form of punishment is no longer needed or appropriate in either House"*). [46]

7.45 As we have noted in paragraph 7.13, [47] the Griffiths Committee thought it doubtful that the House of Lords had either the power to suspend or expel a member but was not inclined to recommend that such powers should be established:

> *There are already many instances where the firm practice of the House is not backed up by formal sanctions, but in a House which operates largely by self-regulation such sanctions are rarely necessary. Moreover, we consider that the publicity attendant upon any finding that a Lord had failed to register would provide a sanction sufficient to ensure compliance.* [48]

45 Paras 3.46 - 3.50.
46 The Nicholls Report, p 74, para 279.
47 See also para 3.8, fn 2, above.
48 The Griffiths Report, p 15, para 55 (footnotes omitted).

7.46 The weight of evidence we received endorsed the Griffiths Committee's view that 'naming and shaming' would be sufficient sanction:

- the Rt Hon Lord Archer of Sandwell QC suggested that *"public exposure and peer group ... criticism"* would be an effective sanction; [49]
- the Rt Hon Lord Jenkin of Roding referred to the House of Lords having *"the quality of a self-regulating body with the atmosphere of disapproval as being the strongest sanction"* ;[50]
- Lord Dubs said: *"The humiliation of being named and shamed, certainly in the Lords, would be so appalling that if it happened to me, I would not dare show my face there again"* ;[51]
- the Rt Hon Lord Rodgers of Quarry Bank said: *"I do not think that there are any ultimate sanctions ... If peers do not respect the rules, their colleagues will know. Peer disapproval is quite a considerable factor"* ;[52]
- the Rt Hon Lord Strathclyde said: *"It is right that since you cannot remove peers without an Act of Parliament or suspend members, it is difficult to see how you can create something that is enforceable. The answer goes back to an old-fashioned view of life, in other words, the shame of being caught out. In the House of Lords, if you were seen to have broken the rules in this way, you immediately would lose any authority"* ;[53] and
- Baroness Jay referred to a requirement to make an apology on the floor of the House as a *"weighty sanction"* .[54]

7.47 For members of the House of Lords, in a culture rooted in the concept of 'personal honour', the informal sanction of 'naming and shaming' by the publication of the report of the Privileges Committee to the House (with the further possibility of its being debated on the floor of the House) appears to be effective and adequate sanction. Furthermore, in serious cases, it appears that the House could pass a resolution admonishing a member. [55] For this reason the Committee makes no recommendation in relation to extending the range of penalties.

[49] Day 1 (am).
[50] Day 1 (am).
[51] Day 3.
[52] Day 5 (am).
[53] Day 5 (pm).
[54] Day 6 (pm).
[55] See para 7.14 and fn 22 above.

Appendix A

List of submissions

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all the submissions can be found on the CD-Rom which is included in Volume 2 of 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.

Parliamentarians

Rt Hon Lord Archer of Sandwell QC
Baroness Ashton of Upholland
Rt Hon Lord Baker of Dorking CH
Nigel Beard MP
Rt Hon Lord Biffen
Rt Hon Lord Bingham of Cornhill TD
Lord Blake
Lord Bradshaw
John Butterfill MP
Lord Campbell of Alloway QC
Lord Chadlington of Dean
Lord Clement-Jones CBE
Lord Craig of Radley GCB OBE
Rt Hon Lord Crickhowell
Baroness David
Lord Dearing CB
Lord Dixon-Smith
Rt Hon Lord Eden of Winton
Lord Ezra MBE
Rt Hon Lord Fellowes GCB GCVO
Rt Hon Earl Ferrers
Lord Flowers FRS
Baroness Goudie
Rt Hon Lord Griffiths MC
Guildford, Rt Rev Lord Bishop of
Rt Hon Sir Archibald Hamilton MP
Lord Haskel
Baroness Hilton of Eggardon QPM
Baroness Hogg
Rt Hon Lord Holme of Cheltenham CBE
Earl of Home CVO CBE
Lord Hooson QC
Rt Hon Lord Howe of Aberavon CH QC
Lord Hylton
Rt Hon Lord Irvine of Lairg
Rt Hon Baroness Jay of Paddington
Rt Hon Lord Jenkin of Roding
Lord Judd
Fraser Kemp MP
Rt Hon Lord Lawson of Blaby
Rt Hon Robert Maclennan MP
Lord Marlesford
Rt Hon Lord Merlyn-Rees
Baroness Miller of Chilthorne Domer
Baroness Miller of Hendon MBE
Rt Hon Lord Naseby
Lord Newby OBE
Baroness Nicol
Lord Oakeshott of Seagrove Bay
Rt Hon Lord Owen CH
Oxford, Rt Rev Lord Bishop of
Lord Pearson of Rannoch
Baroness Platt of Writtle CBE
Portsmouth, Rt Rev Lord Bishop of
Lord Rix CBE
Rt Hon Lord Rodgers of Quarry Bank
Earl Russell FBA
Lady Saltoun of Abernethy
Lord Sandberg CBE
Rt Hon Lord Selkirk of Douglas
Baroness Sharples
Rt Hon Robert Sheldon MP
Lord Simon of Highbury
Rt Hon Lord Stewartby RD FBA
Rt Hon Lord Strathclyde
Lord Tombs
Lord Tugendhat
Baroness Turner of Camden
Lord Vinson LVO
Wakefield, Rt Rev Lord Bishop of
Rt Hon Lord Wakeham
Lord Walton of Detchant TD
Lord Wigoder QC
Lord Williams of Elvel CBE
Lord Wright of Richmond GCMG
Rt Hon Baroness Young
Baroness Young of Old Scone

Organisations

Association of Conservative Peers
Association of Professional Political Consultants
Conservative Front Bench in the House of Commons
Conservative Party in the House of Lords
Transparency International (UK)

Others

G Andrews
Edward J Armstrong
Michael Davies, Clerk of the Parliaments
Richard Heller
David Hencke
Pamela J Kennedy
Lt Commander Duncan Macdonald RN (Rtd)
Donnachadh McCarthy
Professor Dawn Oliver
Peter Riddell
Corinne Souza
Damien Welfare
Graham Wood

Appendix B

List of witnesses who gave oral evidence

Rt Hon Lord Archer of Sandwell QC (Day 1, am)

Association of Conservative Peers, Rt Hon Lord Trefgarne
and Rt Hon Lord Mayhew of Twysden QC (Day 5, am)

Association of Professional Political Consultants, Michael Burrell, Chairman
and Martin Le Jeune, member of the Managing Committee (Day 6, am)

Rt Hon Lord Biffen (Day 6, pm)

Rt Hon Lord Bingham of Cornhill TD, Senior Law Lord (Day 5, pm)

Lord Campbell of Alloway QC (Day 2, pm)

Lord Chadlington of Dean (Day 4)

Lord Craig of Radley GCB OBE, Convenor of the Cross Bench Peers (Day 1, pm)

Rt Hon Lord Crickhowell (Day 3)

Michael Davies, Clerk of the Parliaments (Day 2, am)

Lord Dixon-Smith (Day 5, am)

Lord Dubs (Day 3)

Rt Hon Earl Ferrers (Day 6, pm)

Elizabeth Filkin, Parliamentary Commissioner for Standards (Day 4)

Lord Flowers FRS (Day 3)

Rt Hon Lord Griffiths MC (Day 2, pm)

Rt Hon Archibald Hamilton MP (Day 3)

Lord Haskel (Day 5, am)

Professor Robert Hazell, Director, Constitution Unit, University College, London (Day 1, am)

David Hencke, Westminster Correspondent, *The Guardian* (Day 2, pm)

Baroness Hilton of Eggardon QPM (Day 1, pm)

Rt Hon Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords
(Day 6, pm)

Rt Hon Lord Jenkin of Roding (Day 1, am)

Rt Hon Lord Mackay of Ardbrecknish, Deputy Leader of the Opposition in the House of Lords (Day 5, pm)

Rt Hon Robert Maclennan MP, Principal spokesman for Constitution, Culture and Sport, Liberal Democrat Party in the House of Commons (Day 6, am)

Lord Marlesford (Day 2, pm)

Lord McNally (Day 3)

Rt Hon Lord Merlyn-Rees (Day 2, am)

Rt Hon Lord Naseby (Day 6, am)

Lord Newby OBE (Day 4)

Dawn Oliver, Professor of Constitution Law, University College, London (Day 1, pm)

Rt Hon Lord Owen CH (Day 1, am)

Lord Plant of Highfield (Day 3)

Portsmouth, Rt Rev Lord Bishop of (Day 6, pm)

Lord Rees-Mogg (Day 5, pm)

Rt Hon Lord Richard QC (Day 1, am)

Peter Riddell, *The Times* (Day 5, am)

Rt Hon Lord Rodgers of Quarry Bank, Leader of the Liberal Democrats (Day 5, am)

Earl Russell FBA (Day 1, pm)

Meg Russell, Senior Research Fellow, Constitution Unit, University College, London (Day 1, am)

Rt Hon Robert Sheldon MP, Chairman, House of Commons Standards and Privileges Select Committee (Day 6, am)

Lord Simon of Highbury (Day 6, pm)

Rt Hon Lord Strathclyde, Leader of the Opposition in the House of Lords (Day 5, pm)

Nicholas True, Private Secretary to the Leader of the Opposition in the House of Lords (Day 5, pm)

Lord Tugendhat (Day 4)

Baroness Turner of Camden (Day 3)

James Vallance White CB, Registrar of Lords' Interests (Day 2, am)

Rt Hon Lord Wakeham (Day 4)

Lord Walton of Detchant TD (Day 2, pm)

Rt Hon Lord Williams of Mostyn QC, Attorney General and Deputy Leader in the House of Lords (Day 6, pm)

Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons (Day 5, pm)

Baroness Young of Old Scone (Day 6, am)

Second Report from the Select Committee on Procedure of the House

Tuesday, the 24th April 1990

By The Select Committee on Procedure of the House

Ordered to Report:-

Declaration of Pecuniary Interest

1. The Committee have concluded their annual review of procedural difficulties in the preceding session to which the attention of the House should be called, by considering at two meetings the issue of Declaration of Pecuniary Interest.

2. Rule (xiv) of the Rules of Debate in the *Companion* (p.44) is as follows:

> It is a long-standing custom of the House that Lords speak always on their personal honour. It follows from this that if a Lord decides that it is proper for him to take part in a debate on a subject in which he has a direct pecuniary interest, he should declare it.
>
> Subject to this, and to the guidance to members or employees of public Boards (the Addison Rules) set out below, there is no reason why a Lord with an interest to declare should not take part in debate. It is however considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or subordinate legislation, in or for which he is or has been acting or concerned for any pecuniary fee or reward.

3. A series of incidents last session suggested that the last sentence of this guidance is widely misunderstood (H.L.Deb. 3rd April 1989 cols. 964 and 972, H.L.Deb. 2nd May 1989 cols. 58 and 61, H.L.Deb. 11th October 1989 cols. 403-406). The point at issue in each case was the meaning of "acting or concerned for any pecuniary fee or reward" and whether it applies to a general salary or retainer or only to a specific pecuniary fee or reward in a particular case, and whether "concerned" is to be construed broadly or narrowly. From an examination of the history of the matter, it appears that the rule was originally aimed at two potential abuses, namely a Lord gaining pecuniary advantage from his membership of Parliament or using it to further his professional career, and a person outside Parliament gaining unfair advantage through a fortuitous connection with a member of the House. It was not intended to prohibit professionally qualified Lords from speaking on matters connected with their profession, which would deprive the House of the views of members with a direct knowledge of the subjects under discussion.

4. In the light of these recent experiences, the Committee consider that the rule as currently phrased fails to express the original intentions of the House, and accordingly they have agreed a new form of guidance which they hope will express the conventions of the House more clearly.

5. The Committee recommend the following new guidance on the Declaration of Interest, for eventual inclusion in the *Companion:*

> "It is a long-standing custom of the House that Lords speak always on their personal honour. The decision whether it is proper to take part in a debate or a vote in which a Lord has a personal interest therefore rests with the Lord himself; but it is considered undesirable for a Lord to advocate, promote or oppose in the House any Bill or

subordinate legislation if he is acting or has acted personally in direct connection with it for a specific fee or reward, or to vote on a Private Bill in which he has a direct pecuniary interest. Subject to these exceptions and to the guidance to Members or Employees of Public Boards (the "Addison Rules") a Lord is free to take part in a debate or a vote in which he has a personal interest.

If a Lord has a direct pecuniary interest in a subject on which he speaks, he should declare it, and he should also declare any kind of interest of which his audience should be aware in order to form a balanced judgement of his argument. Such interests may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or unpaid membership of an interested organisation, and they may include past and future interests. This rule also applies where a Lord is using his influence as a member of the House in communication with a Minister, Government Department, local authority or other public body outside the House. If a Lord wishes to vote on a subject in which he has an interest that is direct, pecuniary and shared by few others, it is better that he should first have spoken in the debate so that his interest may be openly declared.

On certain occasions such as Starred Questions and the various stages of a bill following Second Reading, it may be for the convenience of the House that Lords should not take up time by repeating declarations of interest but a Lord should make a declaration whenever he is in doubt. The Clerks at the Table are available to advise on the interpretation of this guidance in a case of uncertainty."

Appendix D

Resolutions of the House of Lords relating to the declaration and registration of interests (7 November 1995)

Procedure of the House-Resolved, That the practice of the House in relation to Lords' interests should be governed by the following principles:

(1) **Lords should act always on their personal honour**; and

(2) **Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence.**

Thus Lords who accept payment or other incentive or reward for providing Parliamentary advice or services, or who have any financial interest in a business involved in Parliamentary lobbying on behalf of clients, should not speak, vote, lobby or otherwise take advantage of their position as members of the House on behalf of their clients. This restriction does not extend to matters relating to Lords' outside employment or directorships, where the interest does not arise from membership of the House. Lords should, however, be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.

In relation to private bills, Lords should not speak or vote on bills in which they have a direct pecuniary interest.

The above guidance cannot cover all eventualities, and therefore the decision ultimately rests with Lords themselves whether it is proper to take part in a debate or a vote in which they have a personal interest.

Lords who have a direct financial interest in a subject on which they speak should declare it, making clear that it is a financial interest. They should also declare any non-financial interest of which their audience should be aware in order to form a balanced judgment of their arguments. Such interests may be indirect or non-pecuniary, for example the interest of a relation or friend, hospitality or gifts received, trusteeship, or unpaid membership of an interested organization, and they may include past and future interests. This rule also applies where Lords are using their influence as a member of the House in communication with a Minister, Government Department, local authority or other public body outside the House.

On certain occasions such as Starred Questions and the various stages of a bill following Second Reading, it may be for the convenience of the House that Lords should not take up time by repeating declarations of interest but Lords should make a declaration whenever they are in doubt. The nature of the interest should be made clear notwithstanding that it may be well known to most other Lords present in the Chamber.

Similar principles apply to proceedings in committees off the floor of the House.

The Clerk of the Parliaments is available to advise on the interpretation of this guidance in a case of uncertainty.

Registration of Interests-Resolved, That there shall be established a register of:

(1) consultancies, or any similar arrangements, whereby members of the House accept payment or other incentive or reward for providing Parliamentary advice or services;

(2) any financial interests of members of the House in businesses involved in Parliamentary lobbying on behalf of clients; and

(3) any other particulars which members of the House wish to register relating to matters which they consider may affect the public perception of the way in which they discharge their Parliamentary duties.

The register shall be maintained under the authority of the Clerk of the Parliaments by a Registrar appointed by him.

Existing arrangements falling within categories (1) and (2) above shall be registered within one month of the register being established. Subsequent arrangements falling within those categories shall be registered within one month of their being made.

The register shall be available for public inspection in accordance with arrangements to be made by the Registrar. The register shall also be published annually. The annual edition shall include all arrangements registered since the previous edition; and all continuing arrangements unless their termination has been notified to the Registrar.

The operation of the register shall be overseen by the Committee for Privileges.

The Committee for Privileges shall investigate, and report to the House on, any allegation of failure to register interests within categories (1) and (2); provided that the Committee shall first satisfy itself that an allegation has sufficient substance to warrant investigation.

The Committee may remit any or all of the matters covered by this order to a sub-committee.

In considering any allegation of failure to register interests, the Committee and any sub-committee shall not sit unless three Lords of Appeal be present.

The Code of Conduct for Members of Parliament

Prepared pursuant to the Resolution of the House of 19th July 1995

I. Purpose of the Code

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

II. Public duty

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

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

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

III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life [1] as applying to holders of public office:-

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material 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 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.

[1] Cm 2850, p 14.

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."

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

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

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

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

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

No Member shall act as a paid advocate in any proceeding of the House.

No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

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

Appendix F

Previous Reports by the Committee on Standards in Public Life

1. 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).

2. The Committee is a standing committee. It can, therefore, not only conduct enquiries into new areas of concern about standards in public life but also, having reported its recommendations following an enquiry, it 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:

   - 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).

[1] This report was not published as a Command Paper.

LIST OF ABBREVIATIONS AND ACRONYMS

APPC	Association of Professional Political Consultants
Bt	Baronet
CB	Order of the Bath
CBE	Commander (of the Order) of the British Empire
CH	Companion of Honour
Cm	Command Paper
CVO	Commander of the Royal Victorian Order
Deb	Debates
DTI	Department of Trade and Industry
FBA	Fellow of the British Academy
FRS	Fellow of the Royal Society
FRSL	Fellow of the Royal Society of Literature
GCB	Knight Grand Cross, Order of the Bath
GCMG	Knight Grand Cross, Order of St Michael and St George
GCVO	Knight Grand Cross, Royal Victorian Order
HC	House of Commons
HL	House of Lords
LVO	Lieutenant, Royal Victorian Order
MBE	Member, Order of the British Empire
MC	Military Cross
MP	Member of Parliament
NDPB	Non-Departmental Public Body
NHS	National Health Service
OBE	Officer of the Order of the British Empire
QC	Queen's Counsel
QPM	Queen's Police Medal
RD	Royal Navy Reserve Decoration
RN	Royal Navy
Rt Hon	The Right Honourable
SO	Standing Orders
TD	Territorial Efficiency Decoration
UK	United Kingdom
UKCC	United Kingdom Central Council
WA	Written Answer

ABOUT THE COMMITTEE

Terms of Reference

The then Prime Minister, the Rt Hon John Major MP, 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)*

Mr Major made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the Prime Minister, the Rt Hon Tony Blair MP: *"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 renewable periods of up to three years. Lord Neill succeeded the Rt Hon Lord Nolan as Chairman on 10 November 1997.

Lord Neill of Bladen QC
(Chairman)

Ann Abraham
Professor Alice Brown
Lord Goodhart QC
Rt Hon John MacGregor OBE MP
Sir William Utting CB

Sir Clifford Boulton GCB
Sir Anthony Cleaver
Frances Heaton
Rt Hon Lord Shore of Stepney

The Committee is assisted by a small secretariat:

Sarah Tyerman *(Secretary)* , Christine Salmon *(Assistant Secretary)* , Andrew Brewster, Nassar Hameed (to 30 April 2000), Harsha Pitrola (to 27 October 2000), Neil Simpson (from 28 February to 27 October 2000), Rani Dhamu, Ann-Marie Lugay (to 28 September 2000), Philip Aylett *(Press Secretary)* .

Advice and assistance to the Committee for this study was also provided by:

Ailsa Henderson, Researcher (from August 2000), Hamish Dibley, Research Assistant (from 7 August to 22 September 2000), Radio Technical Services Ltd for the provision of sound recording, Palantype Services Ltd for the provision of transcription services during the public hearings; and Heather Bliss for editing the draft report.

Expenditure

The estimated gross expenditure of the Committee on this study to the end of October 2000 is £378,231. This includes staff costs; the cost of printing and distributing (in April 2000) 4,500 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 One Great George Street, London from 26 June to 17 July 2000; and estimated costs of printing, publishing and distributing this report.

Committee on Standards in Public Life
35 Great Smith Street
London SW1P 3BQ
Tel: 0207 276 2595
Fax: 0207 276 2585
Email: neill@gtnet.gov.uk
Internet: www.public-standards.gov.uk

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