



# MEG WEBB MLC

Independent Member for Nelson

The Hon. Rob Valentine MLC  
Chair – Joint Standing Committee on Integrity  
Parliament House  
Hobart TAS 7000

Via email: [rob.valentine@parliament.tas.gov.au](mailto:rob.valentine@parliament.tas.gov.au)

20 July 2022

Dear Mr ~~Valentine~~ <sup>Rob</sup>,

**RE: Code of Conduct for Members of Parliament review**

I note and thank you for your correspondence of 17 June 2022 inviting submission on the Integrity Committee's review of the Code of Conduct for Members of Parliament. I am supportive of the Code being reviewed, and it is my intention to make a submission to this review in coming weeks.

However, I believe that the review of the Code is a matter of public interest and I have some questions and concerns in relation to the review process itself, which I wish to put to the Committee for consideration.

The review of the Code of Conduct for Members is occurring in the context of a range of other reviews and reforms relating to our state's democratic architecture, including electoral donation reform, lobbyist regulation reform, review of the *Integrity Commission Act 2009*, and the proposal to restore the number of MPs in the House of Assembly.

It is also occurring in a political environment in which community trust in government and politicians is declining, and best practice approaches to transparency and accountability in political governance and parliamentary practice have shifted to increased rigour and openness.

I believe best practice, and community expectation for greater and improved transparency, would be for a review of the Code of Conduct for Members of Parliament to be conducted independently and publicly. In the absence of an independent review, it is even more important that the process be public and transparent.

At this stage, it does not appear this review of the Code is being conducted in such a manner, with no information on the Parliamentary website indicating it is occurring and no public communication made or process provided for public submissions.



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Specifically, the [Integrity Commission Act 2009](#) provides an existing and appropriate framework which could be utilised for this important Code of Conduct Review. Section 8 of the Act provides for the following:

*8. (1) In addition to any other functions that are imposed on the Integrity Commission under this or any other Act, the functions of the Integrity Commission are to –*

*(a) develop standards and codes of conduct to guide public officers in the conduct and performance of their duties; and*

*(b) educate public officers and the public about integrity in public administration; and*

*(c) prepare guidelines and provide training to public officers on matters of conduct, propriety and ethics;*

As we are aware, the Integrity Commission was responsible for the development of the current MPs' Code of Conduct making it a valid expectation the Commission would drive any future reviews.

I would be interested in the Committee's response to the following:

1. What consideration was given to the review of the Code of Conduct for Members of Parliament being independently undertaken, to mitigate against the unfortunate optics of MPs privately setting their own rules?
2. What consideration was given to providing an open, public process for the review of the Code, including inviting public submissions?
3. Has a comprehensive comparison with other interstate and international equivalent parliamentary Codes of Conduct for Members of Parliament, and associated training, compliance and enforcement frameworks been undertaken, and if so, what were the findings?
4. How will the report and recommendations of the *Independent Review into Parliamentary practices and procedures to support workplace culture* inform the review of the Code? As reported, the Federal Jenkins Review has recommended the Federal Parliament requires a 'clear and consistent' MPs' Code of Conduct, highlighting the inherent synergy between those workplace safety and inclusion reviews and any modern and effective Codes of Conduct. These considerations are as important during the design, delivery and post-implementation compliance stages of any such Codes of Conduct life-cycles.
5. What are the planned steps and full process for the review of the Code? Will external expertise be sought and consulted, such as the CPA, regarding current best practice? Beyond the invitation to MPs to provide a submission, no further information has been provided on next steps, timelines or further consultation opportunities on proposed changes to the Code.

While I appreciate and acknowledge the diligence with which the Joint Standing Committee on Integrity is undertaking its responsibilities in general, and this specified four-yearly review in particular, I do urge the Committee to give serious consideration to recommending that the Tasmanian Integrity Commission undertake a comprehensive and public review of the MPs Code of Conduct and to report back to the Committee accordingly.

This approach would be consistent with the recent UK review of that Parliament's MPs Code of Conduct, which saw the Parliamentary Commissioner for Standards initiate a review of the Code which was then incorporated into the Committee for Standards in Public Life's report released for public consultation.

For completion of the Committee's records, I have also attached a Hansard excerpt of my question to the Premier requesting this scheduled review of the MP Code of Conduct be undertaken by the Integrity Commission.

Yours truly



Meg Webb MLC

Cc: Ms Fiona Murphy, Secretary of the Joint Standing Committee on Integrity

**Attached:**

1. Commonwealth Parliamentary Association, [Recommended Benchmarks for Codes of Conduct applying to Members of Parliament](#), 2016-17.
2. Kelly, R, *Reviewing the Code of Conduct for MPs*, [UK House of Commons Library](#), 1 February 2022.
3. Hansard excerpt, Legislative Council Budget Estimates Hearing Committee A, Tuesday 7 June 2022.

# Recommended Benchmarks for Codes of Conduct applying to Members of Parliament



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## ACKNOWLEDGMENTS



**MONASH** University

These Benchmarks are the outcome of a partnership between the Commonwealth Parliamentary Association (CPA) and Monash University and a subsequent workshop hosted by the Parliament of Victoria, Melbourne, Australia in April 2015, bringing together Parliamentarians and Clerks from across the regions of the CPA and other experts in the field.

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## FOREWORD

As an Association, the **Commonwealth Parliamentary Association (CPA)** has continued to lead the way in Parliamentary strengthening with regards to its Benchmarks work and the implementation of the good governance values of the Commonwealth, including enhancing public trust in parliament and its members.

Following the *CPA Benchmarks for Democratic Legislatures* which were published in 2006 in collaboration with the then World Bank Institute and the UNDP, and developed by a CPA-organized parliamentary study group, attention moved to developing a Code of Conduct for Parliamentarians.

The public's trust in its representatives is a fundamental aspect of good governance and an open, transparent society. It is crucial because if Parliamentarians demonstrate high standards of ethics consistent with their important public interest roles, especially when they are scrutinising the executive arm of government, it enhances public trust.

Good conduct is crucial as it can help uncover and deter unethical behaviour and corruption. Good conduct is also crucial because it builds trust - when there are trusting relationships between the people, parliament and other institutions, democracy works at its best. When people trust that their elected representatives are acting in their best interests, this helps legitimise our parliaments and our democratic systems. Good conduct is also crucial because it is fundamental to the effectiveness of parliament in fulfilling its essential roles of legislating, approving budgets, scrutinising Executive Government and representing the public interest.

The '**Recommended Benchmarks for Codes of Conduct applying to Members of Parliament**' was developed by the CPA in partnership with Associate Professor Hon. Dr Ken Coghill of Monash University in Australia.

This partnership was further enhanced by a CPA Workshop for Parliamentarians on the Benchmarks for Codes of Conduct applying to Members of Parliament which was hosted by the Victoria CPA Branch in Melbourne, Australia in April 2015. The Workshop examined the importance of codes, what they should contain and how they could be implemented.

The CPA Workshop was attended by Parliamentarians from eight out of the nine regions of the CPA with representatives from the following CPA Branches: Western Australia; Kenya; Bangladesh; New South Wales; United Kingdom; Canada; Jamaica; India; Samoa; Perak, Malaysia; Victoria, Australia. Many of the participants were experts on Codes of Conduct in their respective jurisdictions.

It is often argued that a lack of political will is the perpetrator of poorly performing ethics and anti-corruption initiatives. Perhaps political will is guided, facilitated and supported by a code of conduct that specifies a series of action-based components that are measurable and visible and where members are accountable for their actions, engendering a greater sense of political and civic responsibility.

A code can raise awareness, educate members and enable enforcement of acceptable standards of conduct. With these we can ensure the practice of civic values that instil public trust and improve the democratic health and performance of our countries.

The Commonwealth and the CPA recognize diversity as a strength: different experiences, approaches and attitudes foster variations in practices and policies which stimulate innovation everywhere. We at the CPA recognize that no single Parliament is a source of 'best practice' in all areas and that all Parliaments can be sources of valuable innovations regardless of their size or age and that in fact there are many forms of 'good practice'; which is why Benchmarks are so valuable; drawing from good practice across the CPA.

**Hon. Dr Shirin Sharmin Chaudhury, MP**  
**Chairperson of the CPA Executive Committee**  
**Speaker of the Parliament of Bangladesh**

## HOW TO USE THESE BENCHMARKS

The increasing complexities of the matters with which Parliament and Members of Parliament<sup>a</sup> must deal add to the pressures on parliamentary performance. The standards of conduct and ethical behaviour expected of Members of Parliament are rising. Codes of Conduct provide valuable guidance and direction for Members of Parliament in the contributions they make to their Parliament's functions. These Benchmarks assist parliaments in the design and revision of Codes of Conduct.<sup>b, 1</sup>

The Commonwealth Parliamentary Association (CPA) is committed to supporting Parliamentarians and parliamentary staff to identify benchmarks of good governance and the implementation of the good values of the Commonwealth including enhancing public trust in parliament and its members; a fundamental aspect of good governance and an open society.

The **Recommended Benchmarks for Codes of Conduct for Members of Parliament** are designed to be used by individual houses of parliament or other legislatures to assist in them to revise and strengthen existing provisions affecting the conduct of their Members or to develop new codes of conduct. The recommended Benchmarks are introduced by brief but important sections that explain the context for codes of conduct, summarised in:

- **PURPOSES AND ROLES OF PARLIAMENT**
- **PUBLIC OFFICE OF MEMBER OF PARLIAMENT**
- **PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT**

The **PRINCIPLES** on which the Benchmarks are based then follows. These draw on principles that have become widely accepted in the international community and are essential reading for an understanding of the Benchmarks. The Benchmarks are general in nature so that they can be adapted to any parliament, ranging from small states and their assemblies to the largest, and from least developed to the most well-resourced.

The CPA encourages Branches to use these Benchmarks as a set of provisions related to each other and together aimed to improve the integrity and performance of each legislature; to take the underlying contribution to integrity of each recommended Benchmark and adapt it to a particular parliamentary system so as to guide the conduct of members to benefit the performance of the parliament. Other measures to complement your Code of Conduct are described in the section **COMPLEMENTARY PROVISIONS**. Further information is available in the list of References and the Endnotes.

<sup>a</sup> Member of Parliament is used to include all members of parliaments and legislatures e.g. Senator.

<sup>b</sup> The term code of conduct is used here to refer to any code or like document affecting the conduct of individual Members of Parliament.

## PURPOSES AND FUNCTIONS OF PARLIAMENTS

Parliament is the highest legislative authority in a nation, province, state or territory.

Its major functions are: legislating (examining, debating and approving new or amended laws); budget-making (approving the collection of taxes and other revenue and authorising spending by the government); representation of the citizens; and scrutiny (checking the work of government).<sup>2</sup>

## PUBLIC OFFICE OF MEMBERS OF PARLIAMENT

Members of Parliament are public officers; as such, a Member must act in the best interests of the nation, province, state or territory concerned.

As public officers, they have a fiduciary relationship with the citizens on whose behalf they act and they are entrusted with responsibility to protect and uphold the common interests of the citizens. In other words, they must put the public interest above all others.<sup>3</sup>

Members of Parliament have complementary obligations to their parliament:

- their own behaviour should reflect favourably on the reputation of the institution of parliament;
- they should protect, strengthen and promote the parliament.
- 

Political parties exist to serve the best interests of the nation, province, state or territory as a whole, as assessed by their Members of Parliament. Again, those Members of Parliament must put the public interest above all others.

## PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT

- 1.1. A Code of Conduct forms an important part of the Integrity System.<sup>4</sup>
- 1.2. Codes affecting the conduct of individual Members of Parliament encourage ethical conduct, reduce risks to the integrity of the Parliament as the paramount political institution, enable it to perform its functions more effectively, enhance propriety and strengthening the community's trust in Parliament.
- 1.3. A Code of Conduct for Members of Parliament applies to all office holders who are members of the House of Parliament, including the Presiding Officer, the Prime Minister/Premier/Chief Minister and ministers.
- 1.4. A Code of Conduct includes both aspirational provisions (what parliamentarians ought to do) and prescriptive provisions (what parliamentarians must do or not do), and should be seen as the minimum standard for conduct.<sup>5</sup>
- 1.5. Codes of Conduct have a purpose different from Standing Orders which are primarily rules of procedure.
- 1.6. A code should be written in a style that is simple, clear and specific.

## PRINCIPLES

- 2.1. A Member of Parliament as a public officer exercises a public trust.<sup>6</sup>
- 2.2. Members of Parliament shall behave according to the following principles:
  - **Selflessness** - Members of Parliament should act solely in terms of the public interest.
  - **Integrity** - Members of Parliament must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
  - **Objectivity** - Members of Parliament must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

- **Accountability** - Members of Parliament are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
  - **Openness** - Members of Parliament should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
  - **Honesty** - Members of Parliament should be truthful.
  - **Leadership** - Members of Parliament should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.<sup>7,8</sup>
- 2.3. Members of Parliament shall:
- Act in good conscience
  - Respect the intrinsic dignity of all
  - Act so as to merit the trust and respect of the community
  - Give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law
  - Hold themselves accountable for conduct for which they are responsible
  - Exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.
- 2.4. Members of Parliament have individual responsibility as contributors to the functioning of the institution.
- 2.5. Parliamentary immunity (i.e. parliamentary privilege) protects the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation.
- 2.6. Members of Parliament shall respect the roles, independence, rights and responsibilities of parliamentary staff.
- 2.7. In a parliamentary democracy, every Member of Parliament has a responsibility to ensure that the Executive Government is accountable to the Parliament.

## BENCHMARKS FOR CODES OF CONDUCT FOR PARLIAMENTARIANS

- 3.1 **Disclosure and Publication of Interests**  
The code shall indicate that each Member shall disclose every interest which may create a perception of conflict between an interest and the duties and responsibilities set out in PRINCIPLES. It shall prescribe provisions to which each Member is subject, with provisions to the effect as follows.
- 3.1.1 Each Member shall disclose to the Parliament all relevant interests that a reasonable person might think could give rise to the perception of influencing behaviour between the Member's duties and responsibilities and his/her personal interests (eg land and property assets, share-holdings, gifts<sup>10</sup>, foreign travel, symbolic rewards (e.g. honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations). These may be subject to a specified thresholds. This applies to items received and could also apply to items donated or given. These shall be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament above a specified threshold.<sup>c</sup>
- 3.1.2 A Member shall not vote in a division on a question about a matter, other than public policy (i.e. government policy, not identifying any particular person individually and immediately) in which he or she has a particular direct pecuniary interest above a threshold (if specified).<sup>11</sup>
- 3.1.3 A Member shall not use for personal benefit confidential information (i.e. non-public information) gained as a public officer.
- 3.1.4 There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House.
- 3.1.5 The Parliament shall publish the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the most accessible means available e.g. parliamentary website.<sup>d</sup>
- 3.1.6 These provisions also apply to interests held by the member's spouse or close family members.

<sup>c</sup> Five to 30 days is suggested.

<sup>d</sup> In open data format.



3.2 **Use of Public Property**

A code should make provision to the effect that a Member may use public funds, property or facilities only in the public interest and as permitted by law (does not include for party political purposes).

3.3 **Inducements**

3.3.1 A Member shall not accept any form of inducement that could give rise to conflict of interest or influence behaviour.

3.3.2 A member shall not engage in paid lobbying, paid parliamentary advice or paid advocacy.

3.3.3 A Member shall not use his or her position to seek or secure future employment, paid lobbying, consultancy work or other remuneration or benefit upon ceasing to be a Member of Parliament.

3.3.4 A Member shall represent the interests of constituents on an equitable basis and not on the basis of personal or political affiliations, or inducements.

3.4 **Civility**

Members shall treat each other, the Parliament and the people with respect, dignity and courtesy, including parliamentary staff.

3.5 **Behaviour**

A Member shall not assault, harass, or intimidate another person.

3.6 **Attendance**

Every member shall attend every sitting of the House, in accordance with practice of the House, except with reasonable excuse, or in the case of extended absences, if excused in accordance with the practice of the House.

## ETHICS ADVISER

As part of an effective implementation of a Code of Conduct, advice shall be available to individual MPs to help them decide how to deal with ethical dilemmas. A code of conduct may provide for an ethics adviser according to the following model.

- 4.1 The adviser shall be independent of influence by any person in giving advice. (The House should designate the title of the office<sup>12</sup>)
- 4.2 The adviser shall be selected by a non-partisan process or other method designed to secure multiparty support.
- 4.3 The adviser shall have knowledge, experience, personal qualities and standing within the community suitable to the office; skill in professional ethics or law is desirable.
- 4.4 The Code shall protect the adviser from removal except for proven misbehaviour or other reasonable grounds.
- 4.5 Members shall endeavour to routinely discuss ethical dilemmas with an ethics adviser.
- 4.6 Members if unable to discuss an ethical dilemma with an ethics adviser or having done so, remain in doubt, must act with caution and not engage in any potentially compromising action.
- 4.7 Advice may be sought on conflicts of interest and any issue arising from codes of conduct and ethics and integrity issues.
- 4.8 The adviser shall base advice in each instance on the facts as related by the MP and any other relevant facts of which s/he becomes aware.
- 4.9 The adviser shall not disclose the fact that s/he has been consulted, nor any information provided by the MP or any advice given to the MP.
- 4.10 Advice sought and given is confidential, and shall not be accessible through provisions for freedom of information. However the person who seeks written advice may make it, and the related request, public.
- 4.11 The adviser shall not investigate any complaint.

## ENFORCEMENT

As part of the effective implementation of a code, an independent system for investigating alleged breaches should be established; a suggested model follows:

### 5.1 **Complaints and Investigations**

A code shall make provisions to the effect that:

- 5.1.1 A complaint alleging breach of the Code by a Member shall be made to an identified office holder who must forthwith refer it to an investigator for investigation of the facts.
- 5.1.2 At least one investigator must be appointed by the House as soon as practicable following adoption of the Code.
- 5.1.3 An Investigator shall be independent of Parliament, any Member of the Parliament, Government, or political party or grouping, and is appointed for a fixed term.
- 5.1.4 The investigator must be selected by a non-partisan process or other method designed to secure multiparty support.
- 5.1.5 An Investigator shall have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office.
- 5.1.6 The Code shall protect the investigator from removal except for proven misbehaviour or other reasonable grounds.
- 5.1.7 The investigator may determine that a complaint is frivolous or vexatious and decline to investigate it.
- 5.1.8 A Member and the complainant shall treat any complaint as if sub judice.
- 5.1.9 Any Member of Parliament shall cooperate with and assist an Investigator in the investigation of any complaint under the Code.
- 5.1.10 If there is evidence of a breach of criminal law, it must forthwith be referred to the police or corruption control agency as appropriate.
- 5.1.11 After investigation, the investigator must present a report to the Presiding Officer (or Deputy if concerning the Presiding Officer) who must determine whether or not a breach has occurred, and if a breach has occurred, refer the report to the House for further proceedings in accordance with its rules.
- 5.1.12 If a complaint has become known publicly and has not been upheld, this outcome shall be made public.

### 5.2 **Appeal or review**

The Code shall make provision that a Member against whom a complaint has been upheld, has rights to appeal or review.

### 5.3 **Sanctions and penalties**

- 5.3.1 The Code shall specify graduated sanctions and penalties for breaches of

the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the parliament.<sup>e</sup>

- 5.3.2 The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.

## FOSTERING A CULTURE OF ETHICAL CONDUCT

Each House should sustain a culture of ethical conduct reflecting a sound understanding of the parliamentary role, the public interest and the institution of parliament. Such a culture may be facilitated by:

- 7.1.1 Introductory and continuing education to assist Members to enhance their skills in ethical deliberation.
- 7.1.2 Induction which includes mentoring and experience-sharing activities involving both new and experienced Members.
- 7.1.3 Exemplary behaviour by those in leadership roles
- 7.1.4 Endeavours to detect and act to deter even minor breaches from which serious breaches may develop.
- 7.1.5 Members being encouraged to consult with the Ethics Advisor before acting on a matter that raises ethical issues.
- 7.1.6 Members acknowledging and accepting provisions of a Code of Conduct when swearing an Oath or making an Affirmation.
- 7.1.7 Publishing and making available the Code to both Members and the public.
- 7.1.8 Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence.
- 7.1.9 Encouraging discussions with the ethics adviser which shall be treated as routine and normal, with frequent informal contact between the ethics adviser and Members.
- 7.1.10 Requiring every Member to participate in activities to enhance their ethical competence on a regular basis. These activities could be online, if resources permit.
- 7.1.11 Requiring Members to provide evidence on a regular basis that they have read and understood the provisions of the Code
- 7.1.12 Endeavouring to adapt the code to changing expectations of society with regard to ethical conduct.

<sup>e</sup> See examples of sanctions shown in the table.

## EXAMPLES OF SANCTIONS

Sanction	Sanctions administered by	Country
Warning	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Remark	The Knesset Ethics Committee	Israel
Formal reprimand/reprimand	Lok Sabha (House of the People)	India
	House of Representatives	Grenada
	House of Commons	United Kingdom
	House of Representatives	United States of America
Rebuke	The Knesset Ethics Committee	Israel
Severe Rebuke	The Knesset Ethics Committee	Israel
Censure	House of Representatives	United States of America
Formal Admonition/Admonition/ Admonition to abide by the standards of conduct/Admonition to refrain from presenting at the House for a certain period of time	Lok Sabha (House of the People)	India
	House of Commons	United Kingdom
	Deliberative Council on Political Ethics	Japan
Suspension from membership of the House for a specified period (which also involves loss of salary for that period)	House of Commons	United Kingdom
Suspension from office/Suspension	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Disqualification from membership on grounds of defection	Speaker of the House	India
Order to withdraw	House of Representatives	Grenada
Loss of mandate (= Expulsion)	N/A	Fiji
	High Court	Grenada
	Lok Sabha (House of the People)	India
	The Knesset	Israel
	House of Commons	United Kingdom
Disqualification to hold public office	N/A	The Philippines
Committal	House of Commons	United Kingdom
Imprisonment	Lok Sabha (House of the People)	India
	N/A	The Philippines

Adapted from: Bruce 1996; Mawer 2006.

## APPENDIX: COMPLEMENTARY PROVISIONS

The Code of Conduct is complemented by other structures and practices in the organisation of parliament, government and the law which are essential to its effectiveness. These vary greatly according to the scale and historical development of each system of government. The Parliament should aspire to complementary norms, institutions and mechanisms which collectively enable the most effective performance of the Parliament and the wider system of government. Features of these are suggested as follows:

### 1. Integrity System

- 1.1. The Integrity system is the overarching system including codes, norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The links between integrity bodies are important. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works. The size and resources of a nation, province, state or territory will influence the institutional structure and mechanisms of its integrity system. Accordingly, it is useful to consider essential structures and the functions to be provided.
- 1.1.1. These structures may include:
- A supreme audit institution (SAI) (e.g. Chief Financial Controller, Comptroller General, or Auditor General), established by act of parliament, being an independent officer of the parliament
  - Ombudsman, also being an independent officer of the parliament, established by act of parliament
  - A parliamentary public accounts committee, chaired by a non-government Member of Parliament, with powers and resources to critically review government policies and expenditure
  - Parliamentary immunity (i.e. parliamentary privilege) protecting the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation
  - A non-partisan institution, established by act of parliament, authorised and empowered to regulate the receipt of donations and other funds and expenditure by political candidates and parties.
- 1.1.2. These functions may include:
- The capacity for independent, thorough investigation of allegations of unethical or corrupt behaviour
  - public interest disclosure (“whistle-blower”) legislation, to include application to Members, Officers and staff of Parliament.

## 2. Election campaign donations and expenditure

- 2.1. Each Member shall disclose to the relevant authority all donations received or donated towards political campaign costs and other political expenses and all expenditure for campaign and other political costs, including political party funds for which the Member has any responsibility; these must be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament.

## 3. Ministerial Code of Conduct

- 3.1. A Ministerial Code of Conduct for members of the Executive shall apply in addition to the Code of Conduct for Members of Parliament; the latter applies to all members of that parliament, including the Presiding Officer(s) and members of the Executive.
- 3.2. A Ministerial Code of Conduct shall be issued by the head of government i.e. Prime Minister, Premier or Chief Minister of the nation, province/state or territory.
- 3.3. Breaches of the Ministerial Code of Conduct shall be dealt with by the head of government.
- 3.4. The provisions of such a Code are beyond the scope of these Benchmarks.

## 4. Code of Conduct for Parliamentary Officers

- 4.1. A Code of Conduct for Parliamentary Officers and staff may be adopted to complement the Code of Conduct for Members of Parliament.
- 4.2. The provisions of such a Code are beyond the scope of these Benchmarks.

## 5. Post-parliamentary employment by former Members of Parliament

- 5.1. Any regulation of post-parliamentary employment, remuneration or other benefits received by former Members of Parliament shall be by act of parliament, as non-statutory codes cannot bind non-Members.

## 6. Lobbyists, Lobbying Register

- 6.1. Regulation of lobbying, including registration of lobbyists, shall be by act of parliament, as non-statutory codes cannot bind non-Members.

## 7. Civil Society's Role

- 7.1. Members of Parliament and Parliamentary Officers and staff should actively enable monitoring and reporting by civil society organisations of compliance with the Code of Conduct.

## 8. Political Parties

- 8.1. Political parties have roles in fostering a culture of ethical conduct.

## 9. Award

- 9.1. An award may be made to recognise exemplary conduct.

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## ENDNOTES

<sup>1</sup> Provisions similar to provisions in a Code of Conduct may be included in: Act of parliament; Conflict of Interest Code; Code of Official Conduct; Code of Ethics; rules of procedure; Standing Orders. Codes of Conduct and Codes of Ethics are often distinguished e.g. as follows:

Codes of ethics “are usually products of professional associations. They serve as a quality assurance statement to society and provide a set of standards for appropriate conduct for members of the profession that issues the code. Codes of ethics for those in government service challenge employees to identify with shared professional values that describe appropriate actions about acting rightly in the service of the public good” (Bruce, 1996, 23).

Codes of conduct are quite different. They “. . . are more concrete and practical . . . for they represent executive orders or legislatively defined and enforceable behavioral standards with sanction for violation. They contain a list of the kinds of behavior required in a given set of circumstances and provide direction to those whose conduct they govern. Codes of conduct contain minimalistic prohibitions to unquestionably subversive or criminal acts. They are designed to protect the government employee, the client, and/or the public at large” (Bruce 1996, 24). (Pelizzo & Stapenhurst, 2006, p. 199)

<sup>2</sup> Adapted from (Parliament UK, no date)

<sup>3</sup> The responsibility of Members to act in the common interests of all people represented in the parliament reflects their fiduciary duty. Fiduciary relationships are explained by Finn as requiring that where a person has been empowered to act in the interests of others, he or she must do so and not act in self-interest (Finn, 2012).

Sir Gerard Brennan, retired Australian Chief Justice, stated “It has long been an established legal principle that a Member of Parliament holds ‘a fiduciary relation towards the public’ and ‘undertakes and has imposed upon him a public duty and a public trust’ ” (2013).

Sir Gerard Brennan has explained that “The obligations cast on members of Parliament and officers of the Executive Government are many and varied and the law takes cognizance of the realities of political life, but asserts and, in interpreting statutes,

assumes that the public interest is the paramount consideration in the exercise of all public powers...Whenever political action is to be taken, its morality – and, indeed, its legality – depends on whether the public interest is the paramount interest to be served...Power, whether legislative or executive, is reposed in members of the Parliament by the public for exercise in the interests of the public and not primarily for the interests of members or the parties to which they belong”(Brennan, 2013)

<sup>4</sup> Integrity Systems are a form of risk management that provide insurance against corruption. They include norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works (Sampford, 2014).

<sup>5</sup> The Australian House of Representatives Committee reported that codes of conduct which it examined “seemed to fall into the two categories . . . – prescriptive or aspirational. One approach is to establish a more directive or prescriptive code which would include quite detailed rules and be a rather lengthy statement. The aim of a prescriptive code is to provide a comprehensive account of the conduct required of members in all conceivable situations. The alternative approach is for a more aspirational set of principles from which each member must determine his or her own behaviour. An aspirational code aims to provide a frame of reference for making decisions that involve competing values.” ((House of Representatives Standing Committee of Privileges and Members’ Interests (Australia), 2011), p.29).

Few if any codes are solely either aspirational or prescriptive. A code including both aspirational and prescriptive provisions is more likely to be effective according to the research leading to these Benchmarks.

<sup>6</sup> As a holder of public office, a Member must avoid:

- official misconduct that involves a breach of powers and duties entrusted to a Member for the public benefit and in which the Member has abused them or his position;
- wilful neglect of duty;
- wilfully embarking on a course of action which the Member has no legal right to undertake;
- oppression and extortion;

- incompatible positions;
- arrangements which are in conflict with his or her official duties;
- bribery;
- misuse of public property.  
(adapted from (Smith, 2014))

<sup>7</sup> These principles are adapted from *The Seven Principles of Public Life* (“Nolan Principles”) for holders of public office (Committee on Standards in Public Life, 1995).

<sup>8</sup> See also the general principles to govern the conduct of members of relevant authorities in England and police authorities in Wales as follows:

*Selflessness*

i. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

*Honesty and Integrity*

ii. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

*Objectivity*

iii. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

*Accountability*

iv. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

*Openness*

v. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

*Personal Judgement*

vi. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

*Respect for Others*

vii. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect

the impartiality and integrity of the authority’s statutory officers, and its other employees.

*Duty to Uphold the Law*

viii. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

*Stewardship*

ix. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

*Leadership*

x. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Statutory Instrument 2001 No. 1401. The Relevant Authorities (General Principles) Order 2001 (United Kingdom). Retrieved 18 March 2015 from [http://www.tisonline.net/ContentUploads/CaseUploads/RelAuthOrder\\_6102009154823.doc](http://www.tisonline.net/ContentUploads/CaseUploads/RelAuthOrder_6102009154823.doc)

<sup>9</sup> This section is adapted from the Politicians’ Pledge (St James Ethics Centre, 2015).

<sup>10</sup> This is not to suggest a total ban on accepting or donating gifts but it recognises that the very act of offering or receiving a gift establishes a favourable predisposition to the other person, irrespective of the value of the gift (Malmendier & Schmidt, 2012). Total bans on accepting any gifts risk leading to failure by even the most ethical Members of Parliament. Once a person is tainted as unethical for accepting or offering a gift no matter how commonplace, reasonable, and harmless social behaviour, critics have a tool with which to tar and tarnish the reputation the individual, and other Members of Parliament (Kania, 2004). Disclosure greatly reduces the risk of appearance of impropriety.

<sup>11</sup> Adapted from House of Representatives Practice (House of Representatives (Australia), 2012).

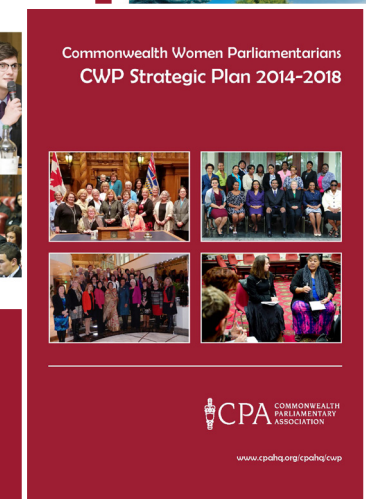
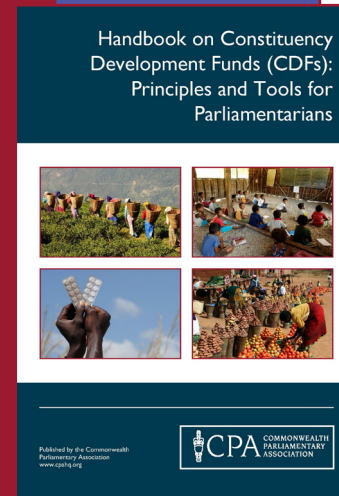
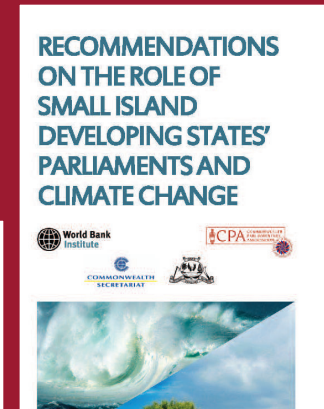
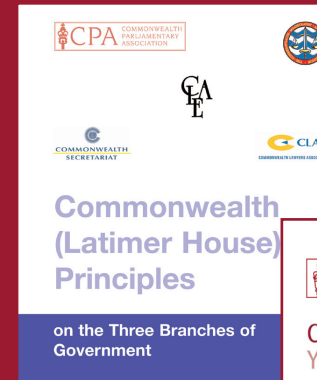
<sup>12</sup> Examples of titles include: Conflict of Interest and Ethics Commissioner; Parliamentary Ethics Adviser; (Parliamentary) Integrity Commissioner; Parliamentary Commissioner for Standards.

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MONASH University

Recommended Benchmarks for Codes of Conduct  
applying to Members of Parliament

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By Richard Kelly

1 February 2022

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# Reviewing the Code of Conduct for MPs

## Summary

- 1 Background
  - 2 The current review of the Code of Conduct
  - 3 Proposals from the Committee on Standards
  - 4 Consultation on the Standards Committee's proposals
- Appendix: New editions of and amendments to the Code of Conduct

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## Summary

The [Committee on Standards](#) was appointed on 13 December 2012 by the House of Commons following its separation from the former Committee on Standards and Privileges to consider any matter relating to the conduct of Members.

The [Code of Conduct](#) for MPs sets out the standards of behaviour expected of Members of Parliament as they carry out their work.

The Code of Conduct describes the duties of MPs and notes that MPs are expected to observe the general principles of conduct in public life set by the Committee on Standards in Public Life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership). It also expects MPs to observe the principles (of respect, professionalism, understanding others' perspectives, courtesy and acceptance of responsibility) set out in the parliamentary [Behaviour Code \(PDF\)](#). The Code of Conduct sets rules on handling conflicts of interest, registering and declaring interests and prohibits paid advocacy.

In 2002, the Committee on Standards in Public Life (CSPL) recommended that, in each Parliament, [the Parliamentary Commissioner for Standards \(PCS\) should initiate a review of the code of conduct](#) (PDF) and guide to the rules.

That was [endorsed by the Select Committee on Standards and Privileges](#) (PDF) and [supported in a debate](#) in the House on 26 June 2003.

## The current review of the Code of Conduct

On 22 September 2020, the Committee on Standards announced it would “carry out [a comprehensive and far-reaching inquiry](#) into the operation of the Code of Conduct for Members of Parliament”.

While the Committee on Standards was undertaking its inquiry, the PCS began her own review of the Code of Conduct.

The Committee on Standards' report, [Review of the Code of Conduct: proposals for consultation](#) (PDF), was published on 29 November 2021. The report brought the two strands together. It included the Commissioner's review and commented on it in developing its proposals for consultation.

All the issues raised in the Committee's report are subject to consultation. The views of MPs and others are requested by 10 February 2022. Chris Bryant also asked for [an opportunity to debate the Committee's proposals](#) in early in 2022.

## The recommendations

The Committee's report was followed by a select committee statement in the Chamber on 2 December 2021. Chris Bryant, Chair of the Committee on Standards, said that [recommendations fell into two main groups](#):

The first was “suggested changes to the substance of the rules”, including:

- an outright ban on an MP acting as a paid parliamentary adviser;
- a new requirement that an MP must have a written contract for any outside work that makes it explicit that their duties cannot include lobbying ministers;
- clarifying the criteria for the “serious wrong” exemption in the lobbying rules;
- extending the restrictions on lobbying that after any payment is received to 12 months (currently, MPs must not lobby or advocate in connection with any payment they have received in the six-month period after receiving it)
- introducing a “safe-harbour” provision that means MPs who take advice and follow it cannot be found to have breached rules;
- requiring ministers to register gifts and hospitality in the Register of Members' Financial Interests (they currently only have to register ministerial interests in Government transparency publications);
- prohibiting MPs from subjecting anyone to unreasonable and excessive personal attack in any medium.

The second group covered questions about the process for enforcing and adjudicating on the rules, including appeals.

Chris Bryant highlighted [the Committee's intention to engage “a senior judicial figure”](#) to advise it on how standards could be clearer, how best practice was followed regarding due process and MPs and complainants were guaranteed fair hearings.

On 9 December 2021, the Committee [confirmed](#) it had appointed former Lord Justice of Appeal and Senior President of Tribunals, Rt Hon Sir Ernest Ryder.

## Criticisms of the standards system

While the Committee on Standards was undertaking its inquiry into the Code of Conduct, it found that Owen Paterson had breached the House's rules on paid advocacy and [recommended he should be suspended from the House](#) (PDF). When the House first considered [the Committee's report on Owen Paterson](#), on 3 November 2021, it heard concerns from some Members about the fairness of the standards systems and complaints alleging there was no appeal mechanism for MPs.

The House initially deferred deciding on the Committee's report and agreed to establish a new committee to review the House's standards system.

However, those decisions were [criticised in and outside the House](#) and subsequently reversed. But the House [did agree](#) that recommendations made by the CSPL, in its 2018 report on [MPs' outside interests](#), should be considered by the Committee on Standards as it reviewed the Code. The Committee on Standards had taken evidence from the CSPL during its inquiry and raised several questions about its recommendations in its review of the Code of Conduct.

## Consultation on the Standards Committee's proposals

The Committee on Standards sought views on its proposals and as well as explicitly asking for comments in its report, it issued a [Code of Conduct consultation document](#) (PDF), alongside the [press notice](#) on the publication of its proposals, on 29 November 2021.

The Committee held [oral evidence sessions on its proposals on 25 and 26 January 2022](#). It heard from the CSPL, from academics, from journalists, from MPs and from the Parliamentary Commissioner for Standards.

In its [written submission](#), the CSPL told the Committee on Standards that the House of Commons should introduce further independence in the process of standards regulation. It believed that MPs should be removed "from the regulatory process entirely, save for a final vote in the case of a sanction of suspension or expulsion".

The Backbench Business Committee has allocated time on Thursday 3 February for a debate on the Committee's proposals for the Code of Conduct in the Chamber to engage Members in the consultation process.

---

# 1 Background

## 1.1 Code of Conduct and Guide to the Rules

The Code of Conduct for MPs sets out the standards of behaviour expected of Members of Parliament as they carry out their work. It describes the duties of MPs and notes they are expected to observe the Committee on Standards in Public Life's general principles of conduct in public life. It also expects MPs to observe the principles set out in the parliamentary [Behaviour Code](#);<sup>1</sup> and sets out rules on handling conflicts of interest, prohibiting paid advocacy, registering and declaring interests.

The Guide to the Rules relating to the conduct of MPs sets out in detail MPs' obligations to register and declare their financial interests, and the restrictions on lobbying for reward or consideration (paid advocacy). It also describes the procedure for the investigation of complaints.

The Code and the Guide are published in a single document:

- [The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members](#) (PDF), 10 October 2019, HC 1882 2017-19.

## 1.2 Committees etc involved in the House of Commons standards system

The **Committee on Standards** was appointed on 13 December 2012 by the House of Commons following its separation from the former Committee on Standards and Privileges to consider any matter relating to the conduct of Members.<sup>2</sup>

The **Parliamentary Commissioner for Standards** is an independent officer of the House of Commons. His or her job is to oversee the Register of Members' Financial Interests and the Code of Conduct for MPs. The Commissioner also

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<sup>1</sup> The parliamentary Behaviour Code was endorsed alongside the Independent Complaints and Grievance Scheme in July 2018. Both were developed in response to complaints about bullying and harassment in Parliament. For more information, see the Library Briefing, [Independent Complaints and Grievance Scheme](#)

<sup>2</sup> Committee on Standards, [Role](#)



advises the Committee on Standards about issues relating to the Code of Conduct.<sup>3</sup>

The **Independent Expert Panel** determines appeals and sanctions in cases where complaints have been brought against MPs of bullying, harassment or sexual misconduct under the [Independent Complaints and Grievance Scheme \(ICGS\)](#).<sup>4</sup>

The **Independent Complaints and Grievance Scheme** is Parliament's independent mechanism for handling complaints of bullying, harassment or sexual misconduct. The ICGS provides advice and support to all members of the parliamentary community, whether an individual chooses to make a formal complaint or not.<sup>5</sup>

The independent **Committee on Standards in Public Life** advises the Prime Minister on arrangements for upholding ethical standards of conduct across public life in England. It is not a regulator and cannot investigate individual complaints. It is an advisory non-departmental public body, sponsored by the Cabinet Office.<sup>6</sup>

## 1.3

## Previous reviews of the Code of Conduct

The House approved the original Code of Conduct and Guide to the Rules on 24 July 1996.<sup>7</sup>

A code of conduct was introduced following recommendations in the first report from the Committee on Standards in Public Life (CSPL), in May 1995.<sup>8</sup> The CSPL's recommendations were considered by a specially appointed select committee before being adopted by the House of Commons.

A slightly revised Code and substantially changed Guide to the Rules were approved by the House on 14 May 2002.<sup>9</sup>

### Reviews of the Code and Guide to the Rules

In 2002, the CSPL recommended that, in each Parliament, the Parliamentary Commissioner for Standards (PCS) should initiate a review of the Code of Conduct and Guide to the Rules.<sup>10</sup> That was endorsed by the Select Committee

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<sup>3</sup> Ibid. There is more information on the [Commissioner's website](#).

<sup>4</sup> UK Parliament, [Independent Expert Panel](#)

<sup>5</sup> UK Parliament, [The Independent Complaints and Grievance Scheme \(ICGS\)](#)

<sup>6</sup> Gov.uk, [Committee on Standards in Public Life](#)

<sup>7</sup> [HC Deb 24 July 1996 cc392-407](#)

<sup>8</sup> Committee on Standards in Public Life, [Standards in Public Life](#) (PDF), Cm 2850 May 1995

<sup>9</sup> [HC Deb 14 May 2002 cc731-751](#)

<sup>10</sup> Committee on Standards in Public Life, [Standards of Conduct in the House of Commons](#) (485KB, PDF), Cm 5663, November 2002, Recommendation 1, p24

on Standards and Privileges and supported in a debate in the House on 26 June 2003.<sup>11</sup>

The Code was reviewed late in the 2001 Parliament. The PCS initiated the review, consulted and reported to the Committee on Standards and Privileges. The Committee accepted the recommendations for changes to the Code but amended the Commissioner's draft by adding the words "including the general law against discrimination" to the general duty to uphold the law. The Committee noted that the Commissioner had not proposed this change.<sup>12</sup>

The Committee considered that:

... the inclusion of a provision committing Members to upholding their legal obligations in relation to equality would, at the least, be of considerable symbolic significance in reaffirming to all citizens the commitment of this House to ensuring they are treated equally under the law.<sup>13</sup>

A new Code was approved on 13 July 2005.<sup>14</sup>

## 2010 review and 2012 code

The next review was delayed until the beginning of the 2010 Parliament. The PCS undertook a consultation and reported to the Committee on Standards and Privileges. In its report, the Committee commented on the Commissioner's proposals and recommended a revised Code of Conduct.<sup>15</sup>

A new Code was approved by the House, after debate and amendment, on 12 March 2012.<sup>16</sup> The new Code defined the scope of the Code as:

2. The Code applies to a Member's conduct which relates in any way to their membership of the House. The Code does not seek to regulate the conduct of Members in their purely private and personal lives or in the conduct of their wider public lives unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.

And provided, among other things that:

16. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.<sup>17</sup>

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<sup>11</sup> Committee on Standards and Privileges, [Eighth Report of the Committee on Standards in Public Life: "Standards of Conduct in the House of Commons"](#) (1.8MB, PDF), 11 February 2003, HC 403 2002-03, Annex, para 3; [HC Deb 26 June 2003 cc1239-1256](#)

<sup>12</sup> Committee on Standards and Privileges, [Review of the Code of Conduct](#) (657KB, PDF), 4 April 2005, HC 472 2004-05, paras 3-12

<sup>13</sup> *Ibid*, para 11

<sup>14</sup> [HC Deb 13 July 2005 cc930-934](#)

<sup>15</sup> Committee on Standards and Privileges, [Review of the Code of Conduct](#) (903KB, PDF), 8 November 2011, HC 1579 2010-12

<sup>16</sup> [HC Deb 12 March 2012 cc85-102](#)

<sup>17</sup> Committee on Standards and Privileges, [Review of the Code of Conduct](#) (903KB, PDF), 8 November 2011, HC 1579 2010-12, Annex, para 16

The amendment added the following paragraph, after paragraph 16:

[16A] The Commissioner may not investigate a specific matter under paragraph 16 which relates only to the conduct of a Member in their private and personal lives.<sup>18</sup>

The Committee reconsidered this; the wording of the scope of the Code was revised; and then agreed by the House in March 2015.<sup>19</sup> Paragraph 16A was deleted and the “scope” paragraph now states that:

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.<sup>20</sup>

Although subsequent reviews of the 2012 Code have been initiated, and alterations have been made because of the introduction of the Independent Complaints and Grievance Scheme, the House has not approved the Code as a whole since 2012.

The Guide to the Rules relating to the Conduct of Members (which is published with the Code of Conduct) has generally been reviewed separately to the Code of Conduct and is not discussed in this briefing.

Full references to the various editions of the Code of Conduct can be found in the Appendix of this briefing.

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<sup>18</sup> [HC Deb 12 March 2012 cc85-102](#)

<sup>19</sup> [HC Deb 17 March 2015 cc695-706](#); Committee on Standards, [The Code of Conduct and Guide to the Rules](#) (561KB, PDF), 3 November 2014, HC 772 2014-15, paras 6-11

<sup>20</sup> House of Commons, [The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members](#) (638 KB, PDF), 10 October 2019, HC 1882 2017-19, Code, para 2

## 2

## The current review of the Code of Conduct

The Committee on Standards' report, [Review of the Code of Conduct: proposals for consultation](#) (PDF), was published on 29 November 2021.<sup>21</sup> (See section 3 on page 17 for an overview of the Committee's proposals.)

The Parliamentary Commissioner for Standards (PCS) reviewed the Code of Conduct and the Committee on Standards held an inquiry, receiving written evidence and holding oral sessions. The Committee's report brought these strands together. It included the Commissioner's review and commented on it when making proposals for consultation.

Shortly before the Committee planned to publish its consultation, it recommended that Owen Paterson should be suspended from the House after he had been found to have breached the paid advocacy rule. This recommendation led to concern from supporters of Mr Paterson about the fairness of the House's standards process. There were also criticisms that the House had not implemented recommendations of the 2018 CSPL report, [MPs' outside interests](#).

These matters were debated during an Opposition Day debate on 17 November 2021. The House acknowledged "recent concern over the outside interests of Members of Parliament" and asked the Committee on Standards to consider specific recommendations from the CSPL on ensuring that outside interests did not prevent MPs from "fully carrying out their range of duties" and that MPs should not be allowed to take on any paid work to provide services as a parliamentary strategist, adviser or consultant.<sup>22</sup>

During its inquiry, the Committee on Standards had taken evidence from the CSPL.

The Committee on Standards has asked for comments on the proposals it made in its report. Once it has reviewed those comments, it will publish another report setting out its recommendations for changes to the Code of Conduct. Before the Code is amended, any changes will have to be agreed by the House.

<sup>21</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (PDF), 29 November 2021, HC 270 2021-22

<sup>22</sup> [HC Deb 17 November 2021 cc624-692](#)

## 2.1

## How was the review undertaken?

On 22 September 2020, the Committee on Standards announced it would “carry out a comprehensive and far-reaching inquiry into the operation of the Code of Conduct for Members of Parliament”.<sup>23</sup>

The Committee received written and oral evidence during its inquiry.

While the inquiry was underway, the PCS began her own review of the Code of Conduct. In her Annual Report 2020-21, she said that her review would “complement the work that has been conducted by the Committee on Standards in their corresponding review”. She gave the following overview of her review:

My review will also aim to identify any possible gaps that may exist about the rules on lobbying; the rules on employment; and on the acceptance of benefits. I will consider how the guidance available to Members might be enhanced in order to avoid inadvertent errors and breaches of the rules. My review will also seek to identify elements of the Code of Conduct regularly misunderstood by MPs and the public, proposing changes to make the Code more accessible and easier to understand for all.<sup>24</sup>

At its meeting on 23 November 2021, the Committee on Standards agreed proposals for consultation, which were published on 29 November (see section 3 on page 17, below).

Before that meeting, the House held four debates on standards matters, following the Committee’s recommendation that Owen Paterson should be suspended from the service of the House, having been found to have breached the House’s rules on paid advocacy.<sup>25</sup>

In the fourth of those debates, on an Opposition Day on 17 November 2021, the House debated recommendations from the CSPL’s 2018 report (see its recommendations, below). The Opposition motion was defeated. In agreeing to the Government amendment, the House highlighted specific recommendations from the CSPL on ensuring that outside interests did not prevent MPs from “fully carrying out their range of duties” and that MPs should not be allowed to take on any paid work to provide services as a parliamentary strategist, adviser or consultant. The House also confirmed that “it supports cross-party work, including that being done by the House’s

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<sup>23</sup> Committee on Standards news, [Standards Committee launches inquiry into Code of Conduct for MPs](#), 22 September 2020

<sup>24</sup> Parliamentary Commissioner for Standards, [Annual Report 2020-21](#) (898KB, PDF), 30 June 2021, HC 309 2021-22, pp6-7

<sup>25</sup> [HC Deb 3 November 2021 cc938-973](#); [HC Deb 8 November 2021 cc33-82](#); [HC Deb 16 November 2021 cc476-492](#); [HC Deb 17 November 2021 cc624-692](#); Committee on Standards, [Mr Owen Paterson](#) (1.2MB, PDF), 26 October 2021, HC 797 2021-22

Committee on Standards, to bring forward recommendations to update the Code of Conduct for MPs by 31 January 2022”.<sup>26</sup>

## CSPL recommendations from 2018

In the executive summary of its 2018 report, [MPs’ outside interests](#), the CSPL expressed its regret that the recommendations it had made on MPs’ outside interests in its 2009 report had “not been fully acted upon by government and Parliament”.<sup>27</sup>

It noted, again, that most MPs did not hold outside interests, but it was concerned that “where a small number of individuals have taken up outside interests beyond what might be considered reasonable, it risks undermining trust in Parliament and Parliamentarians”.

In the 2018 report, it examined how to interpret and police “reasonable limits”. It considered that neither time limits nor financial limits on outside interests were appropriate. Some MPs had to spend specific amounts of time on maintaining professional registration (doctors, nurses, etc). In other cases, earnings came from royalties and did not take time.<sup>28</sup>

It proposed that regulation of MPs’ outside interests should be based on the principle that any outside roles MPs undertake, whether or not they were paid, should not prevent MPs from fully undertaking the range of duties expected of them in their primary role as an MP.

The first recommendation of the 2018 report was that the Code of Conduct should include this requirement. Any breach of this principle should trigger an investigation by the independent Parliamentary Commissioner for Standards. Dependent on the findings of that investigation, sanctions should be recommended by the Commons Committee on Standards.

The CSPL argued that it was not appropriate for MPs to engage in “paid political or Parliamentary advisory or consultancy work” because this risked “perpetuating the public concern that MPs are using their public office for personal gain”.<sup>29</sup>

The CSPL noted that such activity was not permitted in other UK legislatures and recommended that the MPs’ Code of Conduct should be updated to state:

MPs should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence Parliament and its members.<sup>30</sup>

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<sup>26</sup> [HC Deb 17 November 2021 cc624-692](#)

<sup>27</sup> Committee on Standards in Public Life, [MPs’ Outside Interests](#) (1.1MB, PDF), July 2018, p8

<sup>28</sup> Ibid, Chapter 3, pp32-40

<sup>29</sup> Ibid, p14

<sup>30</sup> Ibid, Recommendation 10

The CSPL's 12 recommendations were:

1. The Code of Conduct for MPs should be updated to state that:

Any outside activity undertaken by a MP, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties.
2. The Parliamentary Commissioner for Standards and the Commons Committee on Standards should undertake a review of the rules for the registration of interests. They should consider how the rules could be revised to make them clearer to MPs and the public.
3. The Code of Conduct for MPs and Guide to the Rules should be revised to state that MPs should register any non-pecuniary [non-financial] interests on the public Register of Interests, on the same basis as pecuniary interests: that the interest might reasonably be thought by others to influence actions taken in their capacity as a Member of Parliament.
4. As a matter of urgency, the Register of Members' Interests should be updated to ensure it is digitally accessible to the public and other MPs.
5. The Code of Conduct and Guide to the Rules for MPs should be revised to make clear when MPs do need to declare pecuniary and non-pecuniary interests, and what level of detail should be provided in declarations of interest.
6. The Parliamentary Digital Service should develop and implement a digital tool to identify where MPs have declared interests during Parliamentary proceedings.
7. The Code of Conduct for MPs and Guide to the Rules should be updated to provide explicitly that Members should not accept any but the most insignificant or incidental gift, benefit or hospitality from lobbyists. Guidance should be offered on the limits of 'insignificant or incidental'.
8. The Code of Conduct for MPs and Guide to the Rules should be updated to state that MPs should register accepted gifts and hospitality. The register of MPs' gifts and hospitality should be published regularly and in an easily accessible format. The Parliamentary Commissioner for Standards and Commons Committee on Standards should have responsibility for sanctions should gifts or hospitality not be registered.
9. All candidates at Parliamentary elections must publish, at nomination, whether they intend to continue to hold any existing

interests if elected. The Cabinet Office should issue guidance on the registration of these outside interests in time for the next general election.

10. The Code of Conduct for MPs and Guide to the Rules should be updated to state:

MPs should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence Parliament and its members.

MPs should never accept any payment or offers of employment to act as political or Parliamentary consultants or advisers.

11. The Parliamentary Commissioner for Standards and Commons Committee on Standards should reconsider whether the Code of Conduct for MPs should be updated to require former MPs to register for two years any occupation or employment which involves them or their employer in contact with Ministers, MPs or public officials.
12. The Parliamentary Commissioner for Standards and the Commons Committee on Standards should consider the recommendations for changes to the Code of Conduct and Guide to the Rules arising from this report within 6 months from publication of this report. They should be debated and voted on in Parliament within 9 months of this report.<sup>31</sup>

In its initial reply to the CSPL in August 2018, the Government noted that there were “limited areas of action in the report identified for the Government” and that the majority of the recommendations were a matter for the House of Commons.<sup>32</sup> The Committee on Standards considered the CSPL’s recommendations in the course of its work on reviewing the Code of Conduct.

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<sup>31</sup> Committee on Standards in Public Life, [MPs’ Outside Interests](#) (PDF), July 2018, pp10-11

<sup>32</sup> Cabinet Office, [MPs’ Outside Interests – letter from Brandon Lewis to Lord Bew, CSPL](#) (PDF), 8 August 2018



## 3

## Proposals from the Committee on Standards

While the debates that followed the Committee’s report on Owen Paterson were taking place, the Committee was finalising its review of the Code of Conduct. It had taken evidence from the CSPL and others; and considered in detail, with witnesses, ideas about limiting MPs’ outside interests as well as other questions about standards or rules.

The Committee on Standards’ report, [Review of the Code of Conduct: proposals for consultation](#) (PDF), was published on 29 November 2021.<sup>33</sup> It was followed by a select committee statement in the Chamber on 2 December 2021 and is open for consultation.<sup>34</sup>

In his statement, Chris Bryant, the Chair of the Committee on Standards, said that recommendations fell into two main sections:

1. “suggested changes to the substance of the rules”, including:
  - an outright ban on an MP acting as a paid parliamentary adviser;
  - a new requirement that an MP must have a written contract for any outside work that makes it explicit that their duties cannot include lobbying ministers;
  - clarifying the criteria for the “serious wrong” exemption in the lobbying rules;
  - extending the restrictions on lobbying that after any payment is received to 12 months (currently, MPs must not lobby or advocate in connection with any payment they have received in the six-month period after receiving it)
  - introducing a “safe-harbour” provision that means MPs who take advice and follow it cannot be found to have breached rules;
  - requiring ministers to register gifts and hospitality in the Register of Members’ Financial Interests (they currently only have to register ministerial interests in Government transparency publications);
  - prohibiting MPs from subjecting anyone to unreasonable and excessive personal attack in any medium.
2. questions about the process for enforcing and adjudicating on the rules, including appeals.

<sup>33</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22

<sup>34</sup> [HC Deb 2 December 2021 cc1073-1081](#)

Chris Bryant highlighted [the Committee's intention to engage "a senior judicial figure"](#) to advise it on how standards could be clearer, on how best practice was followed regarding due process and MPs and complainants were guaranteed fair hearings.<sup>35</sup> On 9 December 2021, the Committee confirmed it had appointed former Lord Justice of Appeal and Senior President of Tribunals, Rt Hon Sir Ernest Ryder (see section 3.2).<sup>36</sup>

All these issues and other matters raised in the Committee's report are to be subject to consultation. The views of MPs and others were requested by 20 January 2022 (subsequently extended to 10 February<sup>37</sup>). Chris Bryant also asked that for an opportunity to debate the Committee's proposals in the new year.<sup>38</sup> The Backbench Business Committee has allocated time on Thursday 3 February for such a debate.

## 3.1

### The Committee's report: overview

In its report, the Committee on Standards outlined the work that had been done so far in reviewing the Code of Conduct, how it had taken account of the instruction given by the House on 17 November, and how its work on the Code and the Guide to the Rules would proceed.

The Committee published the PCS's review of the Code in the report (see [Annex 7 of the Committee's Report](#)). It set out its own set of proposals and commented on the PCS's recommendations. It confirmed that following consultation on its proposals, it would bring forward a "final set of proposals, which would need to be put to House for a debate and a vote". It also confirmed it would propose recommendations for changes to the Guide to the Rules at that time. The Committee anticipated completing that process by Easter 2022.<sup>39</sup>

#### Purpose and scope of the Code

The Committee emphasised that "a key purpose of the Code is to assert a set of values and to promote best practice".<sup>40</sup> It recommended that the Code should continue to be based on [the Seven Principles of Public Life](#) but that the descriptors attached to the principles should be revised to reflect how they

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<sup>35</sup> [HC Deb 2 December 2021 cc1073-1074](#)

<sup>36</sup> Committee on Standard news, [Committee to appoint Sir Ernest Ryder to review Commons standards system](#), 9 December 2021

<sup>37</sup> Committee on Standards news, [Committee to extend consultation period for Code of Conduct report](#), 17 December 2021

<sup>38</sup> [HC Deb 2 December 2021 c1074](#)

<sup>39</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 7

<sup>40</sup> *Ibid*, para 15

apply to an MP's role. The Committee proposed that an additional principle of "respect" should be included in the Code.<sup>41</sup>

### Public and private life

The Committee also reviewed the scope of the Code of Conduct. It affirmed the existing position that the PCS should not investigate complaints about an MP's views or opinions. What MPs said in the Chamber would be protected by [parliamentary privilege](#) in any case. However, the Committee noted that the Commissioner also received complaints about the tone and content of comments made by MPs on social media and in other settings outside Parliament. It proposed that a new rule should make it "an investigable breach of the Code for a Member to subject anyone to unreasonable and excessive personal attack in any medium".<sup>42</sup>

The Committee noted that the PCS received many complaints about MPs' responses to correspondence from constituents. It concluded that any attempt to include constituency casework within the Code of Conduct could lead to "unfounded, vexatious or politicised complaints" and it did not recommend any change to the existing exclusion of constituency casework from what can be investigated by the Commissioner.<sup>43</sup>

It noted that it did not intend to change the existing provision of the Code that:

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

The Committee noted that this did not mean that aspects of an MP's private and personal life could not be relevant to an investigation. It stated: "It is only a Member's *purely* private and personal life that is exempt from investigation" (emphasis in the original). It did not propose to change the boundary between "public life" and "purely private and personal lives".<sup>44</sup>

Conduct in the Chamber continues to be a matter for the Speaker, not the Committee or the PCS. However, the Committee thought that in matters where an instant judgment was not possible, particularly in potential ICGS cases, there could be a role for the Commissioner. It sought views on this. It also wanted more clarity on how the ICGS applied to witnesses before select committees.<sup>45</sup>

### How the code applies to ministers

The Committee noted that in some situations, MPs who are ministers are subject to different reporting requirements. When acting as ministers they

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<sup>41</sup> Ibid, chapter 3

<sup>42</sup> Ibid, paras 44-58

<sup>43</sup> Ibid, paras 59-69

<sup>44</sup> Ibid, paras 70-73

<sup>45</sup> Ibid, paras 74-80

have to adhere to the Ministerial Code; and the Code of Conduct, when acting as an MP. The Committee accepted that the Ministerial Code should not be subsumed into the Code of Conduct. However, it concluded that the two codes should be aligned as closely as possible and that, consequently, the Committee was considering recommending that the requirements on ministerial interests should form part of the Register of Members' Financial Interests. It confirmed it would seek the views of the Independent Adviser on Ministers' Interests on this question.<sup>46</sup>

The Committee also examined the relationship between the Code of Conduct and various other rules applied to MPs, including the Code of Conduct in the House of Lords.

## Paid advocacy and outside interests

The Committee devoted a chapter of its report to “registration, declaration and paid advocacy”. It commented again on the distinction between the interests of ministers and MPs. Ministers are not required to register either that they hold ministerial office or benefits received as a minister. The Committee invited comments on the proposal that ministers should be required to register **any benefits and hospitality** received, whether or not it was received in their capacity as a minister. It also recommended that the Government improve the timeliness of, quality of and access to the information it publishes on registrations of interests by ministers.<sup>47</sup>

It recommended the accessibility of the Register of Members' Financial Interests was improved and ways of linking declarations made in parliamentary proceedings to entries in the Register were developed. But the Committee did not propose any changes to the requirements for declaring interests.<sup>48</sup>

It discussed whether MPs with relevant declarable financial interests should be barred from voting. It concluded that “Any change to the rules of conduct relating to voting would represent a very significant change to the House’s current practices”. It proposed no change but asked for views before it made its final report.<sup>49</sup>

The Committee said that the paid advocacy rule’s<sup>50</sup> purpose is to “prevent Members from using their position as a Member – whether by participating in proceedings or approaching Ministers or officials – to advocate a cause in return for financial reward”.<sup>51</sup> It considered that while the rule was set out in

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<sup>46</sup> Ibid, paras 81-96

<sup>47</sup> Ibid, paras 127-140

<sup>48</sup> Ibid, paras 141-155

<sup>49</sup> Ibid, paras 156-160

<sup>50</sup> The Code of Conduct states that “No Member shall act as a paid advocate in any proceeding of the House”. Chapter 3 of the Guide to the Rules describes in much more detail the lobbying rules that derive from the provision in the Code of Conduct

<sup>51</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 161

simple terms in the Code of Conduct, the interpretation in the Guide to the Rules – the lobbying rules – was “very complex”. The Committee considered how the provisions could be “significantly simplified”.

It noted that there were two exemptions to the paid advocacy rule:

- the serious wrong exemption;<sup>52</sup> and
- the constituency interest exemption.

The Committee said the serious wrong exemption could be interpreted too broadly. It proposed the House should explicitly confirm that it should apply if four criteria were met:

1. Firstly, it can only be relied upon in an exceptional instance;
2. Secondly, the whole approach—rather than just aspects of it—must fit the criteria;
3. Thirdly, the benefit that might accrue to the third party must be entirely incidental and not integral to the approach;
4. And fourthly, there must be evidence of a serious wrong or substantial injustice. As we stated in a recent report on an individual case, “[t]he exemption is—and must be—a narrow exemption, not a wide loophole”.<sup>53</sup>

It also proposed that:

- The lobbying rules should apply for 12 months after a benefit was received;
- A “safe harbour” provision should be introduced for Members who took advice and acted on it;
- Members taking on outside work be required to obtain a written contract, which should make it clear that they cannot lobby ministers, Members or public officials on behalf of the employer;
- Both initiating or participating in proceedings or approaches to ministers or officials should be prevented. At present there are tighter restrictions on initiating; and
- The Code of Conduct would refer to lobbying rules rather than paid advocacy -

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<sup>52</sup> The Guide to the Rules says the serious wrong exemption is: “Exceptionally, a Member may approach the responsible Minister or public official with evidence of a serious wrong or substantial injustice even if the resolution of any such wrong or injustice would have the incidental effect of conferring a financial or material benefit on an identifiable person from whom or an identifiable organisation from which the Member, or a member of his or her family, has received, is receiving or expects to receive, outside reward or consideration (or on a registrable client of that person or organisation)” [Chapter 3, para 9]

<sup>53</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 165

- Currently the Code of Conduct states: “No Member shall act as a paid advocate in any proceeding of the House”.<sup>54</sup>
- The Committee propose that it should in future state: “Members must rigorously follow the rules on lobbying set out in the Guide”.<sup>55</sup>

On MPs’ outside interests, the Committee proposed to ban MPs from “providing paid parliamentary advice, consultancy, or strategy services”.<sup>56</sup>

The Committee considered the CSPL’s recommendation that “any outside activity undertaken by a MP, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties”.

It noted that the House’s resolution of 17 November 2021, referred to this CSPL recommendation. However, the Committee suggested that while it supported the principle, it did not think a rule along these lines would be practicable or enforceable. It acknowledged that some people believed that there should be a limit on the time spent on or amount that could be earned from outside interests. It asked for comments before making its final proposals.<sup>57</sup>

## The functioning of the Code

The Committee said that it was vital that the code and the way it operated commanded the respect of the public and of the House of Commons. The Committee stated its view that the House’s present standards system is fair, that it guarantees a Member a fair hearing, that it observes the norms of due process and is compatible with Article 6 ECHR (the right to a fair trial). However, the Committee added: “we have also considered whether there is more we can do to clarify the process, eliminate confusion, and ensure best practice in guaranteeing natural justice”.<sup>58</sup> The Committee reported that it planned to appoint a senior judicial figure to review whether the way alleged breaches of the code were investigated and decided upon was compatible with fairness and natural justice.<sup>59</sup> The Committee later confirmed the appointment of Sir Ernest Ryder to undertake this review, on 9 December 2021 (see section 3.2 for more details of this review).

The Committee described the current standards system as “hybrid” because while the House maintained control of the system based on the “traditional assertion that it has the right to regulate its own affairs”, the system includes significant independent elements. The Committee thought that the House

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<sup>54</sup> House of Commons, [Code of Conduct together with the Guide to the Rules relating to the Conduct of Members](#), 10 October 2019, HC 1882 2017-19, Code, para 12

<sup>55</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, Annex 1, II, D4

<sup>56</sup> *Ibid.*, para 179

<sup>57</sup> *Ibid.*, paras 181-192

<sup>58</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 8

<sup>59</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 196

should continue to take responsibility for suspending or expelling an MP. However, it sought views on whether, as in cases under the ICGS, MPs should play no part in all decisions to that point on conduct cases.<sup>60</sup>

The Committee noted that the investigation procedures followed by the PCS and the Committee were not clearly understood. It reported that the Commissioner was revising the Information Note that describes her procedures and that the Committee would produce a similar note. It also undertook to explore whether there were ways in which investigations could be concluded more swiftly.<sup>61</sup>

The current investigation process is inquisitorial rather than adversarial. The Committee said the House has considered switching to an adversarial system and “has consistently rejected this, for good reason”.<sup>62</sup> The Committee Chair has stated that “The Committee does not propose to move from an inquisitorial system to an adversarial one, which would lead to significant delays and require legal representation on all sides, and would therefore be disproportionate”.<sup>63</sup>

## Appeals

The Committee considered the opportunities that MPs had to appeal against the findings of the Commissioner and of the Committee. An allegation made when the Committee reported on Owen Paterson was that there was no right of appeal. However, in the subsequent debate approving the Committee’s report on Owen Paterson, the Committee Chair, Chris Bryant, described the opportunities MPs had to appeal findings, including in writing and in person:

It is wrong, however, to say, as several hon. Members have, that there is no appeal process now. There is. A Member can appeal the commissioner’s decision that there has been a breach of the rules. The Committee on Standards hears that appeal, with seven independent lay members and seven Members of this House. Unlike most appeal bodies, we are remarkably generous. We do not specify grounds for appeal; we effectively allow not just an appeal, but a general rehashing of all the arguments. We can also hear an appeal in writing and in person, unlike most courts, and often a Member chooses to do both, as Mr Paterson did. We honestly give every single Member a fair hearing. We do not always agree with the commissioner.

There are, however, some blurred lines here. We could tighten up the grounds for appeal, but I warn colleagues that that might not go down too well. We could constitute ourselves as two panels, as the independent expert panel does: one to hear the original decision and determine a sanction, another to hear an appeal. We could engage an outside figure to hear that final appeal, or we could ask the independent expert panel to do that. But that is not as simple as some might suggest. The corollary might be that the House would

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<sup>60</sup> Ibid, paras 198-200

<sup>61</sup> Ibid, paras 201-208

<sup>62</sup> Ibid, para 211

<sup>63</sup> Committee on Standards, [Review of fairness and natural justice within the House’s standards system – exchange of letters between Chris Bryant, Chair, and Sir Ernest Ryder](#) (433 KB, PDF),

then have to take the sanction motion without debate or amendment, as it is required to do in sexual harassment cases.<sup>64</sup>

The Committee noted there was effectively no appeal against sanctions it recommended. It considered four options for creating a formal right of appeal:

- (a) set up an internal system of appeal to a sub-committee of the Committee;
- (b) refer any such appeal to the IEP;
- (c) create a new appeal body; or
- (d) retain the status quo, i.e. accepting that there is effectively no appeal against a recommended sanction other than to the House, when it votes on imposing the sanction.

It argued that all four had significant disadvantages and asked for views on which was the “least bad”.<sup>65</sup>

The Committee concluded its section on the functioning of the Code by noting the responsibility of MPs and proposed stating in the Code that Members should not lobby any member of the Committee (already in the Code) or the Independent Expert Panel or the PCS, or their staff, in an attempt to influence their investigation or recommendation on any sanction.<sup>66</sup>

## Training

The Committee recommended that the House service should develop “in-depth training on standards to be delivered to all Members within six months of a general election and for new Members within six months of their election”.<sup>67</sup>

## 3.2

## Review of the Code etc by a judge

As noted above, in its consultation on the Code of Conduct, the Committee on Standards said that it planned to appoint a senior judicial figure to review whether the system for investigating and deciding upon breaches of the Code was compatible with fairness and natural justice.

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<sup>64</sup> [HC Deb 16 November 2021 cc490-491](#)

<sup>65</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 238-244

<sup>66</sup> *Ibid*, paras 245-248

<sup>67</sup> *Ibid*, para 261



On 9 December 2021, the Committee confirmed it had appointed former Lord Justice of Appeal and Senior President of Tribunals, Rt Hon Sir Ernest Ryder.<sup>68</sup> The Committee's press notice outlined the scope of the review:

Sir Ernest will review whether the House's current system of investigating and deciding upon breaches of the Code of Conduct for Members of Parliament is compatible with fairness and natural justice, and with Article 6 of the European Convention on Human Rights (relating to the 'right to a fair trial').

The review will include whether greater clarity can be achieved about the roles of the Commissioner and the Committee, and setting out potential options for formalising appeal or introducing additional elements of appeal into the system.

The Committee also published an exchange of letters between its Chair and Sir Ernest. An annex to the Chair's letter set out detailed terms of reference. Sir Ernest will consider:

- the role of the PCS and whether she should be both an investigator and decision-taker on whether there has been a breach of the Code;
- how the Commissioner supports the Committee on Standards on cases she has investigated;
- whether the Committee on Standards should become a decision taker on investigations completed by the Commissioner and the implications this has for appeals;
- whether it should be possible to appeal against sanctions and how such an appeal could be considered;
- compatibility with fairness and natural justice;
- ways of enhancing the fairness of the existing system.<sup>69</sup>

The Chair's letter to Sir Ernest stated that the Committee look forward to receiving his conclusions early in 2022.

During the statement on the Committee's report, Sir William Cash asked Chris Bryant to consult on who to appoint to carry out the review, before the appointment was confirmed by the House. Chris Bryant said that the Committee on Standards would decide who was appointed, in line with any other select committee appointing an adviser.<sup>70</sup>

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<sup>68</sup> Committee on Standard news, [Committee to appoint Sir Ernest Ryder to review Commons standards system](#), 9 December 2021

<sup>69</sup> Committee on Standards, [Review of fairness and natural justice within the House's standards system – exchange of letters between Chris Bryant, Chair, and Sir Ernest Ryder](#) (433 KB, PDF), dated 8 December 2021, published 9 December 2021

<sup>70</sup> [HC Deb 2 December 2021 c1076](#)

## 3.3

# Work before the current review

## 2015 Parliament

In the 2015 Parliament, the Committee on Standards launched, but did not complete, an inquiry into the Code of Conduct and Guide to the Rules. The Committee's inquiry ran alongside a review by the previous PCS (Kathryn Hudson). The evidence that the Committee took was published on its website.<sup>71</sup>

The previous PCS announced that there were likely to be several stages to her review:

- A first consultation on the fundamental purpose of the code and who it was directed at;
- A second consultation on detailed changes to the Guide to the Rules; and
- Making recommendations to the Committee on Standards which will consult on changes before reporting to the Commons for its decision on a refreshed and updated code and rules.<sup>72</sup>

## 2017 Parliament

In the 2017 Parliament, the Committee on Standards did some background work to prepare for a review, but did not launch an inquiry. The Committee's Formal Minutes record that on 29 January 2019, it approved in principle the creation of an informal sub-committee to review the Code of Conduct and Guide to the Rules.<sup>73</sup>

On 19 March 2019, it agreed the informal sub-committee's terms of reference:

To review the Code of Conduct and Guide to the Rules, taking into account:

(a) the proposals put forward in 2017 by the previous Commissioner

(b) the need to incorporate changes resulting from the Independent Complaints and Grievance Scheme and the implementation of the Cox report as these emerge

(c) other codes of behaviour that apply to Members and the potential to either consolidate these or to illuminate the relationship between them

(d) The report of the Committee on Standards in Public Life, MPs Outside Interests, July 2018

<sup>71</sup> Committee on Standards, [Code of Conduct and Guide to the Rules inquiry](#) [webpage, 2015 Parliament]

<sup>72</sup> Ibid. See also, Parliamentary Commissioner for Standards, [Code of Conduct Review](#) and Committee on Standards news, [Commissioner publishes responses to Code of Conduct review](#), 25 January 2017

<sup>73</sup> Committee on Standards, [Formal Minutes 2017-19](#) (813KB, PDF), p25

(e) Good practice models from other parliaments or relevant bodies.<sup>74</sup>

It also agreed that the informal sub-committee should be chaired by a lay member of the Committee.<sup>75</sup>

At the end of the 2017-19 Session, the Chair wrote to the PCS about the informal sub-committee's work and a draft revised text of the Code of Conduct.<sup>76</sup> The conclusions of the informal sub-committee were placed before the Committee in the present Parliament and were taken into account when it drew up its current proposals.<sup>77</sup>

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<sup>74</sup> Ibid, p29

<sup>75</sup> Ibid, p37

<sup>76</sup> Parliamentary Commissioner for Standards, [Annual Report 2019-20](#) (675KB, PDF), 15 July 2020, HC 616 2019-21, para 9

<sup>77</sup> Committee on Standards, [Review of the Code of Conduct: proposals for consultation](#) (952KB, PDF), 29 November 2021, HC 270 2021-22, para 30

## 4

## Consultation on the Standards Committee's proposals

As noted above, the Committee on Standards sought views on the proposals it made in its report, [Review of the Code of Conduct: proposals for consultation](#) (PDF). The Committee issued a [Code of Conduct consultation document](#) (PDF), alongside the [press notice](#) on the publication of its proposals, on 29 November 2021.

The Committee held [oral evidence sessions on its proposals on 25 and 26 January 2022](#). It heard from the CSPL, from journalists, from MPs and from the Parliamentary Commissioner for Standards.

### Evidence from the CSPL

#### Increasing independence in the process

In its [written submission](#), the CSPL told the Committee on Standards that the House of Commons should introduce further independence in the process of standards regulation. It believed that MPs should be removed “from the regulatory process entirely, save for a final vote in the case of a sanction of suspension or expulsion”.

In oral evidence, Lord Evans of Weardale, the Chair of the CSPL, explained why the CSPL had reached this view:

If you want to put this in terms of the public credibility of disciplinary processes, the general direction of travel in recent years has been towards more independence. Some 40 years ago, many of the professions would have looked to their professional body to regulate them. Increasingly, that has proved not to be as effective as what there has been public appetite for. Accountancy now has a separate regulator, and the same is true for many of the other professions.

There is scepticism about whether adjudicating on the behaviour of your friends and close associates is credible. Indeed, it is interesting that the House of Lords has gone away from that procedure and has adopted a more independent model for conduct issues. With regard to the effectiveness and credibility of the system, our view was that less direct involvement of peers—I mean peers in the sense of MPs judging each other—would result in greater credibility, but we are aware that there is an issue of sovereignty. Our view is that you can have a model that is designed by and within the control of

Parliament and the Commons, but in which they do not have to debate and make decisions on individual cases..<sup>78</sup>

Sir Bernard Jenkin queried how an entirely independent panel would properly understand the context in which MPs had to manage conflicts of interest. Lord Evans thought the Committee on Standards would continue to be “the regulator of the system” but it would not sit on individual cases. There would be dialogue between the Committee and the independent panel.<sup>79</sup>

### Outside interests – reasonable limit

The CSPL also commented on its 2018 recommendation that MPs’ outside interests should be subject to “reasonable limits”. It noted that the proposal was endorsed by the Prime Minister and by the House. But that the Committee on Standards had viewed such a rule as “not practicable or enforceable”. A reasonable limits approach was still the CSPL’s “preferred approach”. It suggested how the Committee on Standards could use both earnings from and hours spent on outside interests to identify reasonable limits:

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

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

3.7 We suggest two initial criteria:

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

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

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<sup>78</sup> Committee on Standards, [Oral Evidence: Code of Conduct Consultation](#) (PDF), 25 January 2022, Q9

<sup>79</sup> Ibid, Q10

3.8 We also suggest that indicative limits can be exceeded where a member can demonstrate that their paid outside employment creates no perception of a conflict of interest, nor will it create the perception that the MP is failing to treat their parliamentary role as their primary employment.<sup>80</sup>

## Debating the proposals

The Backbench Business Committee has allocated time on Thursday 3 February 2022 for a debate on the Committee's proposals for the Code of Conduct in the Chamber to engage Members in the consultation process.

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<sup>80</sup> Committee on Standards, [Code of Conduct Consultation – written evidence submitted by the Committee on Standards in Public Life](#) (PDF), paras 3.5-3.8

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## Appendix: New editions of and amendments to the Code of Conduct

### 1996

The House of Commons Code of Conduct was first adopted by the House on 24 July 1996.<sup>81</sup> The Code was proposed by the Committee on Standards and Privileges.<sup>82</sup>

This followed a process of review by the House following the first report from the Committee on Standards in Public Life, in May 1995.<sup>83</sup> A specially constituted Select Committee on Standards in Public Life produced two reports which refined the Nolan proposals.

### 2002

The second version of the Code of Conduct was approved by the House on 14 May 2002,<sup>84</sup> following a review of the Code by the Committee on Standards and Privileges.<sup>85</sup>

### 2005

The next version of the Code of Conduct was approved by the House on 13 July 2005,<sup>86</sup> following a review of the Code by the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards.<sup>87</sup>

The Code agreed in 2005 was republished in June 2009, after a new version of the Guide to the Rules was agreed in February 2009. The publication was updated in 2010.<sup>88</sup>

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<sup>81</sup> [HC Deb 24 July 1996 cc392-407](#)

<sup>82</sup> Committee on Standards and Privileges, *The code of conduct and the guide to the rules relating to the conduct of members*, 12 July 1996, HC 604 1995-96

<sup>83</sup> Cm 2850 May 1995

<sup>84</sup> [HC Deb 14 May 2002 cc731-751](#)

<sup>85</sup> Committee on Standards and Privileges, [A New Code of Conduct and Guide to the Rules](#), 30 April 2002, HC 763 2001-02

<sup>86</sup> [HC Deb 13 July 2005 cc930-934](#)

<sup>87</sup> Committee on Standards and Privileges, [Review of the Code of Conduct](#) (657KB, PDF), 4 April 2005, HC 472 2004-05

<sup>88</sup> House of Commons, [The Code of Conduct together with The Guide to the Rules relating to the conduct of Members](#) (530 KB, PDF), 23 June 2009, HC 735 2008-09

## 2012

The current version of the Code of Conduct was first agreed on 12 March 2012,<sup>89</sup> following a review of the Code by the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards.<sup>90</sup>

The House made an amendment to the Committee's proposals before adopting the new Code of Conduct. The amendment prevented the Parliamentary Commissioner for Standards from investigating matters that related to the conduct of a Member in their private and personal lives.<sup>91</sup>

Amendments have been made to the Code on three occasions since then:

- 17 March 2015;<sup>92</sup>
- 19 July 2018;<sup>93</sup>
- 23 June 2020.<sup>94</sup>

The published version of the Code of Conduct<sup>95</sup> does not include the amendments that were made on 23 June 2020.

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<sup>89</sup> [HC Deb 12 March 2012 cc85-102](#)

<sup>90</sup> Committee on Standards and Privileges, [Review of the Code of Conduct](#) (903KB, PDF), 8 November 2011, HC 1579 2010-12

<sup>91</sup> [HC Deb 12 March 2012 cc85-102](#)

<sup>92</sup> [HC Deb 17 March 2015 cc695-706](#)

<sup>93</sup> [HC Deb 19 July 2018 cc627-660](#)

<sup>94</sup> [HC Deb 23 June 2020 cc1244-1272](#)

<sup>95</sup> House of Commons, [The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members](#) (638 KB, PDF), 10 October 2019, HC 1882 2017-19



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## Hansard Transcript Excerpt - Legislative Council - Estimates Committee A

**Hon. Jeremy Rockliff MP**

**Tuesday 7 June 2022**

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[...]

**Ms WEBB** - Yes, thank you. This is in relation to the MP's code of conduct, which was developed by the Integrity Commission, as we know, passed in parliament 2018 with the commitment that it would be reviewed in four years, which would make it this year. And when that commitment was made as it came through this place, I believe it was proposed that it would be reviewed by the parliamentary joint house committee on integrity.

What I'm wondering, Premier, is given that there could be community concerns about MPs adjudicating on our own code of conduct and deciding whether it's fit for purpose, I'm wondering whether you'd be open to considering if the Integrity Commission undertake a review of that MP's code of conduct this year instead of the internal parliamentary committee, particularly because the Commission was the one that developed it in the first place. That might be an appropriate location for the review.

**Mr ROCKLIFF** - So, of course, the code applies to the Premier and each minister. Ministers must observe the code at all times and the consequences of any failure to do so is a matter between, of course, the Premier and the minister concerned, and will depend on the merits of each case.

**CHAIR** - That's the ministerial code, Premier. I think we're talking about the code for members, aren't you?

**Ms WEBB** - MP's code of conduct, yes, the MP's.

**CHAIR** - The member's code of conduct.

**Ms WEBB** - Yes.

**Mr ROCKLIFF** - Right.

**CHAIR** - Which was -

**Ms WEBB** - It's in your standing orders. It's not in our standing orders, but it does apply to us, too.

**CHAIR** - Yes. It's a separate process, Premier.

**Mr ROCKLIFF** - So, I've got some detail here which reflects Ms Webb's question, as I understand it, in terms of the ministerial code adopted in March 2014, updated in 2018, and updated again in 2021. The Government has made changes to a number of the sections of the code, including the section relating to respect for persons, to ensure there's no doubt that the Government will operate in a manner which withstands the closest public scrutiny. We're committed to ensuring and enabling both women and men work in a safe, respectful, and inclusive environment that is free from discrimination, harassment, sexual harassment, and bullying.

**CHAIR** - With due respect, minister, this is the ministerial code we're talking about.

**Ms WEBB** - I'm talking about a different code. The MPs code of conduct, developed by the Integrity Commission.

**CHAIR** - We might have to put that on notice.

**Mr ROCKLIFF** - I'll put it then on notice, as it's a matter for parliament. I think your question relates to where that should be reviewed, either the Integrity Commission or the -

**CHAIR** - Integrity Committee. The Joint Standing Committee on Integrity.

**Mr ROCKLIFF** - The Joint Standing Committee. I'll have to take advice on that, Ms Webb.

**Ms WEBB** - Okay. I'll put that on notice, thank you. I did have one on the ministerial Code of Conduct, if I may. [...].

\*\*\* Excerpt ends\*\*\*

## **Response to Question on Notice**

**Hon. Jeremy Rockliff MP**  
**Friday 10 June 2022**

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**The Tasmanian Integrity Commission developed a Code of Conduct for the State Members of Parliament, subsequently formally adopted by both Chambers in 2018. When passed in 2018, it was agreed this Code of Conduct would be reviewed in four years – which would be this year. Initially, it was proposed the 4 yearly review would be undertaken by the Parliamentary Joint House Committee on Integrity. Acknowledging community concerns regarding MPs adjudicating on ourselves, and the fact that any other workplace or entity would commission an independent review: would you be open to considering requesting the TIC to undertake the MPs Code of Conduct review, due this year? Particularly since they were involved in its initial development and consultation.**

As the Member notes, the Code of Conduct for State Members of Parliament, adopted by both Chambers in 2018, was agreed to be reviewed in four years by the Joint House Committee on Integrity.

While it is a matter for MPs whether the review is undertaken by the Joint House Committee, or the Integrity Commission, I note that the current Code of Conduct for Members of Parliament was informed by the Integrity Commission's 2016 Draft Code of Conduct. In addition, in finalising the Code, the former Parliamentary Standards Commissioner provided advice, on invitation from the Committee.

I am also mindful that the Independent Review into Parliamentary Practices and Procedures to support Workplace Culture is currently underway, and there may be learnings from this Review that the Committee may wish to consider in relation to any updated Code of Conduct.

Therefore, I would propose that the four-year review be conducted initially by the Joint House Committee following the Bolt review, with initial input from the Parliamentary Standards Commissioner, and further input able to be sought from the Integrity Commission if requested by the Committee.