

STANDARDS REVIEW SUB-COMMITTEE ISSUES AND QUESTIONS PAPER

September 2014

Committee on
Standards in
Public Life

Chair: Lord Paul Bew

RESPONSE FROM THE COMMITTEE ON STANDARDS IN PUBLIC LIFE TO THE STANDARDS REVIEW SUB-COMMITTEE ISSUES AND QUESTIONS PAPER

Introduction

1. The Committee on Standards in Public Life ('the Committee') is an independent advisory body to the Government, which monitors, reports and makes recommendations on all issues relating to standards in public life. The Committee promotes high ethical standards in public life in the UK and works to ensure that the Seven Principles of Public Life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership – underpin all aspects of public life.
2. In 1994, when the Committee was established by the then Prime Minister, its terms of reference were '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.'¹
3. Those in public office were originally defined as '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.'² In 2013, the Committee's remit was extended so that it 'can examine issues relating to the ethical standards of the delivery of public services by private and voluntary sector organisations, paid for by public funds, even where those delivering the services have not been appointed or elected to public office.'³
4. The Committee has previously made a number of recommendations for the House of Commons Standards regimes, many of which have been adopted and are reflected in the current regulatory arrangements. This response looks afresh at the matters raised in the Issues and Questions paper, and is not slavishly wedded to previous recommendations. The Committee's response focuses on matters of principle rather than operational detail.

Regulatory Framework

5. Any system for self-regulation of Members' behaviour must, as a whole, command public confidence. If it does not, it risks bringing the system and Parliament more generally into disrepute, and adding to the wider loss of trust in institutions that has increasingly become a feature of contemporary public life post the Parliamentary expenses scandal, the Leveson inquiry and the various inquiries into banking standards. We welcome that one of the specific aims of the inquiry is to improve confidence in the system for regulating Members' behaviour.

¹ First Report Standards in Public Life CM 2850-I May 1995

² Hansard (HC) 25 October 1994, col 758

³ Hansard (HL), 28 February 2013, col WA347

Public perceptions and research

6. The Committee has commissioned independent quantitative surveys every two years to track changes in the public's understanding of and attitudes towards the seven principles of public life in order to:
 - a. Establish what the public sees as acceptable and unacceptable behaviour on the part of holders of public office;
 - b. Assess how far the public believes that the behaviour of holders of public office conforms to these standards; and
 - c. Assess public confidence that holders of public office are effectively held responsible and accountable for any unacceptable conduct.
7. Our research has shown that there has been a continuous and substantial decline in the number of respondents rating standards in public life as high or very high. Furthermore, public trust in Government Ministers and MPs to tell the truth rates just above tabloid journalists at the bottom of the scale.⁴
8. Our most recent survey explored, amongst other things, which measures for ensuring good standards of conduct in public life elicit the most public support. The questions were informed by a common distinction drawn between 'compliance-based' and 'integrity-based' behaviour: that is, between good behaviour resulting from a well-designed and systematically enforced external set of rules, and good behaviour that is internally driven and the result of strong ethical character. Respondents were asked to choose up to three policies they thought important in ensuring probity in large public and private organisations. We consider the findings to be of relevance to the Standards Review sub-committee ('the sub-committee') consideration of the features of a system for regulating Member's behaviour which improves public confidence.
9. Findings suggest that members of the public favour adopting elements from **both** the compliance and integrity models in ensuring public probity. They do not endorse internal self-regulation or a culture of financial incentives for those doing a job (26% for large public sector organisations and 22% for private sector). They do favour senior managers setting a good example, (38% for large public sector organisations and 51% for private sector) and training people in a code of conduct (63% for large public sector organisations and 60% for private sector), but they also want protection for 'whistleblowing' and external regulators for organisations (whether public or private sector). Encouraging a culture where people are not afraid to report wrongdoing (66% for large public sector organisations and 53% for private sector) was seen as particularly important for promoting probity.
10. The responses of different groups of respondents - as distinguished by trust in public office holders, perceptions of standards, party-political preferences, social grade, ethnicity, age and gender - were compared to see if there were any clear differences found in how various segments of the public think that probity should be promoted. In fact, none of these comparisons yielded significant differences.

⁴ *Survey of public attitudes towards conduct in public life 2012* (London: Committee on Standards in Public Life, 2013).

11. There is therefore very wide agreement in all segments of the British general public about the ways in which probity in both the public and the private sector can be promoted. In that shared view, the ways seen as most important are the promotion of a culture in which people are not afraid to report wrongdoing, the use of codes of proper conduct in which office holders and staff are trained, and the setting of a good example by senior managers or office holders.

Criteria for public confidence

12. Reflecting on these public perceptions as well as the Committee's recent reviews which have considered best practice in promoting good behaviour in public life⁵, the Committee considers the criteria for ensuring credibility of the system, as a whole, to be as follows:
- a. there should be external consultation, involvement and scrutiny in the design and review of the system;
 - b. there should be significant and meaningful independent lay involvement in the operation of the system;
 - c. there should be accessible, clear and intelligible principles and rules, with clarity about rationales and intended outcomes;
 - d. there should be sufficient advice, education and guidance about the principles and rules to avoid suggestions of ignorance about their existence or content or doubt about their application in particular circumstances;
 - e. complaints and disciplinary arrangements should be clear, fair and effective;
 - f. sanctions for breaches and non-observance should be transparent, meaningful, flexible and proportionate and encourage behaviour change;
 - g. the whole system, including provision of advice, education and guidance, should be adequately resourced;
 - h. with sufficient public accountability, the system as a whole should be reviewed and updated at regular intervals or at least once per Parliament.

The Committee has borne these criteria and the findings of our public perceptions surveys in mind when responding to this consultation.

Substance of the principles and rules

13. We note that the issues and questions paper states that the inquiry "*will not look at the detailed provisions of the Code and the Guide, or of other rules,*" and that one of the aims of the inquiry is "*to provide clarity, certainty and coherence in the rules, guidance and processes (which should in turn improve awareness and compliance).*"⁶ We are not sure how the latter aim can be achieved without the sub-committee inquiry or Parliament more generally reviewing the detailed provisions

⁵ Committee on Standards in Public Life, *Standards Matter: A review of best practice in promoting good behaviour in public life*, Cm 8519, (January 2013); *Strengthening Transparency Around Lobbying* (November 2013); and *Ethics in Practice: Promoting Ethical Conduct in Public Life* (July 2014).

⁶ Standards Review Sub-Committee: Issues and Questions, p 7.

of the Code and Guide and all other rules which govern Members' behaviour. The issues and questions paper explains that, in addition to the Code and Guide, there are some specific rules relating to conduct in the parliamentary chamber or parliamentary committees and Rules set by the Members Estimate Committee and Administration Committee which the Parliamentary Commissioner for Standards can investigate and the Committee adjudicate on. There are also proposed changes to the Guide to the Rules proposed by the Committee on Standards and Privileges in December 2012 which await consideration by Parliament. There is also a lack of consistency between the rules for the Commons and the House of Lords Conduct Rules, which in some cases be justified and in other cases may not.

14. This collection of rules can be seen as fragmented, obscure and inaccessible and this, as the inquiry acknowledges, may well impact on awareness and compliance by Members. It creates the potential for Members to argue, in some cases legitimately, that ignorance of, or doubt about, the rules exists. It also means that there is a lack of clarity for members of the public as to the minimum standards and good practice that should be aimed for.
15. The Committee recommends that the inquiry considers drawing together all of the provisions, Guide and other rules into one document and one single, easily searchable section of the Parliament website. Simple summaries should also be provided. These documents should be provided to Members as part of their induction, should be publicly available both electronically and in paper form, and should be supplemented by advice, education and guidance provided as part of induction, following any change to the rules, and on request by individual Members. At present, the Parliamentary Commissioner has a remit to prepare guidance and provide training for Members on matters of conduct, propriety and ethics. We recommend that this role is developed further, in concert with other activities undertaken by the House Authorities.
16. To reinforce emphasis on the promotion of clear rules and to encourage Members to take them seriously, we further recommend that it should be explicitly provided that ignorance of the principles or the rules should not be a defence or mitigation in cases of alleged misconduct.

Complaints and disciplinary arrangements

17. In order for any complaints and disciplinary arrangements to be credible, the Committee considers that any such arrangements should be effective in dealing with non-compliance, act as a deterrent and be capable of influencing behaviour change. These factors must be demonstrable, apparent and credible to the public as well as Members in order to command respect. We also recognise that the arrangements must be constitutionally and politically acceptable and should build on existing institutions as far as possible.
18. There should be a proper investigation of facts, and demonstrable fairness to all concerned throughout any complaints process, with key elements of natural justice being met (e.g. fair process, no actual or suspected bias, notice of accusation(s), opportunity to answer, clarity of decisions and reasoning). Procedures should be clear, with particular clarity about the roles and powers of the various players and the process should be as speedy, non-legalistic and simple as possible, whilst eliminating or minimising scope for recourse to the courts. There must be meaningful, flexible and proportionate sanctions.
19. Some of these components may pull in different directions, but the Committee believes there are ways forward which largely reconcile them. In our view, this is best achieved by developing

optimum arrangements for each of the three stages of any complaints/disciplinary system – Investigation, Adjudication and Review – and ensuring that they fit well together.

Investigation

20. At present, upon a complaint being made or brought to the attention of the Commissioner, the Commissioner has the power to investigate the matter. To assist in that investigation, the Commissioner may appoint an Investigatory Panel, although the Committee notes such a panel has never been used. The Commissioner then has the option to:
 - a. Dismiss the complaint and report that conclusion to the Standards Committee;
 - b. Report an alleged breach of the rules or a complaint of wider importance to the Standards Committee for the Committee to decide; and
 - c. Resolve the matter using the rectification procedure.
21. The Committee considers this to be a proportionate approach, so that only matters which require particular consideration go to the Standards Committee, with options to dismiss without further consideration and a simplified procedure to deal with more trivial matters. But the Committee also believes it is important that there should be no blurring, actual or perceived, of the roles of investigator and decision-maker and is not convinced that the existing rules separate out the roles clearly or satisfactorily. They may also fail to meet the principle of fairness by clouding the Member's opportunities to make representations, challenge findings or raise concerns about the procedure or process.
22. The Committee therefore considers that the Commissioner should primarily be seen as an Investigator. This involves gathering and reviewing the written and other evidence, receiving representations, making findings of fact and setting out conclusions about whether specific principles or rules have been breached. She should explicitly be entitled to draw inferences where the Member has not provided requested evidence or otherwise not co-operated. The primary role as Investigator would not rule the role of resolving or conciliating the straightforward cases which do not need to be taken further.

Adjudication

23. We note that currently a Standards Committee of up to 13 members, including 3 lay members who do not have voting rights, adjudicates on complaints and disciplinary matters at a hearing following which there is no formal right of appeal. Such an approach is cumbersome and cannot be either efficient or fair as a means of adjudication. It is in marked contrast with many other self-regulatory regimes which delegate the initial decision to a small adjudication body and then provide for a review mechanism which involves different and wider membership. They do so for reasons of fairness, proportionality and efficiency, as it provides a quicker process and a more efficient use of resources.
24. One option for the Sub-Committee to consider would be whether, for the reasons of fairness, proportionality and efficiency, it would be appropriate for the Standards Committee to delegate the adjudication stage to a small (perhaps three-person) sub-committee. Membership of the sub-committee would need to reflect a political balance and include lay representation. Such an Adjudication Sub-committee would be established to adjudicate each specific case and (if appropriate) impose any sanction, having received both the findings and conclusions of the

Commissioner and any further representations the Member wished to make if they could not have been made to the Commissioner. The Sub-Committee could decide, in each case, whether to proceed via a hearing or “on the papers”.

Review

25. A review process is a component of numerous self-regulatory regimes. The Advertising Standards Authority, for example, provides for a complainant, advertiser or broadcaster to request an independent review of adjudication. An individual subject to a Solicitors Regulatory Authority finding or disciplinary decision may appeal that decision to a different adjudicator or panel.
26. Adding a sub-committee stage to the complaints process then allowing the Standards Committee (minus the members of its sub-committee) to carry out a review where the Member seeks a similar opportunity to individuals who, in different circumstances, might wish to judicially review a decision of a public body. This would not be an appeal as such, or a fresh hearing, but would allow challenge where, for example, the Member alleges an incorrect interpretation of the Code, irrationality or failure of procedural propriety. Such a review stage would arguably make the process more proportionate because the opportunity to seek a review is likely especially to cater for more complex cases where issues relating to interpretation of the Code or major issues of fact and law are being disputed.
27. If the full Committee changed any decision of the sub-committee we would expect full reasons to be given.

Lay Membership

28. One of the questions that would arise in establishing an Adjudication Sub-Committee and at the review stage would be the role of lay members.
29. Other largely self-regulatory regimes have significant lay representation at both stages. Indeed, it would be unusual for a self-regulatory regime not to have significant and influential lay representation at key stages of the process. It is regarded as providing a check and balance on proceedings where individuals are being judged by their peers and ensuring representation of the public interest – i.e., providing public assurance. Examples of regimes which successfully integrate active lay members are widespread. For example, six of the 13 panel adjudicators for the Solicitors Regulatory Authority are lay members and they can individually, or as part of a small panel with a minimum of two, determine allegations regarding the conduct of individuals, make findings and impose sanctions. Any General Medical Council Fitness to Practice panel, which hears evidence and decides whether a doctor’s fitness to practice is impaired, consists, in addition to the chairman, who may be medical or non-medical, of at least one medical and one non-medical panellist on each panel. The Judiciary, who are fully aware of the need to maintain their independence as part of their constitutional function, nevertheless include two lay members, with voting rights, on any disciplinary panel convened under their Judicial Disciplinary procedures. The Chair of the panel, who is a judicial office holder or former office holder higher in rank than the judge concerned, exercises the casting vote if necessary.

30. This Committee welcomed the introduction of lay members to the Committee on Standards, and also recommended that those lay members should have a vote.⁷ We remain of the view that any self-regulatory regime should include a strong, resilient and robust independent element. We believe that the lay members should be included in both an Adjudication Sub-Committee and at the review stage conducted by the Committee on Standards itself. We would prefer the lay members to have a vote at both stages, but if this raises insuperable Privilege or similar issues, we would expect to see at the least the publication of any dissenting opinion.

Clarity of arrangements

31. The procedures and processes for complaints is currently set out in paragraphs 103- 114 of the Guide to the Rules relating to the Conduct of Members, and Standing Orders 149 – 150 set out the terms of reference and powers of the Committee on Standards, the appointment and role of lay members to the Committee on Standards and the office and duties of the Parliamentary Commissioner for Standards. We make the general point that we do not consider that the information currently available is sufficiently detailed or clear as to how the arrangements work from investigation to decision. For example, little detail is provided on the circumstances in which an Investigatory Panel may be used and the procedure of the Panel is simply stated as a matter for the Commissioner to determine. The investigation of complaints section in the Standards Review Sub-Committee: Issues and Questions paper makes a number of points that are not evident from or do not appear to derive from the guidance or standing orders. For example, as referred to above, the Issues and Questions paper states *“It is open to those under investigation to seek legal advice, and the Committee has power to hear Counsel”*, whilst the Standing Orders refer to the Committee appointing legal advisors the guidance and standing orders are silent on the issue of legal representation of the member (in person or represented by Counsel) appearing before the Committee at the member’s request.
32. The Committee contrasts this lack of clarity with the disciplinary arrangements for the judiciary, one of the other institutions of state. The Judicial Discipline (Prescribed Procedures) Regulations 2014 and the Judicial Conduct (Judicial and other office holders) Rules 2014 set out clearly the processes for how allegations of misconduct are investigated and decisions arrived at, including the roles and powers of those involved. Procedural time limits are set out in order to ensure progress of the complaint. The regulations and rules are supplemented with additional short guidance documents.
33. The Committee sees no reason why a similar level of clarity, whatever processes are adopted, cannot be provided in the Parliamentary Standing Orders and guidance documents. To do so would provide clarity to Members, reduce any possible concerns about unfairness or procedural irregularity, could reduce the time taken to consider complaints and also provide transparency to the public and the press as to the complaints and disciplinary arrangements.

Sanctions

34. The Sub Committee has asked whether the existing penalties are appropriate. The Government has recently published the Recall of MPs Bill, which provides for the opening of a recall petition

⁷ Committee on Standards in Public Life, *MPs expenses and allowances: Supporting Parliament, safeguarding the taxpayer*, Twelfth Report, CM 7724 (November 2009): Recommendation 52 - The external members of both the Standards and Privileges Committee and the Speaker’s Committee of the independent regulator should have full voting rights. If the House authorities are of the opinion that clarifying the question of parliamentary privilege in that regard requires an amendment to the Parliamentary Standards Act, the Government should facilitate this.

on either the conviction of an MP for an imprisonable offence or the suspension of an MP from the service of the House for a period of 21 or more sitting days, as ordered by the House. We note also the publication of the Private Members Recall Bill, which provides for recall without reference to conviction or suspension.

35. The Committee supports the principle that constituents should be able to petition for the recall of an MP whose conduct falls seriously below the standards expected of those elected to public office but which does not trigger automatic disqualification under the Representation of the People Act 2001. A recall provision⁸ adds to the range of sanctions available to the House to use in occasional cases of serious wrongdoing, while leaving the final judgement on an MP's conduct to their constituents.
36. However, the proposal to trigger a recall mechanism for MPs found to have engaged in conduct resulting in a sanction of suspension for at least 21 sitting days as ordered by the House of Commons will have considerable implications for any self-regulatory standards regime in the Commons. We note that suspensions at the upper end of the scale, but below the proposed 21 day threshold, have been for 20 or 18 sitting days.⁹ Both the public and MPs are likely to seek clarity and consistency around the relationship between offences and sanctions, putting a particular onus on the Standards Committee and the Commissioner for Standards to provide clear guidance (possibly along the lines of 'sentencing guidelines') and for the Standards Committee to be consistent, evidence-based and transparent in its determinations. The role of the Lay Members, in particular, will be critical in enhancing public acceptance of the robustness of the process, especially when it does not lead to recall.
37. Equally critical will be the role of guidance, education and training on the rules and principles of the standards regime (as set out in paragraphs below). Even if not spelt out in the new arrangements, the public is unlikely to accept ignorance of the principles or the rules as a defence in cases of alleged misconduct and MPs are unlikely to accept unclear advice on opaque rules. The Parliamentary Standards Commissioner and the Standards Committee will need to work with the House Authorities and the political parties to raise awareness and understanding of a clear and transparent standards regime amongst MPs.
38. We also raise the question of whether the recall legislation erodes the self-regulatory aspect of the regime by bringing recall and associated elements of the Commons complaints system into the field of judicial determination.

Embedding Standards and Public Confidence

39. The Committee has set out the importance of and need for guidance, education, and training in embedding ethical standards in a number of its reports, most recently in *Standards Matter* (2013) and *Ethics in Practice: Promoting Ethical Standards in Public Life* (2014). As a Committee, we have always been clear that publishing rules and Codes of Conduct, and instituting independent

⁸ In its response to the Government's Draft Bill providing for recall of Members of Parliament in January 2012, the Committee did comment that the relatively low level required to trigger the process could leave the process open to abuse through the manipulation of postal or proxy votes.

⁹ "Members who have withdrawn from the Commons Chamber or who have been suspended." House of Commons Library, SN/PC/02430, 15 July 2013

scrutiny mechanisms are not sufficient to maintain, and where necessary, raise standards in public life. As we stated in *Standards Matter*:

*Codes do not have an impact simply by existing. Principles and rules are necessary but not sufficient to create high standards. Organisations also need the right culture, effective monitoring and strong leadership.*¹⁰

40. One of the most effective ways of building the right culture is through education and training – particularly induction training. Both *Standards Matter* and *Ethics in Practice* emphasise the need for Parliament to develop an induction programme that cover both the Seven Principles of Public Life and the particulars of the rules of the Commons standards regime. The Committee also calls upon MPs and their parties to show leadership by actively engaging with the induction and awareness programmes that are on offer and being public advocates for high ethical standards.

41. In *Ethics in Practice*, the Committee recommended that:

- Parliament needs to make better use of its induction programmes to increase awareness of ethical principles and rules, and embed ethical standards;
- MPs, parties and the House Authorities should take this opportunity to develop a meaningful and credible induction and professional development programme that covers the Seven Principles of Public Life and the separate Codes of Conduct, building on lessons learned from recent or significant standards breaches, that meets the needs of MPs and Lords and the expectations of the public.;
- induction is essential to ensure that public office holders are aware of the standards expected of them, and that ethical standards need to be included in the induction arrangements for all those public life.

42. We believe there is a role for Parliament *and* the political parties in making sure that all potential and current MPs are aware of the standards of behaviour expected of them and the principles and rules that govern that behaviour. As we stated in *Ethics in Practice*:

There is clearly also a role for the party managers and leaders in ensuring attendance, and we would expect individual Members and parties to demonstrate their commitment to ethical standards by attending, and being prepared to justify themselves to constituents and the public at large if they do not.

43. The Committee also reiterated its call for those in public life, including Members of Parliament, to demonstrate leadership:

The Committee expects all those in public life to demonstrate leadership. As the Seventh Principle states:

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge

¹⁰ *Standards Matter*, p. 39

poor behaviour wherever it occurs.

For us, leadership includes leadership in accepting, promoting and participating in the guidance and education, and in particular the induction training, that formed Lord Nolan's third thread for ensuring that the Principles were understood and the highest standards of propriety in public life established and maintained.

44. We agree with the Lay Members to the Standards Committee who, in their report reflecting on their first year in post, suggested that the Standards Committee itself should explore the possibility of taking on a greater leadership role on standards within the House. While we recognise that there may be some difficulties attached to providing specific advice and then determining complaints, actively promoting the rules and the principles, or facilitating education and awareness events should not prove problematic. Providing a leadership role in proactively explaining their own procedures and reports to the press would also demonstrate that the Standards Committee, and by implication Parliament, was promoting high standards rather than defending itself against accusations of low standards. Such an approach might also, minimise opportunities for misunderstanding and misrepresentation.
45. Parliament regularly calls for other institutions, professions and individuals to take the lead on raising standards, regulating those standards, and demonstrating their accountability to the public through transparent and effective complaints systems. We would expect Parliament, and the Standards Committee, to take on the same obligations it imposes on others.
46. In a self-regulatory system, in an environment where there are no legal or professional obligations mandating training or continuing professional development, MPs, their parties must also take responsibility for ensuring that they have sufficient awareness and understanding of their ethical obligations. Any induction and training programmes or information sessions offered by the House Authorities, the parties, or the Parliamentary Commissioner for Standards (through her remit to prepare guidance and provide training for Members on matters of conduct, propriety and ethics) should be sufficiently informative and accessible (in terms of timing) to address the basis needs of MPs without undermining their personal responsibility.
47. Recent standards cases in the Commons have called into question the credibility of the current complaints architecture. Some comments and actions by individual MPs indicate that, in some quarters, there is a low level of engagement with and understanding of the standards regime in the Commons. The failure of the Commons to debate the proposed revisions to the Guide to the Rules proposed by the Committee on Standards and Privileges in December 2012 or respond to the recommendations of the Committee on Standards in Public Life report *Strengthening Transparency Around Lobbying* (2013) do nothing to counteract the view that Parliament does not take standards seriously. Parliament needs to show that it understands the nature of the problem it faces in maintaining a self-regulatory disciplinary system, where much of the criticism rests on misunderstanding of the actual procedures and public perceptions of self-interested protectionism. The public is losing trust in our democratic institutions and Parliament needs to show that it understands the public malaise, and is taking steps, swiftly and transparently to establish complaints system that commands public confidence.

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September 2014