



BRIEFING PAPER

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Independent Complaints and Grievance Scheme: independent investigations

By Richard Kelly

1. Introduction

On 23 June 2020, the House is being asked to asked to approve [motions on the establishment of an Independent Expert Panel](#) to consider cases against MPs raised under the Independent Complaints and Grievance Scheme.

In [The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report](#), Dame Laura Cox recommended that the “process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part”.

The Independent Complaints and Grievance Scheme (ICGS) was adopted in July 2018, and gave the Committee on Standards responsibility for carrying out the appeal function under the ICGS. The Committee on Standards has published two reports on how it proposed to take on these responsibilities.¹

In the first of these reports the Committee accepted its role until the full package of reforms was in place:

we note that until the full package of Cox report reforms is put in place, the ICGS as agreed on 19 July 2018 remains in place. Complaints under the Scheme are being investigated, and we are advised that there is a possibility that before long we may be asked to consider appeals in ICGS cases.²

In a debate on that report, Kate Green, then Chair of the Committee, welcomed the introduction of the ICGS but said that “Cox requires us to go further and to have a system that only is independent, fair and transparent, but that is seen to be so”. She said her Committee’s proposals were “a step on that journey”.³

In the second of these reports, the Committee set out a framework for appeals (Box 1).

Responsibility for developing an independent process fell to the House of Commons Commission. After work on developing alternatives (see section 5), it consulted on its

¹ Committee on Standards, [Implications of the Dame Laura Cox report for the House’s standards system: Initial proposals](#), 10 December 2018, HC 1726 2017-19; and [The Committee’s role in ICGS appeals](#), 13 March 2019, HC 1976 2017-19

² Committee on Standards, [Implications of the Dame Laura Cox report for the House’s standards system: Initial proposals](#), 10 December 2018, HC 1726 2017-19, para 10

³ [HC Deb 7 January 2019 c134](#)

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preferred approach in February 2020 and then agreed an implementation plan at its meeting in April 2020.

Box 1: The Committee on Standards' framework for appeals under the ICGS

- a) Appeals to the Sub-Committee should be a two-stage process: (1) acceptance that there are grounds for appeal and (2) where there are such grounds, the appeal itself.
- b) Grounds for an appeal by either the complainant or the respondent would be:
 - i) The investigation or decision-making was procedurally flawed.
 - ii) Significant new evidence has become available.
- c) The Sub-Committee would not re-investigate a case, but rather would, if necessary, require the investigation to be re-opened.
- d) An appeal by the respondent against sanctions would be heard where those are imposed by the Commissioner: this would not involve re-opening the investigation but would consider whether the proposed sanction was appropriate in view of the investigation findings.
- e) Given the sensitive nature of ICGS complaints, other than in exceptional circumstances neither the complainant nor the respondent should appear before the Sub-Committee; the appeal would be considered on the basis of documentation only.⁴

A fuller background to the ICGS can be found in the Library Briefing Paper, [Independent Complaints and Grievance Scheme](#), CBP 8369.

2. Independent Expert Panel: implementation

At its meeting on 27 April 2020, the Commission confirmed the implementation plan for its preferred option, including the following aspects:

- The House would be asked to consider whether or not there should be a time-limited debate led by a member of the House of Commons Commission in the very rare circumstances where it is asked to implement a sanction of suspension or expulsion of a Member following a panel determination;
- The Independent Expert Panel would not include a former Member;
- The Independent Expert Panel would adopt the Committee on Standards appeals framework;
- The recruitment process would select a Chair for the panel; [The motions before the House on 23 June 2020 state that "The Panel may elect its own Chair."]
- The Independent Expert Panel would use the confidentiality processes established by the Committee on Standards; and
- The Commons Executive Board, in conjunction with the Commission, would finalise the person specification and conduct the recruitment process.⁵

A separate statement on the independent complaints process also confirmed that if the proposals were approved by the House, an Independent Chair and seven expert panel

⁴ Committee on Standards, [The Committee's role in ICGS appeals](#), 13 March 2019, HC 1976 2017-19, para 13. The Committee modified these arrangements, see: Committee on Standards, [Formal Minutes 2017-19](#), 23 July 2019, p36

⁵ House of Commons Commission, [Decisions – 27 April 2020](#), Item 2

members would be recruited. It repeated that neither the Chair nor any members of the panel would be MPs.⁶

2.1 Proposals

The House of Commons Commission described its preferred option in a February 2020 consultation document:

The preferred option is to establish an independent expert panel to replace the Committee on Standards in considering ICGS cases.

As now, the Parliamentary Commissioner for Standards (PCS) would retain the power to determine cases and impose sanctions up to a certain level of severity. The new independent expert panel would consider cases where more serious sanctions were considered appropriate and also hear appeals by either party against the PCS's conclusions.

The Commission then launched a consultation on its preferred option. It also sought views on how sanctions should be considered on the floor of the House and whether the panel should include a Member.⁷

2.2 Feedback from the consultation

Feedback from the consultation was released in response to a freedom of information request. HouseLive reported on responses that the Commission received on June 19 2020:

...Overwhelmingly, the Commission was warned against allowing MPs a debate on sanctions, citing areas around fairness, procedural justice and confidentiality. Many felt it would undermine the independence of the new system

[...]

An ex-clerk said: "Any procedure on the floor, debate or no debate, gives a member an opportunity to reopen a complaint investigation and attempt to politicise it."

[...]

A joint contribution from Parliament's own Cultural Transformation Group said: "A debate would wholly undermine fair trial principles, both for complainants and respondents, potentially breaching Article 6 of the Human Rights Act, and could contribute to further harm and a complainant being revictimised."

[...]

The Commission also received a submission from the 1922 committee of backbench Conservative MPs. In its conclusion, the '22 argued: "Whatever the composition of the panel tasked with a finding of fact, the Committee believes that following the publication of that determination, the appropriate body to determine sanction should be the Committee on Standards and Privileges.

"The existence of a public finding of serious misconduct against a Member would place an expectation on the Committee on Standards and Privileges to recommend a serious sanction to the House. Experience suggests that once a sanction has been recommended in this way, the House normally accepts that recommendation."⁸

⁶ House of Commons news, [Commission statement: Independent complaints process](#), 29 April 2020 [intranet link]

⁷ House of Commons Commission, *Decisions – 10 February 2020*, Item 2; House of Commons, [Cox III: Consultation Paper](#), undated

⁸ Sebastian Whale and Max Jeffrey, "[Revealed: The warnings to the House of Commons Commission on new plans to tackle Westminster bullying and harassment](#)", *The HouseLive*, 19 June 2020

3. The motions for debate

Jacob Rees-Mogg, the Leader of the House, has tabled [three motions](#) relating to the Independent Expert Panel, which will come before the House for approval on 23 June 2020.

The first motion, entitled “Independent Determination of Complaints of Bullying and Harassment”:

- Reaffirms the House’s commitment to the ICGS;
- Accepts Dame Laura Cox’s recommendation on independence of process;
- Agrees to the Commission’s proposal for an Independent Expert Panel;
- Agrees to its establishment; and
- “expects Members of this House to cooperate with the Panel’s work and comply with its findings”.

The second motion makes amendments to Standing Orders and to the Code of Conduct, to establish the Independent Expert Panel and sets out how the House will consider any sanctions against Members determined by the Panel. This motion provides that a sanction against an MP could be debated for up to an hour.

The third motion sets out rules that may be applied in the conduct in any such debate:

That, subject to the discretion of the Chair, the House shall apply the following rules in proceedings on matters raised by the Independent Expert Panel or its sub-panels:

- (a) The name of any complainant may not be referred to in any motion, debate or question.
- (b) Details of any investigation or specific matters considered by a sub-panel of the Independent Expert Panel shall not be referred to in any motion, debate or question.
- (c) The findings and determination of sanctions of a sub-panel of the Independent Expert Panel may not be called into question.⁹

The Leader of the House issued a [press release](#) on the motions on 19 June 2020.

3.1 Is this an independent process?

A report on the proposals in *The Times* questioned whether allowing Members to debate the recommendations of the Independent Expert Panel compromised the independence of the process – it is headlined “MPs could gain right to debate complaints despite calls for independent process”. It quotes Dr Hannah White, deputy director of the Institute for Government, who said:

Giving a voice to the perpetrator by allowing a debate in which the victim will be unable to participate will undermine the whole system. It will discourage staff from reporting bullying rather than risk seeing their experience discussed by MPs on the floor of the House.

The report also records the Conservative 1922 Committee submission to the Commission’s consultation which argued that excluding MPs from the process completely “flies in the face of all normal laws of natural justice”.¹⁰

⁹ House of Commons, [Order of Business, Future Business A for 23 June](#), 22 June 2020

¹⁰ Esther Webber, “[MPs could gain right to debate complaints despite calls for independent process](#)”, *Times*, 18 June 2020 [online, paywall]

In March 2020, the House of Lords agreed that its Conduct Committee, which has oversight over the ICGS should determine appeals. However, “the full Conduct Committee need not, and probably should not, be involved in appeals” – a panel of three peers and two lay members would suffice.¹¹ The Conduct Committee had also recommended a change to the Code of Conduct to ensure that its recommendations were not be debated on the floor of the House. The Code of Conduct now includes:

When the Conduct Committee reports to the House on an individual case, the report and any resolution relating to sanction are decided without debate.¹²

4. Independent Inquiry into bullying and harassment of House of Commons Staff by Dame Laura Cox

In March 2018, whilst the ICGS was being developed, complaints about the behaviour of Members towards staff of the House were reported in the press and television. The House of Commons Commission

The Commission [agreed](#) that an inquiry into the bullying and harassment of House staff should be initiated immediately. Its Non-Executive members were [asked](#) to appoint an independent expert to lead the inquiry and to develop terms of reference.

Dame Laura Cox QC was appointed to lead the Inquiry. Her appointment and terms of reference were announced, in a [press release](#), on 23 April 2018.

[*The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*](#), by Dame Laura Cox was published on 15 October 2018.

Dame Laura did not provide an Executive Summary. However, in a statement at the beginning of her report, she suggested that “those looking to see if changes are being made over the coming weeks” should “look for progress as regards the following fundamental recommendations”:

- The “Valuing Others Policy” and the “Revised Respect Policy” should both be abandoned as soon as possible, and members of House staff wishing to complain about bullying, harassment or sexual harassment should no longer be required to use them.
- The new Independent Complaints and Grievance Scheme should be amended, so as to ensure that those House employees with complaints involving historical allegations can access the new Scheme.
- Steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.

¹¹ [HL Deb 16 March 2020 cc1280-1281](#)

¹² Conduct Committee, [Progress report and amendments to the rules of conduct](#), 5 March 2020, HL Paper 34 2019-21, Appendix 2 [amendments to the Code of Conduct] para 161

5. An entirely independent process

5.1 Acceptance of the recommendations

At its meeting on 24 October 2018, the Commission discussed [Dame Laura Cox's report](#). Following its meeting, the Commission issued a statement, in which it acknowledged that "The scale of the problem and depth of hurt caused is beyond dispute". It expressed its determination to rectify past mistakes and agreed to "the three fundamental recommendations highlighted by Dame Laura":

1. We are terminating the Valuing Others Policy, and have suspended operation of the Respect Policy recommending that the House terminate it as soon as possible;
2. We recommend that the House amend the new Independent Complaints and Grievance Scheme to ensure that those House employees with complaints involving historical allegations can access the new Scheme;
3. We recommend that the House consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.

It is now up to the House to take forward these recommendations to which we are fully committed. We would expect to see them progressed as quickly as possible.¹³

5.2 Development of proposals for an independent process

At its meeting on 17 December 2018, the Commission agreed that:

... a small informal working group should be established to examine and report on the third key recommendation made by Dame Laura Cox in relation to the independence of the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament.¹⁴

At its meeting on 25 February 2019, the Commission "made progress on agreeing the membership of the informal working group on the determination of complaints without MP involvement, which will comprise a balance between MPs and independent members". It expected to be able to confirm and announce the membership "shortly".¹⁵

At its meeting on 29 April 2019, the Commission reviewed the prospective membership for the working group on determination without Member involvement and agreed it would be finalised by correspondence.¹⁶

On 10 June 2019, a House of Commons news item announced "The creation of a staff team to lead on producing options on implementation for the Commission" on entirely independent process for determining complaints. The press notice continued that:

This team will include members with procedural and legal knowledge, as well as expertise in the operation of the Independent Complaints and Grievances scheme - as well as any other resource that may be required. They will also work closely with the Parliamentary Commissioner for Standards, and may draw on other resources as required.

¹³ House of Commons, [Statement from the House of Commons Commission on the Dame Laura Cox Report](#), 24 October 2018

¹⁴ House of Commons Commission, [Decisions – 17 December 2018](#), Item 1

¹⁵ House of Commons Commission, [Decisions – 25 February 2019](#), Item 3

¹⁶ House of Commons Commission, [Decisions – 29 April 2019](#), Item 1a

[...]

These options will be presented to the Commission, who will select their preferred option and then open it for public consultation.¹⁷

5.3 The Commission's preferred option

The Commission received a number of options from the staff team. At its meeting on 10 February 2020, it agreed its preferred option for implementing the recommendation, which would involve the setting up of a new independent panel of experts with the power to determine ICGS cases and decide on sanctions; and agreed that formal consultation on the selected preferred option be undertaken.¹⁸

As noted above, in section 2, at its meeting on 27 April 2020, the Commission confirmed the implementation plan for its preferred option

6. ICGS – a brief timeline

Date	Development
Nov 2017	The Government established a cross-party Working Group on an Independent Complaints and Grievance Policy.
8 Feb 2018	The Working Group's Report was published. It called for a Parliament-wide behaviour code and An independent complaints and grievance scheme including two new Parliament-wide policies for responding to and managing complaints of (i) Sexual harassment; and (ii) Bullying and harassment
28 Feb 2018	The House of Commons endorsed the Report and asked the House of Commons Commission to authorise the work.
Mar 2018	BBC Newsnight reported complaints about the behaviour of MPs towards House staff.
19 Mar 2018	The House of Commons Commission agreed to establish an independent inquiry into bullying and harassment of House staff.
23 Apr 2018	House of Commons Commission announced announced the terms of reference of the inquiry and that it would be undertaken by Dame Laura Cox.
17 July 2018	The Independent Complaints and Grievance Policy Delivery Report was published.
19 July 2018	The House of Commons approved the Delivery Report; endorsed the Behaviour Code and incorporated it in the Code of Conduct; and the policies and procedures relating to bullying and harassment and sexual harassment set out in the Delivery Report.

¹⁷ House of Commons news, [Progress on Dame Laura Cox recommendations – Commission update](#), 10 June 2019. In the debate on 18 June 2019, Valerie Vaz outlined the background to the change of approach [[HC Deb 18 June 2019 c199](#)]

¹⁸ House of Commons Commission, *Decisions – 10 February 2020*, Item 2; House of Commons, [Cox III: Consultation Paper](#), undated

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28 Feb 2018	The House of Commons endorsed the Report and asked the House of Commons Commission to authorise the work.
Mar 2018	BBC Newsnight reported complaints about the behaviour of MPs towards House staff.
19 Mar 2018	The House of Commons Commission agreed to establish an independent inquiry into bullying and harassment of House staff. The House also agreed to establish a further independent inquiry to consider allegations of bullying and harassment in respect of those individuals including MPs and their staff. This inquiry, by Gemma White QC, was launched , on 6 November 2018.
15 Oct 2018	<i>The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report</i> , by Dame Laura Cox was published.
24 Oct 2018	The House of Commons Commission agreed to the three fundamental recommendations highlighted by Dame Laura Cox.
28 Jan 2019	Alison Stanley was appointed to conduct the six-month review of the ICGS.
13 Mar 2019	The Committee on Standards set out its interim role in ICGS appeals.
12 June 2019	Alison Stanley's <i>Independent 6-month Review</i> of the ICGS published.
11 July 2019	Gemma White QC's report <i>Bullying and Harassment of MPs' Parliamentary Staff – Independent Inquiry Report</i> published.
17 July 2019	Gemma White QC's report debated in the House of Commons. House of Commons agreed to allow historic cases to be investigated under the ICGS.
27 April 2020	Following consultation, the House of Commons Commission confirmed that it wanted an independent expert panel to determine ICGS cases and decide upon sanctions. The House has to agree the arrangements before they can be implemented.

Date	Development
Nov 2017	The Government established a cross-party Working Group on an Independent Complaints and Grievance Policy.
8 Feb 2018	The Working Group's Report was published. It called for a Parliament-wide behaviour code and An independent complaints and grievance scheme including two new Parliament-wide policies for responding to and managing complaints of (i) Sexual harassment; and (ii) Bullying and harassment
28 Feb 2018	The House of Commons endorsed the Report and asked the House of Commons Commission to authorise the work.
Mar 2018	BBC Newsnight reported complaints about the behaviour of MPs towards House staff.
19 Mar 2018	The House of Commons Commission agreed to establish an independent inquiry into bullying and harassment of House staff.
23 June 2020	The House of Commons will be asked to approve motions on the establishment of an Independent Expert Panel to consider cases raised under the Independent Complaints and Grievance Scheme

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