



RESEARCH PAPER 01/102  
19 NOVEMBER 2001

# Parliamentary Standards

This Paper looks at the background to the ‘Nolan reforms’ of 1995 in the Commons and examines some of the major themes of those reforms. It also sets out the background to the recent changes in the House of Lords. It does not examine the standards systems in the devolved legislatures, except by analogy.

Oonagh Gay

PARLIAMENT AND CONSTITUTION CENTRE

HOUSE OF COMMONS LIBRARY

**Recent Library Research Papers include:**

<b>01/88</b>	Members' Office Costs – the new system	08.11.01
<b>01/89</b>	The <i>Animal Health Bill</i> [Bill 39 of 2001-02]	08.11.01
<b>01/90</b>	The <i>British Overseas Territories Bill</i> [Bill 40 of 2001-02]	13.11.01
<b>01/91</b>	Unemployment by Constituency, October 2001	14.11.01
<b>01/92</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Part XII: Anti-Corruption Legislation [Bill 49 of 2001-02]	15.11.01
<b>01/93</b>	The <i>Employment Bill</i> [Bill 44 of 2001-02]	15.11.01
<b>01/94</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Parts VI & VII: Pathogens, Toxins & Weapons of Mass Destruction [Bill 49 of 2001-02]	15.11.01
<b>01/95</b>	The <i>National Health Service Reform and Healthcare Professions Bill</i> [Bill 47 of 2001-02]	15.11.01
<b>01/96</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Parts IV & V: Immigration, asylum, race and religion [Bill 49 of 2001-02]	16.11.01
<b>01/97</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Part X: Police powers [Bill 49 of 2001-02]	16.11.01
<b>01/98</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Parts III & XI: Disclosure and Retention of Information [Bill 49 of 2001-02]	19.11.01
<b>01/99</b>	The <i>Anti-terrorism, Crime and Security Bill</i> , Parts I, II, VIII, IX & XIII: Property, Security and Criminal Justice [Bill 49 of 2001-02]	19.11.01
<b>01/100</b>	The <i>Age Equality Commission Bill</i> [Bill 10 of 2001-02]	16.11.01
<b>01/101</b>	The <i>Anti-terrorism, Crime and Security Bill</i> : Introduction and Summary [Bill 49 of 2001-02]	19.11.01

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site,  
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,  
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

## Summary of main points

This paper deals with developments in Parliamentary standards in the Commons and the Lords; it does not attempt to cover similar initiatives in the devolved assemblies/parliaments, except by analogy.

Until 1995, allegations of failure to declare and register financial interests were dealt with by the Select Committee on Members' Interests, set up in 1974. Disciplinary sanctions against Members were imposed by the Commons, using traditional powers under parliamentary privilege to regulate its own affairs. The cash for questions allegations of the 1992 Parliament led to the establishment by the then Prime Minister, John Major, of the independent Committee on Standards in Public Life, chaired by Lord Nolan.

Following the first report of the Nolan Committee on Standards in Public Life in May 1995, the Commons set up new machinery to oversee members' conduct. The key changes, loosely known as the Nolan reforms, were:

- A new Code of Conduct for Members, incorporating new rules on registration and declaration of interests
- A new select committee, the Committee on Standards and Privileges, in place of the Privileges and Members' Interests Committees
- A new post of Parliamentary Commissioner for Standards who would investigate allegations against Members and report to the Committee on Standards and Privileges
- A ban on paid advocacy by Members
- A retention of self-regulation, with the Commissioner as an independent element

The Commissioner and Committee have had to deal with a number of high profile and complex investigations, notably those concerning Neil Hamilton, who lost his seat in the 1997 election, before the Committee had published its findings. This and other investigations have provoked some criticism of the fairness and efficacy of the investigations and appeals procedures. For example, a feature of the 1997 Parliament was the extent to which Members of one party complained about Members of another party to the Commissioner.

The implementation of the ban on paid advocacy has not been without difficulties and has been subject to some serious criticism within the House. The Standards and Privileges Committee has published some proposals for change, which have yet to be approved by the Commons. Its procedures have also been examined by the Committee on Standards in Public Life<sup>1</sup> and the Joint Committee on Parliamentary Privilege.<sup>2</sup>

---

<sup>1</sup> *Reinforcing Standards* Cm 4557 January 2000

<sup>2</sup> HL Paper 43/HC 214 1998-9

Following a further report from the Committee on Standards in Public Life,<sup>3</sup> the House of Lords is due to introduce its own code of conduct on 31 March 2002, which will contain new rules on registration and declaration of interests, as well as advocacy. No Standards Commissioner is to be appointed.

---

<sup>3</sup> *Standards of Conduct in the House of Lords* Cm 4903 November 2000

## CONTENTS

<b>I</b>	<b>Background</b>	<b>7</b>
	<b>A. Introduction of registration and declaration of interests</b>	<b>7</b>
	<b>B. The operation of the 1974 system</b>	<b>8</b>
<b>II</b>	<b>The Nolan Committee recommendations and implementation</b>	<b>11</b>
<b>III</b>	<b>The Code of Conduct</b>	<b>12</b>
<b>IV</b>	<b>The Committee and Commissioner</b>	<b>16</b>
	<b>A. The Parliamentary Commissioner for Standards</b>	<b>16</b>
	<b>B. Select Committee on Standards and Privileges</b>	<b>19</b>
	<b>C. Standards and Privileges Committee Reports</b>	<b>21</b>
<b>V</b>	<b>The Investigation and Appeals Process</b>	<b>22</b>
	<b>A. Self –regulation and parliamentary privilege</b>	<b>22</b>
	<b>B. Application of the law on corruption to MPs</b>	<b>24</b>
	<b>C. <i>The Political Parties, Elections and Referendums Act 2000</i></b>	<b>24</b>
	<b>D. The investigation process</b>	<b>25</b>
	<b>E. Appeal procedures- the initial provisions</b>	<b>26</b>
	<b>F. The investigation into Mr Neil Hamilton</b>	<b>28</b>
	<b>G. The Select Committee reports on appeal procedures in 1998</b>	<b>30</b>
	<b>H. Joint Committee on Parliamentary Privilege</b>	<b>34</b>
	<b>I. <i>Reinforcing Standards</i>- the report from the Committee on Standards in Public Life</b>	<b>36</b>
	<b>J. The response to <i>Reinforcing Standards</i></b>	<b>39</b>
	<b>K. Interaction between the Commissioner and the Committee</b>	<b>41</b>

<b>VI</b>	<b>The Advocacy Rule</b>	<b>44</b>
<b>A.</b>	<b>The operation of the advocacy rule</b>	<b>44</b>
<b>B.</b>	<b>Employment agreements</b>	<b>50</b>
<b>C.</b>	<b>The future of the advocacy rule</b>	<b>53</b>
<b>VII</b>	<b>Parliamentary Standards in the House of Lords</b>	<b>54</b>
<b>A.</b>	<b>The Neill Committee report</b>	<b>56</b>
<b>B.</b>	<b>The debate on 2 July 2001</b>	<b>58</b>
<b>C.</b>	<b>The Code of Conduct</b>	<b>58</b>
	<b>Appendix 1 Extracts from <i>The Code of Conduct for Members</i></b>	<b>59</b>
	<b>Appendix 2 Commons debates on Standards and Privileges Committee reports</b>	<b>69</b>
	<b>Appendix 3 The House of Lords Code of Conduct</b>	<b>70</b>

# I Background

## A. Introduction of registration and declaration of Interests

Demands for a register of interests for Members in the Commons began to be heard in the late 1960s.<sup>4</sup> Members had been subject to a long-standing convention requiring declaration of financial interests during debate, but this was not formally stated as a Resolution of the House. The acceptance of money by Members was considered in a 1947 Resolution which noted:

It is inconsistent with the dignity of the House, with the duty of a Member to his constituents and with the maintenance of the privilege of freedom of speech for any Member to enter into a contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulate that he act in any way as the representative of an outside body in regard to any matters to be transacted in Parliament, the duty of a Member being to his constituents and to the country as a whole, rather than to any section thereof.<sup>5</sup>

In 1967 a voluntary register of Liberal MPs began, which was made available for public inspection.<sup>6</sup> A select committee was appointed to consider a register in May 1969 following press revelations that a Labour Member, Gordon Bagier, was working for a public relations firm to improve the image of the Greek Government.

The report from the Select Committee on Members' Interests (Declaration) (the Strauss report) of 1969<sup>7</sup> recommended against a public register of members' interests, but in favour of a code of conduct for Members which would emphasise the duty of declaration of interests. The report was not received favourably and was never debated. The press favoured a register of interests, but the Leader of the House told the Commons in February 1971 that the Code of Conduct proposed was considered too restrictive.<sup>8</sup>

Following the Poulson affair in the early 1970s there was renewed pressure for a register and the incoming Labour government of February 1974 tabled motions for the Commons

<sup>4</sup> See for example evidence from Michael English to the Select Committee on Parliamentary Privilege 1967-68 Appendix XIX. Full background to the system of registering and declaring Members' interests before the establishment of the Committee on Standards in Public Life in October 1994 is contained in Library Research Paper 95/62.

<sup>5</sup> The resolution followed a report from the Privileges Committee on the case of W.J. Brown, who had complained of improper pressure placed on him by the Civil Service Clerical Association. See HC 118 Session 1946-7

<sup>6</sup> Michael English had submitted evidence to the Select Committee on Parliamentary Privilege on the need for a register of members' interests. HC 34 1967-8 Appendix XIX

<sup>7</sup> HC 57 1969-70

<sup>8</sup> HC Deb 10 February c1704

to create a system for the declaration of interests, to express support for the principle of a compulsory public register of interests and to create a select committee to flesh out the details.<sup>9</sup> The Select Committee reported at the end of 1974<sup>10</sup> with detailed recommendations on the creation of a register and the establishment of a permanent select committee to oversee the implementation of the new system and to hear complaints against Members. A senior clerk would service the committee and act as Registrar of Members' Interests. The report stressed that the Registrar could not be seen as an enforcement officer, given that 'the ultimate sanction behind the obligation on Members to register would be the fact that it was imposed by Resolution of the House'.<sup>11</sup>

The Resolution on registration simply referred to the need to furnish a list of registrable interests, without further consideration of the propriety of such interests. There was no reference to the terms of the 1947, or indeed the 1858 Resolutions.<sup>12</sup> The 1974 Select Committee report noted that the purpose of the register was to 'give public notice of those interests and benefits which a Member enjoys and which might on occasion affect the discharge of his Parliamentary duties'.<sup>13</sup>

## **B. The operation of the 1974 system**

A small minority of Members, notably Enoch Powell, did not participate in the register in the 1970s, arguing that the system was ill-conceived.<sup>14</sup> The Select Committee on Members' Interests issued a number of reports but there were no sanctions against non-participants, including Mr Powell, who lost his seat in 1987. The incident highlighted the difficulties of establishing a register on the basis of a resolution of the House rather than by statute; the only punishment for failure to comply with the House's rules is what the House itself determines. If the House chooses to take no action, no sanctions are applied and nothing can be done by any other body, such as the courts.

A specially constituted select committee, the Select Committee on the Conduct of Members, investigated three Members in connection with the Poulson affair in 1977 concluding that their conduct was inconsistent with the standards of the House. The House agreed without a division to a motion moved by the Leader of the House expressing agreement with the Committee's decision on John Cordle (who had resigned his seat before the debate) but similar motions relating to Reginald Maudling and Albert

---

<sup>9</sup> The resolutions were passed on 22 May 1974

<sup>10</sup> HC 102 1974-75

<sup>11</sup> HC 102, paras 33, 37

<sup>12</sup> This Resolution of 22 June 1858 banned paid advocacy but was interpreted as referring to advocacy in the House by members of the bar. See *Erskine May* (22<sup>nd</sup> ed) p116 for the text

<sup>13</sup> HC 102 1974-5 para 9

<sup>14</sup> Mr Powell's argument was that the resolution was not binding on Members in as much it purported to impose obligations on Members which should only be lawfully and constitutionally imposed by legislation. For further detail see his letter to the Members' Interests Committee HC 479 Appendix 1



Roberts were amended on division so that the House simply took note of the Committee's report. Amendments calling for their expulsion or suspension for six months were defeated by substantial majorities.<sup>15</sup> The episode illustrated the difficulties in achieving House-wide consensus on such sensitive issues.

There were very few complaints made against Members in the 1970s and 1980s investigated by the Select Committee, and none merited a full investigation by the Committee until the Browne case (see below). This may be considered surprising, at a time when the lobbying industry was growing rapidly. A report from the Members' Interests Select Committee noted in 1990-91 that its predecessor Committee had been given an estimate of £3.25m for political consultancy fee income; by 1987 a separate estimate was £9m, and an assessment that the industry was expanding by 20 to 25 per cent annually.<sup>16</sup> The defeat of the *Shops Bill* in 1985-6 was accompanied by extensive lobbying and a minority of Members were well-known to have extensive connections with parliamentary consultancies.<sup>17</sup> One analyst estimated that at least 29 public relations and lobbying firms paid retainers directly to MPs.<sup>18</sup> The Nolan Committee found, following an analysis of the 1995 Register, that almost 30 per cent of Members (excluding ministers and the Speaker) held consultancy arrangements. 26 of these MPs held agreements with public relations or lobbying firms, the rest with other business associations<sup>19</sup>

The pre-Nolan system of registration of Members' interests had its greatest test in the John Browne case. The Select Committee upheld two serious complaints about his failure to register his interests.<sup>20</sup> The report was debated in the House on 7 March 1990; there was a wide range of opinion as to what punishment, if any, should be imposed. After a series of divisions, the House agreed, without division, to suspend Mr Browne for 20 sitting days. It also agreed a resolution to request the Select Committee to report further on the definition of outside interests and the methods of investigation used. Mr Browne and others expressed dissatisfaction with the investigation procedures, claiming that the rules of natural justice had not been followed.

In response, the select committee reassessed the scope and value of the register in its then current form and recommended changes designed primarily to consolidate previous rulings and to clarify, rather than to amend, the rules. The report was approved in a debate on 23 June 1993.<sup>21</sup> The first new-style register was published in February 1994.<sup>22</sup>

---

<sup>15</sup> HC Deb 16 July 1977 c332-460

<sup>16</sup> HC 586 1990-91, para 18

<sup>17</sup> The defeat of a bill promised in the Queen's Speech at second reading is a rare event, but one which cannot be attributed solely or substantially to commercial lobbying

<sup>18</sup> *Parliamentary Affairs* 1992 'Lobbyists and their techniques' Sebastian Berry

<sup>19</sup> Cm 2850 para 13

<sup>20</sup> HC 135 1989-90

<sup>21</sup> HC Deb c757-780

On 10 July 1994 the *Sunday Times* published allegations that two Members, Graham Riddick and David Tredinnick, had agreed to table parliamentary questions in exchange for payment. The Speaker granted precedence to a motion to refer both the allegations and the conduct of the newspaper to the Committee of Privileges.<sup>23</sup> Following the motion the Committee began an investigation, which was subsequently delayed in October 1994 when the Labour opposition campaigned for its meetings to take place in public. Tony Benn, a member of the Committee, subsequently published his own transcripts of the Committee meetings, and was discharged from the Committee following a motion in the House.<sup>24</sup>

At the same time, the action of the Guardian newspaper in making use of Commons notepaper was referred to the Privileges Committee, as a possible contempt of the House.<sup>25</sup>

The Privileges Committee report published in April 1995 recommended that Mr Riddick and Mr Tredinnick should be formally reprimanded and suspended from the House, for 10 and 20 sitting days respectively. The recommendations were accepted by the House on 10 April 1995.<sup>26</sup> In the *Guardian* case the Committee decided not to publish evidence given to it by Mr Al Fayed in November 1995, and the evidence was referred to the new Standards and Privilege Committee. The report noted the apology of the then editor of the *Guardian*, Peter Preston, and recommended no further action.<sup>27</sup>

The Committee on Members' Interests was also facing difficulties with the investigation process. In October 1994 new allegations were made in the press concerning the conduct of two junior ministers, Neil Hamilton and Tim Smith. It was alleged that they had failed to register financial benefits received from Mr Al Fayed. The complaint was referred to the Committee. Dale Campbell-Savours, a former member of the committee, refused to leave private proceedings of the Committee in protest against the appointment of a Conservative whip, Andrew Mitchell, to the Committee in July 1994.<sup>28</sup> Subsequently, Mr Mitchell was investigated by the new Committee on Standards and Privileges; he was not criticised for his conduct, but the Committee concluded that it was inappropriate for whips of major parties to be appointed to quasi-judicial committees.<sup>29</sup>

---

<sup>22</sup> HC 219 1993-94. At this stage 11 Members had not registered their interests due to disputes about the requirement to list syndicate numbers at Lloyds. Subsequently the rules were amended following a debate on 13 July 1994 HC Deb xx

<sup>23</sup> HC Deb 12 July 1994 c829-30

<sup>24</sup> HC Deb 12 December 1994 c718-44

<sup>25</sup> This followed a motion in the House on 2 November 1994 c1568-1602. The *Guardian* was conducting an investigation into Jonathan Aitken's stay at the Ritz Hotel, Paris

<sup>26</sup> HC Deb c350-384

<sup>27</sup> HC 161 1995-96

<sup>28</sup> Following a special report from the Committee and a debate in the House on 20 April 1994, an amendment to standing orders was adopted enabling select committees to order the withdrawal of Members not nominated to that committee

<sup>29</sup> HC 226 1996-97. The Committee, in a separate report, criticised David Willetts, then a Government whip, for a conversation with the Conservative Chairman of the Members' Interests Committee, Sir Geoffrey Johnson Smith about the Hamilton case and the conduct of the inquiry by the committee.

The Members' Interests Committee continued to be beset with divisions over its methods of procedure and investigation.<sup>30</sup> It reported in June 1995<sup>31</sup> on allegations relating to Mr Hamilton's stay at the Ritz Hotel in Paris, but decided not to consider other allegations in view of the libel action taken out by Mr Hamilton and Ian Greer against the *Guardian*.

In summary, therefore, by 1994 the existing Commons machinery for investigating allegations was subject to considerable strain. It is difficult to see how a completely internal model of self-regulation could have continued to function satisfactorily, even if the Committee on Standards in Public Life had not been established by the then Prime Minister in October 1994.<sup>32</sup>

## II The Nolan Committee recommendations and implementation

The Nolan Committee's First Report<sup>33</sup> was a landmark in the development of parliamentary standards regulation and was summarised in Research Paper 95/62 *Aspects of Nolan: Members' Financial Interests*. The Nolan Committee recommended the appointment of a Parliamentary Commissioner for Standards who would report to a sub-committee of the Privileges Committee, and appeal would lie to the full Privileges Committee. The key recommendations were as follows:<sup>34</sup>

- A new code of conduct for MPs
- The appointment of an independent Parliamentary Commissioner for Standards, by analogy with the Comptroller and Auditor General, who would maintain the register and investigate allegations of misconduct.
- A new sub-committee of the Committee of Privileges would hear cases where the Commissioner recommended further action.
- A ban on Members acting as consultants to multi-client lobbying firms
- Full disclosure of consultancy agreements and payments, and of trade union sponsorship and payments
- A more informative and detailed Register of Members' Interests.

The recommendations were refined by a specially constituted select committee in June 1995- the Select Committee on Standards in Public Life- to consider the detailed implementation of the Nolan proposals, and its recommendations were summarised in Research Paper 95/109 *Aspects of Nolan :the proposals for Parliament*. As Leader of the

---

<sup>30</sup> Some detail is given in HC 226 1996-97, paras 3 and 4

<sup>31</sup> HC 460 1994-95

<sup>32</sup> See HC Deb 25 October 1994 c758 for the statement by John Major. Background is also given in the Committee's website at <http://www.public-standards.gov.uk/>

<sup>33</sup> Cm 2850 May 1995

<sup>34</sup> *First report on standards in public life* Cm 2850 May 1995

House and Shadow Leader, both Tony Newton and Ann Taylor were members of the Committee which published two reports in July and November 1995.<sup>35</sup> Its proposals differed in some respects from the Nolan scheme, for example, in the First Report the Committee recommended a new select committee on Standards and Privileges to replace the Privileges and Members' Interests committees.

Motions were tabled by the then Leader of the House, Tony Newton, based on the recommendations in the First Report which were debated and approved on 19 July 1995. The Second Report of the Committee concentrated on the Nolan recommendations on advocacy and consultancies. The House debated and approved these recommendations on 6 November 1995. Research Paper 95/118 *The Nolan Resolutions* gives background and sets out the text of the relevant Resolutions. The Standing Order for the new committee followed the recommendations of First Report, without the accompanying detail of its Appendix 2, which had made recommendations on the powers and functions of the Committee and Commissioner. A Code of Conduct for Members was approved on 24 July 1996 by the House and was published as HC 688 1995-96.

In summary, therefore, the Select Committee on Standards in Public Life developed the Nolan recommendations in two significant areas:

- It rejected the creation of a separate sub-committee of the Privileges Committee, with an appeal to that Committee, preferring the establishment of a new committee which would deal with all stages of an investigation
- It adopted a more radical solution to the question of consultancies and prohibited members from paid advocacy.

These two developments are considered in separate sections of this paper.

### **III The Code of Conduct**

The Code of Conduct was proposed by the first report of the Committee on Standards in Public Life (the Nolan Committee), as part of a number of proposals to reform the procedures governing the conduct of Members. It believed that such codes were more effective if the institutions to which they applied were responsible for drafting and implementation.<sup>36</sup>

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

---

<sup>35</sup> HC 637 and HC 816 Session 94/95

<sup>36</sup> Cm 2850 May 1995, chapter 2, para 88

The Commons endorsed the principle of a Code of Conduct in a resolution of 19 July 1995, which instructed the appropriate committee to prepare a draft as soon as possible, taking account both of the Nolan suggestions and of examples from overseas.

The Committee's draft of the code differed from the Nolan draft in a number of respects, but the overall principles were similar. The Committee's draft incorporated the seven general principles of public life identified by Nolan as applying to the holders of public office.

The Code was approved by the Commons on 24 July 1996 and is reproduced in Appendix 1, together with details of the categories for registration.

The Code of Conduct contains a number of broad principles, derived from the Seven Principles of Public Life identified by Nolan as applying to the holders of public office.<sup>37</sup> The various devolved parliaments/assemblies have also incorporated in their equivalent Codes either this list of principles or their own variation and they have, like the Commons so far avoided investigation of complaints based directly on alleged breaches of these broad principles themselves, which cover virtues such as selflessness, integrity, or (in Scotland) duty as a representative.<sup>38</sup>

Arguably a Member engaged in noisy behaviour in the chamber could be accused of a breach of the Code, or a member who was dilatory in response to correspondence from a constituent might be considered in breach of his special duty to his constituents. In practice misbehaviour in the chamber is the province of the Speaker or (in the devolved parliaments/assemblies Presiding Officer), and there is no adjudicator for failure to offer a responsive constituency service.

Straightforward questions of failure to declare or to register interests in the capacity as a Member have in general been considered more appropriate for investigation. However, the Committee commented on Mr Peter Mandelson's handling of his mortgage application from the Britannia Building Society although he was not acting as a Member in his dealings with the Society:<sup>39</sup>

7. The third complaint related to Mr Mandelson's mortgage with the Britannia Building Society. We have considered whether this fell within our responsibilities, since in his dealings with Britannia Mr Mandelson was not acting in his capacity as a Member. There are arguments on both sides of the case. On the one hand, the House does not seek to regulate what its Members do in their purely private and personal lives. On the other hand, the maintenance of public

---

<sup>37</sup> These principles were formulated in the first report of the Committee on Standards in Public Life Cm 2850 and are available from the Committee website at <http://www.public-standards.gov.uk/>

<sup>38</sup> See separate PCC standard note *The Code of Conduct for Members* October 2000 at <http://hcl1.hclibrary.parliament.uk/notes/pcc/CodeofConductforMembers.pdf>

<sup>39</sup> HC 611 1998-99

trust in the integrity of Parliament requires Members to observe the highest standards of conduct in financial matters. The Nolan Committee recommended that the Code of Conduct for Members of Parliament should apply "to all aspects of public life". We understand that it may not have been the intention of the House, when it approved the Code on 24 July 1996, to remove this concept from the Code. The Commissioner considered the complaint because the mortgage was directly linked to the loan from Mr Robinson. ...

12. Mr Mandelson ought to have given full and accurate information to Britannia. Under Britannia's general conditions his solicitor, who was acting as Britannia's agent, should have fully disclosed the change in the funding arrangements for the purchase of the property prior to Mr Mandelson's taking up the mortgage.

In his evidence to the Standards Commissioner, Mr Mandelson protested that he was being judged for actions undertaken in his private capacity as an ordinary citizen:<sup>40</sup>

Any member of the public might have filled in their form incompletely and still have received a mortgage. My status as a Member of Parliament is irrelevant. Leaving aside her judgement of the explanation and mitigating circumstances I have provided (and which have been accepted fully by the Society), I believe she cannot conclude that as a Member of Parliament I was given the benefit of the doubt and treated more favourably by the Society.

The majority of investigations relate to allegations of failures to register financial interests. But some examine wider issues. For example, the Commissioner has investigated a complaint against Mr Fabian Hamilton that he misused his position as a Member to seek to influence a local authority in its appointment of a new Director of Education, resulting in a serious financial loss to the authority.<sup>41</sup> Another example is that of Mr Frank Cook. A complaint was made that he had adversely affected funding decisions by the Department for International Development in respect of a particular charity.<sup>42</sup>

There have been a number of investigations recently on the question of the use of the Office Cost Allowance.<sup>43</sup> The resignation of Henry McLeish as First Minister in Scotland on 8 November 2001 may prompt further complaints about the use of parliamentary allowances. The involvement of the Commissioner in complaints against former Members raises difficult issues about jurisdiction and sanctions in a self-regulatory system.<sup>44</sup>

---

<sup>40</sup> HC 611 1998-99, Appendix 7

<sup>41</sup> HC 503 1999-2000. The complaint was not upheld

<sup>42</sup> HC 709 1999-2000. The complaint was not upheld

<sup>43</sup> HC 89 2000-2001, HC 319, 2001-2, HC 320 2001-2,

<sup>44</sup> See HC 320 2001-2 Complaint against Mr John Maxton for decision to continue with an inquiry, although the member had retired at the 2001 general election

In the Commons, breaches of old style ‘privilege’ are dealt with by the Committee alone, and not the Commissioner, but offences such as leaking of select committee reports can also be categorised as breaches of both privilege and of the Code. The Willetts case<sup>45</sup> and the Mitchell case<sup>46</sup> raised questions about the ability of a committee to conduct a thorough and impartial investigation of the truth of a particular allegation involving privilege. Similar questions about natural justice and ECHR rights would seem relevant to such privilege investigations. The Joint Committee on Parliamentary Privilege has recommended that the Commons develop machinery for appeals on factual disputes in such privilege cases.<sup>47</sup>

The Code applies to members, and therefore applies to ministers who are members as well. In general, the Commons has not investigated alleged misdeeds conducted in a ministerial capacity, preferring these to be considered under the *Ministerial Code*.<sup>48</sup> The *Guide to the Rules*, contained in the *Code of Conduct* states:<sup>49</sup>

7. Ministers of the Crown who are Members of the House of Commons are subject to the rules of registration, declaration and advocacy in the same way as all other Members. In addition, Ministers are subject to further guidelines and requirements laid down by successive Prime Ministers in order to ensure that no conflict arises, nor appears to arise, between their private interests and their public duties ("Questions of Procedure for Ministers"). These requirements are not enforced by the House of Commons and so are beyond the scope of this Guide.

In Scotland, there was some initial confusion when the Parliament’s Standards Committee was being established as to the extent of its remit. The ‘Lobbygate’ incident has however persuaded the Committee against further investigation of allegations of impropriety against the Executive.<sup>50</sup>

Following the text of the Code, the next section gives detailed guidance on the Resolutions governing registration, declaration and advocacy.<sup>51</sup> This replaced the guide previously produced by the Registry of Members’ Interests.<sup>52</sup> The first part gives detailed guidance on the ten categories of registrable interests first established in 1974. The tenth,

---

<sup>45</sup> HC 88 1996-7

<sup>46</sup> HC 226 1996-97 Committee on Standards and Privileges

<sup>47</sup> HL Paper 43/HC 214 1998-99, para 292

<sup>48</sup> The latest version is at *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers* <http://www.cabinet-office.gov.uk/central/2001/mcode/contents.htm>

<sup>49</sup> Available from <http://www.publications.parliament.uk/pa/cm199697/cmselect/cmstand/688/guide.htm>

<sup>50</sup> This was the first inquiry conducted by the Standards Committee and related to allegations from the *Observe* about the influence of lobbyists over MSPs and ministers in the Scottish Executive [http://www.scottish.parliament.uk/official\\_report/cttee/stan99-00/str01-c.htm](http://www.scottish.parliament.uk/official_report/cttee/stan99-00/str01-c.htm)

<sup>51</sup> HC 688 1995-96. The report is available from the Standards and Privileges website at <http://www.parliament.the-stationery-office.co.uk/pa/cm199697/cmselect/cmstand/688/codefc.htm>

<sup>52</sup> *Rules on Registration and Declaration of financial interests* October 1994

miscellaneous, category first appeared in the Register for 1994, but in general categories have remained broadly similar since 1974 and are listed in Appendix 1 to this Paper.

Finally, the complaints procedure is summarised. The Standards and Privileges Committee recently made proposals for changes to the rules relating to the conduct of Members but they did not propose a redrafting of the Code of Conduct itself.<sup>53</sup> A pocket guide to the Code is now available.<sup>54</sup>

## **IV The Committee and Commissioner**

### **A. The Parliamentary Commissioner for Standards**

Following the recommendations of the Select Committee on Standards in Public Life, Sir Gordon Downey was appointed as the first Parliamentary Commissioner for Standards (PCS) on 15 November 1995. He had a three year, fixed term contract for a four day week.<sup>55</sup>

Sir Gordon Downey had served as Comptroller and Auditor General in the 1980s, when he was an Officer of the House. As Commissioner he was also appointed as an Officer of the House.

The Standing Order on the PCS reads as follows<sup>56</sup>:

- 150.** - (1) There shall be an officer of this House, called the Parliamentary Commissioner for Standards, who shall be appointed by the House.
- (2) The principal duties of the Commissioner shall be-
- (a) to maintain the Register of Members' Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards and Privileges or an appropriate sub-committee thereof;
- (b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;
- (c) to advise the Committee on Standards and Privileges, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;

---

<sup>53</sup> HC 710 1999-2000. See separate PCC note *Standards- The Advocacy Rule* October 2000 for more details of the proposals at <http://hcl1.hclibrary.parliament.uk/notes/pcc/AdvocacyRule.pdf>

<sup>54</sup> See <http://www.publications.parliament.uk/pa/cm199697/cmselect/cmstand/688/pocket1.htm>

<sup>55</sup> His appointment was made by Resolution on 6 November 1995, following closely the recommendations of the House of Commons Commission in HC 789 1994-95

<sup>56</sup> The Standing Order has not been amended since it was first passed on 6 November 1995



- (d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards and Privileges or an appropriate sub-committee thereof; and
- (e) to receive and, if he thinks fit, investigate specific complaints from Members and from members of the public in respect of-
  - (i) the registration or declaration of interests, or
  - (ii) other aspects of the propriety of a Member's conduct,
 and to report to the Committee on Standards and Privileges or to an appropriate sub-committee thereof.
- (3) The Commissioner may be dismissed by resolution of the House.

The PCS therefore has a separate identity from the Committee on Standards and Privileges, but in the absence of statutory authority the PCS can only operate through the Committee. Note that in 'traditional' privilege cases, e.g. leaking of select committee reports, the Commissioner has no involvement. It is the Committee which has authority to publish the reports of the Commissioner and to compel the attendance of Members before the Committee. In an article written a few months after appointment, Sir Gordon Downey commented that in theory this arrangement could lead to difficulties if it were felt that his independence were compromised, but in practice it was unlikely to be a problem.<sup>57</sup>

The Committee makes recommendations to the House in cases where it considers that an appropriate penalty is necessary. This has ranged from a requirement to make a personal apology to the House to a suspension from the House. The longest suspension so far following an investigation by the Commissioner has been one month.<sup>58</sup> A debate in the House is held when a period of suspension is recommended. The House does not necessarily have to accept the recommendation of the Committee, but so far it has done so.

Sir Gordon Downey retired from his post in November 1998 and Mrs Elizabeth Filkin was appointed on the terms of a report from the House of Commons Commission from 15 February 1999.<sup>59</sup> This report contained an Annex with a formal job description of the post. There was a debate on the floor of the House on the Commission report, in which the chairman of the Committee expressed the hope that the workload of the new Commissioner would naturally diminish:<sup>60</sup>

When Elizabeth Filkin appeared before the Standards and Privileges Committee this morning, we were able to discuss her role. She will be taking on the kind of work that Sir Gordon did so well. It is intended that she should work four days a week, but that may not be necessary: we hope that the amount of work, which was initially large, will diminish as new standards are more widely recognised.

---

<sup>57</sup> *House Magazine* 11 March 1996 'A Loose Cannon?'

<sup>58</sup> Teresa Gorman HC 260 1999-2000

<sup>59</sup> HC 1143 1997-98. The text of the report appears at <http://www.publications.parliament.uk/pa/cm199798/cmselect/cmcomm/1143/114303.htm>

<sup>60</sup> HC Deb 17 November 1998 c 809

People now accept standards that were produced two or three years ago, and I trust that that will mean that far fewer representations will be made to the commissioner.

There was some press comment following the announcement by the House of Commons Commission in October 2001 that post would be filled through open competition on the expiry of Mrs Filkin's contract in February 2002.<sup>61</sup> This meant that the term of office of the current Commissioner would not be automatically renewed.<sup>62</sup>

**Mrs. Roe:** To ask the hon. Member for Roxburgh and Berwickshire, representing the House of Commons Commission, what steps the Commission is taking in respect of the expiration of the current term of appointment of the Parliamentary Commissioner for Standards in February 2002.

**Mr. Kirkwood:** The appointment of the current Parliamentary Commissioner for Standards, Mrs. Elizabeth Filkin, ends in February 2002. The House of Commons Commission has considered how best to fill the post for the future. It has decided that there should be an open competition through advertisement in the national press as part of the overall selection process. As a result of the sifting and initial interview process, a shortlist will be drawn up for final interview. The Commission hopes to be able to make a recommendation to the House early in 2002. The competition will be organised to meet the appropriate standards for senior appointments, including equality of opportunity and selection on merit.

The competition will be open to existing members of staff, including Mrs. Filkin, as well as to external applicants. In the event of Mrs. Filkin wishing to enter the selection process, she would take part in the final short list stage when candidates were interviewed by the Commission.

Advertisements were placed in the press at the beginning of November.<sup>63</sup>

The Scottish Parliament, which is founded on statute and which does not have the equivalent of parliamentary privilege, is in the process of legislation for the establishment of a Parliamentary Standards Commissioner for Scotland. The Standards Committee is drawing up a 'committee bill' for further consideration, having already appointed a temporary standards adviser.<sup>64</sup> The National Assembly for Wales also has a non-statutory standards adviser. Both bodies have statutory provisions governing the registration and declaration of interests, and these developments may well be possible precedents for Westminster.

---

<sup>61</sup> *Guardian* 1 November 2001 'A brilliant public servant is being hounded from her job'. See also EDM no 258 2001-2

<sup>62</sup> HC Deb 18 October 2001 c1285w

<sup>63</sup> See, for example, *Sunday Times* 4 November 2001 'Parliamentary Commissioner for Standards'. See also comments by Peter Bottomley, a member of the Standards and Privileges Select Committee in *Guardian* 16 November 2001 'A shadowy group in the House'

<sup>64</sup> For further background see Standards Committee Second Report 2001 SP Paper 312 at [http://www.scottish.parliament.uk/official\\_report/cttee/stan-01/str01-02-01.htm](http://www.scottish.parliament.uk/official_report/cttee/stan-01/str01-02-01.htm)

## B. Select Committee on Standards and Privileges

This Committee was established in November 1995. The Standing Order governing its activities is as follows:

**149.** - (1) There shall be a select committee, called the Committee on Standards and Privileges-

- (a) to consider specific matters relating to privileges referred to it by the House;
- (b) to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; and
- (c) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner; and to recommend any modifications to such code of conduct as may from time to time appear to be necessary.

(2) The committee shall consist of eleven Members, of whom five shall be a quorum.

(3) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(4) The committee shall have power to appoint sub-committees consisting of no more than seven Members, of whom three shall be a quorum, and to refer to such sub-committees any of the matters referred to the committee; and shall appoint one such sub-committee to receive reports from the Commissioner relating to investigations into specific complaints.

(5) The committee and any sub-committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time and to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(6) The committee shall have power to order the attendance of any Member before the committee or any sub-committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of a sub-committee or of the Commissioner, be laid before the committee or any sub-committee.

(7) The committee, or any sub-committee, shall have power to refer to unreported evidence of former Committees of Privileges or of former Select Committees on Members' Interests and to any documents circulated to any such committee.

(8) The committee shall have power to refuse to allow proceedings to which strangers are admitted to be broadcast.

(9) Mr Attorney General, the Advocate General and Mr Solicitor General, being Members of the House, may attend the committee or any sub-committee, may take part in deliberations, may receive committee or sub-committee papers and may give such other assistance to the committee or sub-committee as may be

appropriate, but shall not vote or make any motion or move any amendment or be counted in the quorum.

Subsection 6 gives the Committee specific authority to order the attendance of any Member and to require the production of relevant documents held by the Member. The Liaison Committee recommended in 1997 that all select committees be given these powers.<sup>65</sup> This recommendation was not implemented.

Subsection 7 was added at a later date to allow the Committee to take over former enquiries from the Committees which it replaced – the Privileges Committee and the Members' Interests Select Committee.<sup>66</sup>

The current membership as at 16 November 2001 of the Committee is as follows:

Bottomley, Mr Peter  
Brown, Mr Russell  
Cranston, Ross  
Dismore, Mr Andrew  
Foster, Mr Michael (Hastings & Rye)  
Heath, Mr David  
Levitt, Mr Tom  
McNamara, Mr Kevin  
Ottaway, Mr Richard  
Williams, Mr Alan  
Young, Sir George (Chairman)

There are seven Labour Members, three Conservatives, and one Liberal Democrat. Four of the members of the Committee for the 1997-2001 Parliament were first elected in 1997.<sup>67</sup> None of the members of the new Committee were first elected in 2001. Four members (Bottomley, Foster, Levitt and Williams) also served on the Committee in the 1997 Parliament. In that Parliament, there was criticism of the lack of experience within the membership of the Committee and of its alleged partisanship. The former PCS noted in his valedictory report in 1998.<sup>68</sup>

## **(2) Lack of Collective Memory**

The Committee is at a disadvantage because its composition has so little continuity with the former Committee; and none at all with the Select Committee on Standards in Public Life. It is therefore in danger of reinventing the wheel. There might be a case for putting half a morning aside from time to time for an informal discussion of significant topics and for inviting a few informed

---

<sup>65</sup> HC 323 1996-97

<sup>66</sup> See *Standing Orders of the House of Commons* Table of Dates of Amendments

<sup>67</sup> Martin Bell, Michael Jabez Foster, Tom Levitt, Shona McIsaac

<sup>68</sup> HC 1147 1997-98

outsiders, including some who were involved in the evolution of the system we now have.

There had also been criticism from the Neill Committee of the lack of experience within the membership of the Committee and the fact that the Chairman of the Standards and Privileges Committee for the 1997 Parliament was from the Government benches.<sup>69</sup> The Neill Committee accepted that the Leader of the House was too busy to be amongst the membership, but counselled that senior Members should be appointed.

The question of the publication of the reports and findings of the PCS was considered by the Select Committee on Standards in Public Life in 1995:<sup>70</sup>

The Committee will determine its own procedures, within the order of reference given to it by the House. We believe that the spirit of what Nolan recommended would be met if the Committee normally published the reports and findings of the Commissioner in full where a prima facie case to answer had been established. This cannot be an absolute rule since this would unacceptably fetter the discretion of the Committee, indeed of any Committee, to decide whether to publish evidence submitted to it. Similarly the Committee must retain the right to add any comments it wishes to make on the Commissioner's findings. We envisage this process taking the form of regular reports to the House from the Committee, to which the Commissioner's findings and conclusions in such cases would be attached as an annex. Where, however, the Commissioner decided that no prima facie case had been established, he would merely report the facts to the Committee. The Committee would inform both the complainant and the Member concerned, but no details of the complaint would be published.

The Committee, exceptionally, has power to pass an order to admit strangers, but exclude broadcasters.<sup>71</sup> Part of the Neil Hamilton investigation was televised.<sup>72</sup> In general Committee meetings and hearings are in private.

### **C. Standards and Privileges Committee Reports**

A list of reports published in the current Parliament is printed at the back of each Committee report. The reports are also available on the Parliamentary website.<sup>73</sup> In 2000-1 there were eight reports, but only seven related to Members. One report related to two Members and one to five Members. In 1999-2000 there were 17 reports, but only 15 related to Members. In 1998-9 there were 14 reports, but only 12 related to complaints

---

<sup>69</sup> The then chairman was Robert Sheldon *Reinforcing Standards* Cm 4557 January 2000

<sup>70</sup> HC 637 1994-95

<sup>71</sup> SO 149(8)

<sup>72</sup> HC 30 1997-98

<sup>73</sup> <http://www.publications.parliament.uk/pa/cm/cmstnprv.htm>

against Members, and of these three were privilege investigations, rather than investigations by the Commissioner. In 1997-98 there were 21 reports, but only 16 related to complaints against Members. Appendix 2 gives details of debates on the floor of the House on reports from the Committee from the 1997 Parliament onwards.

A notable feature of the reports in the 1997 Parliament was the extent to which investigations were begun following complaints by one Member against another, usually of a different party. Only two of the reports published involved parties other than Labour or Conservative<sup>74</sup> and even the Chairman of the Committee was investigated.<sup>75</sup> The former PCS commented on the danger of tit for tat actions in his valedictory report.<sup>76</sup>

## **V The Investigation and Appeals Process**

### **A. Self –regulation and parliamentary privilege**

The implementation of the Nolan proposals has left the Commons with a self-regulating procedure, supplemented by an independent element. The final verdict and penalty for any breach of the Code remains with the Commons. Self- regulation derives from parliamentary privilege: it is the exercise of exclusive cognisance, or the exercise by Parliament of control over its own affairs. This complements the other main component of privilege: freedom of speech, guaranteed by Article 9 of the Bill of Rights. The rationale for parliamentary privilege was set out as follows in an extract from the Joint Committee on Parliamentary Privilege:<sup>77</sup>

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

There has been concern that the removal of the right to self-regulation for standards issues would have a detrimental effect on parliamentary privilege, since the right of the House to discipline its members would be affected. The contempt power of each House is seen as essential as a power to enforce its authority against ministers or to support the requirements of committees which have been given powers to send for persons and papers. A final sanction against ministers is the fact that they are Members and might ultimately be held in contempt in the exercise of the House's powers.

---

<sup>74</sup> Liberal Democrats Sir David Steel HC 548 1997-98, Ulster Unionist Party Mr Roy Beggs HC 377 2000-2001

<sup>75</sup> Robert Sheldon HC 916 1999-2000

<sup>76</sup> HC 1147 1997-98, Appendix

<sup>77</sup> HL Paper 43 and HC 214 1998-99 *Executive Summary*

This paper concentrates on the parliamentary aspects of regulating the standards of members. The dispute between Neil Hamilton and Mr Al Fayed has however also featured in the courts. After his defeat in the 1997 election, Neil Hamilton began a libel action against Al Fayed, which the latter sought to have set aside on the grounds of abuse of process, in that it was an attack on the decision of the House of Commons and an infringement of its privileges. The case therefore touched on the delicate boundary of the jurisdiction of the courts in relation to Parliament. Neil Hamilton had attempted an earlier case for libel against Al Fayed where the action had been stayed by Mr Justice May, ruling that the proceedings would be unfair to the defendant if he could not use parliamentary proceedings to justify his statements.<sup>78</sup> An amendment to the *Defamation Act 1996*<sup>79</sup> however allowed Mr Hamilton to attempt another action. In a series of judgements,<sup>80</sup> culminating in the House of Lords in October 1999, it was firmly established that:<sup>81</sup>

Courts were precluded from entertaining in any proceedings (whatever the issue may be at stake in those proceedings) evidence, questioning or submissions designed to show that a witness in parliamentary proceedings had deliberately misled Parliament. To mislead Parliament is itself a breach of the code of parliamentary behaviour and liable to be disciplined by Parliament: See *Church of Scientology of California v Johnson-Smith* [1972] 1QB.522; *Pickin v British Railways Board* [1984] A.C. 765 at p800 per Lord Simon of Glaisdale. For the courts to entertain a questions whether Parliament had been deliberately misled would be for the courts to trespass within the area in which Parliament had exclusive jurisdiction.

The judgment endorsed the Court of Appeal finding that proceedings before the PCS, his reports, and acceptance by the select committee were all ‘parliamentary proceedings’ and that attempts to investigate or challenge them in a court of law were a breach of privilege.

However, the Lords found that the passage of s13 of the *Defamation Act* allowed Mr Hamilton to waive the protection of privilege in relation to a defamation action and so allowed the courts to examine parliamentary proceedings in these circumstances. Section 13 appears to operate therefore to override any privilege belonging to Parliament as a whole.<sup>82</sup> This has caused some concern that the waiver of privilege by one individual

---

<sup>78</sup> 25 July 1995 High Court. (Unreported)

<sup>79</sup> This became s13 of the Act. For background, see Library Research Paper 96/61 *Defamation Bill: Parliamentary Privilege*

<sup>80</sup> The judgment of Mr Justice Popplewell in the High Court involved an element of criticism of the procedures of the House in its hearing of the Hamilton case. At the Court of Appeal stage, Lord Woolf’s judgment noted that these observations infringed parliamentary privilege. See [1999] 3 All ER.317

<sup>81</sup> The reasons were not made available until March 2000. Extract is from Lord Browne-Wilkinson’s judgment [2000] 2 All E.R.224

<sup>82</sup> The libel action against Mr Al Fayed was allowed to proceed, but in December 2000 the Court of Appeal dismissed Mr Hamilton’s appeal against the High Court ruling in Mr Al Fayed’s favour in December 1999, and the Lords refused leave to appeal in March 2001.

Member using s13 might bring the operation of the standards machinery within the jurisdiction of the courts.

The full implications of the Lords judgment have yet to be fully explored in Parliament or in the courts. The Joint Committee on Parliamentary Privilege has recommended that s13 be repealed, as unsatisfactory law. However, there is no indication that this recommendation or the overall Joint Committee recommendation for a new statute on parliamentary privilege is likely to be implemented in the 2001-2 session of Parliament.

## **B. Application of the law on corruption to MPs**

The Government has indicated that members of parliament are to be made subject to the criminal law on corruption as part of a comprehensive reform of the law on bribery and corruption.<sup>83</sup> Legislation will be introduced when parliamentary time permits. Full background is given in Library Research Paper 01/92 *The Anti-terrorism, Crime and Security Bill*. If legislation is enacted, there are likely to be fewer very serious cases handled by the Commissioner and Committee. Failure to register and to declare interests are already statutory offences in the devolved parliaments/assemblies.<sup>84</sup>

## **C. The Political Parties, Elections and Referendums Act 2000**

Schedule 7 to this Act requires the disclosure by holders of relevant elective office to the Electoral Commission of donations received over £1,000.<sup>85</sup> The *Explanatory Notes* to the Act state:

141. One effect of these provisions is to require that donations made to a holder of an elective office, which are disclosed in a register of members' interests, will also be subject to the reporting requirements set out in Schedule 7. This will mean some overlapping of registers of members' interests and the Electoral Commission's register of disclosable donations. But the controls on donations to MPs and others will not in any way circumscribe the ability of the House of Commons or the devolved legislatures to regulate the interests and conduct of their members.

The Electoral Commission has recently encountered some difficulty with the overlap in registration requirements, notably over the treatment of the provision of BAA passes to Members, and of Commonwealth Parliamentary Association, Inter-Parliamentary Union and select committee visits abroad.<sup>86</sup> This is likely to be an area of uncertainty for some time.

---

<sup>83</sup> *Raising Standards and Upholding Integrity: the Prevention of Corruption* Cm 47 Home Office June 2000

<sup>84</sup> *Scotland Act 1998*, s39, *Government of Wales Act 1998*, s72, *Northern Ireland Act 1998*, s43

<sup>85</sup> See PCC standard note *Political Donations* 27 March 2001 for background

<sup>86</sup> See HC Deb 19 July 2001c460, *Sunday Times* 3 June 2001 'MPs in airport parking perk row' HC Deb 15 November 2001 c984



## D. The investigation process

The Select Committee on Standards in Public Life set out some recommendations for detailed procedures in Appendix 2 of its First Report. These included the right to be accompanied by an adviser and measures to protect natural justice.<sup>87</sup>

A report in the 1999-2000 session<sup>88</sup> set out the procedures used by the Commissioner in investigating complaints:

15. I put to the Committee the background to the complaint, the information which has been provided by the Member and others and I support my memorandum with documents and records of my investigation as necessary.

16. When the Committee considers my report they may feel that they need further information before they come to their decision and I obtain it where possible.

17. The Committee may decide to interview any of those involved in a complaint or those who may have evidence.

18. The Committee has decided that I should not provide copies of my report to the Member prior to reporting to the Committee and I explain this to Members. On three occasions during the last year the Committee has decided that the matters I have investigated are serious and that therefore the Member should be able to read my report before giving oral evidence. In my view this is a fair way to proceed.

19. I inform Members when I have completed my report that I am putting matters to the Committee. Members are informed when the Committee has decided to publish a report.

20. Members and complainants are provided with the printed Committee report one hour prior to publication. The Committee report includes my memorandum and the supporting evidence.

### **OTHER MATTERS**

21. The procedure for complaints set out at page 27 of the Code of Conduct and Guide to the Rules states that "Communications between a member of the public and the Commissioner are not covered by Parliamentary privilege nor privileged at law unless and until the Commissioner decides the case has some substance to merit further inquiry." In some cases it is not immediately apparent whether further enquiry is necessary, in many it is unnecessary, in others sufficient evidence is provided at the outset to merit further enquiry. I always make it clear that an enquiry does not indicate there is evidence of any breach. However some complainants release their complaint to the press and articles appear about my "investigation" before I have received any complaint.

The Commissioner also noted that she had never taped a conversation with a Member, although she would if asked, and had not taken evidence on oath, although she would do so if requested.

---

<sup>87</sup> HC 637 1994-95

The report of the Committee relating to complaints against Teresa Gorman noted that she had been shown a copy of the Commissioner's memorandum in confidence 'because of our concern that she might not have been taking the complaints against her sufficiently seriously.'<sup>89</sup> With the agreement of the Committee, the Commissioner now shows her reports in draft to the Member concerned before she reaches her conclusion, so that she can take account of any representations the Member wishes to make.

## **E. Appeal procedures- the initial provisions**

The Committee on Standards in Public Life has over a number of years criticised the appeals mechanism as insufficiently developed. The preferred option of the Nolan Committee was a hearing by a subcommittee, with appeal to a full committee. The Select Committee on Standards in Public Life received evidence from the Clerk of the House, which expressed concerns about this procedure, on the basis that members of the subcommittee might dominate the committee's appeal hearing, and thus act contrary to natural justice.<sup>90</sup>

The report of the Select Committee on Standards in Public Life was non-specific about appeal hearings and although the new Standards and Privileges Committee was given power in standing orders to set up sub-committees it did not establish such a formal structure. Appendix 2 of the First Report from the Select Committee recommended:<sup>91</sup>

•

**4. The new Committee should** have the power to appoint one or more Sub-Committees, one of which would be empowered:

(i) to receive reports from the Commissioner in cases where he or she had decided that there was no *prima facie* case to answer; the Sub-Committee would not be expected to question the Commissioner's findings in such cases.

(ii) to receive and consider reports from the Commissioner in cases where he or she had accepted that there was a *prima facie* case to answer and had reached an agreed course of action with the Member or Members concerned. A course of action could range from an apology to a penalty. Where the imposition of a penalty required the authority of the House, such as a period of suspension, the Sub-Committee would refer the case to the full Committee, which would make a formal recommendation to the House. In a case where the agreed course of action did not require the endorsement of the House, the Sub-Committee's decision on the Commissioner's report would be final.

5. Where a *prima facie* case had been accepted by the Commissioner, but no agreement had been reached with the Member or Members concerned on a course of action, the case would automatically be referred to the full Committee, which would adjudicate and, where a penalty was deemed appropriate, make a

---

<sup>88</sup> HC 403 1999-2000

<sup>89</sup> HC 260 1999-2000 para 37

<sup>90</sup> HC 637 1994-95 *Memorandum from the Clerk of the House*

<sup>91</sup> HC 637 1994-95 Appendix 2

recommendation to the House. If the full Committee decided upon action falling short of a penalty, but which nonetheless required the co-operation of the Member or Members involved (such as an apology or an undertaking about future conduct), any Order to that effect should have the same force as an Order of the House.

6. A Member who challenged the Commissioner's findings, either as regards the facts or the judgement, would have a right to have his case referred to the full Committee as set out under para (5) above.

*7. Although it is implicit in the preceding paragraphs, it must be clearly emphasised that the authority to impose any penal sanctions would remain with the House, even in cases where the Member in question did not challenge the recommendation.*

8. Both in its own right and in order to buttress the role of the Commissioner, the Committee would need the standard powers to send for persons, papers and records. In addition, however, the power to send for persons will have to be extended, in a way not available to any existing Select Committee, to cover Members. The work of both the Commissioner and the Committee would be unacceptably hampered if in those cases- no doubt rare -of non co-operation by a Member, the Committee had to go to the House to seek appropriate enforcement action. These powers would be exercised by and in the name of the Committee-*they would not be delegated to the Commissioner*. Such a delegation of powers would, in any case, almost certainly require legislation

The Standing Order for the new committee followed the recommendations of the First Report, without the accompanying detail of the Appendix 2.<sup>92</sup>

The Standards and Privileges Committee was empowered to set up sub-committees under the terms of the Standing Order, but did not establish a formal sub-committee structure. The report of the retiring Commissioner, Sir Gordon Downey, noted how the first Committee had quickly rejected the idea of a sub-committee.<sup>93</sup>

When it came to actual cases, the former Standards and Privileges Committee rapidly concluded that the proposed procedure was not to their liking. In particular, they implicitly rejected the idea of a sub-committee on the grounds

- that Members would not have the time to conduct complex inquiries
- that investigations would not be seen as independent
- that the full committee would not be qualified to overturn the conclusions of a sub-committee on appeal.

They therefore adopted, in effect, a practice under which

- the Commissioner established the facts and reached conclusions on rule breaches in virtually all cases

---

<sup>92</sup> HC 688 1995-96

<sup>93</sup> HC 1147 1997-98 Appendix

- the Committee satisfied themselves, so far as possible, that proper procedures had been adopted and that conclusions were supported by evidence and were not manifestly unsound (a judicial review-type function); and recommended penalties where appropriate
- the House imposed the penalties.

## **F. The investigation into Mr Neil Hamilton**

The post-Nolan system received its greatest test to date in the Neil Hamilton investigation. Some background is required: The Standards and Privileges Committee issued a series of reports in the 1996-7 session<sup>94</sup> relating to the Al Fayed and *Guardian* allegations. Following the collapse of his libel case against the newspaper, the *Guardian* had printed fresh allegations about Mr Hamilton on 2 and 3 October 1996 relating to alleged commission payments and about David Willetts's activities as a whip. On 3 October the then Prime Minister, John Major, had issued a press release, following indications from Sir Gordon that he would take up the allegations, stating that he had made arrangements to ensure that Sir Gordon received any relevant Government documents. On 14 October 1996 the then Speaker, Betty Boothroyd, made a statement<sup>95</sup> in which she said that she took the new allegations very seriously and these should be investigated by Sir Gordon without waiting for a formal complaint.<sup>96</sup>

The Commissioner was given additional assistance in the form of Mr Nigel Pleming QC as legal adviser and two senior officers of the House as other support. The Commissioner considered that his powers were sufficient to attempt the investigation.<sup>97</sup>

The First Report of the Committee in 1997-98, published in July 1997,<sup>98</sup> contained the findings of the Commissioner on allegations made against 25 members and former Members. The report drew attention to the right of those members criticised to submit a written statement to the Committee rebutting or challenging the findings of the Commissioner. The Commissioner described his approach as follows:<sup>99</sup>

This was a parliamentary inquiry and there was no attempt to replicate the procedures of a court action. The proposed procedures were shown in advance to the previous

---

<sup>94</sup> HC 34 (Additional assistance for the Commissioner)

HC 88 (David Willetts) This was a privilege matter and therefore considered by the Committee and not the Commissioner

HC 226 (Andrew Mitchell) This was also a privilege matter

HC 359 (Michael Howard)

HC 362 (Election expenses of various Members)

<sup>95</sup> HC Deb c 463

<sup>96</sup> The allegations related to election campaign donations received by a number of members. For background see HC 30 1997-98

<sup>97</sup> HC 30 1997-1998

<sup>98</sup> HC 30 – I and II 1997-98

<sup>99</sup> taken from HC 261 1997-98 para 3

Select Committee and to complainers. The approach was inquisitorial, not adversarial. Its sole purpose was to arrive at the truth, not to achieve a 'conviction'.

This approach was accepted by the Committee. Mr Hamilton made written representations and an oral statement to the Committee.<sup>100</sup> The Committee decided not to offer a comparable right of reply to the Guardian and to Mr Al Fayed's solicitor, as unnecessary to enable the Committee to reach a decision. The Committee considered that the representations made by Mr Hamilton did not contain relevant new evidence.

The Committee did not accept all of the findings of the Commissioner with respect to Mr Hamilton,<sup>101</sup> but did consider that his conduct fell seriously and persistently below the standards which the House is entitled to expect of its Members.<sup>102</sup> It noted:

The Committee did not arrive at a practicable way of reaching a judgement which added to or subtracted from the Commissioner's findings.

It also concluded that:

11 The scale and nature of this inquiry, analogous in some ways to that of a tribunal of inquiry, have highlighted the need for the Committee to assess its own role in relation to inquiries conducted by the Commissioner for Standards. Although some guidance was provided by the Select Committee on Standards in Public Life and by the Nolan Committee there was no agreement on whether there could be an appeal against the Commissioner's findings or conclusions by the Select Committee except in consideration by the House. The Committee will consider the matter further.

In his valedictory report Sir Gordon Downey commented on the investigatory and appeals process:

The only case in which this practice has caused concern is that of Neil Hamilton where the facts on one issue turned largely on the credibility of a substantial number of witnesses and were in dispute. The Committee felt that in any such case, there was currently no effective appeal procedure and this issue is still unresolved.

My own view is that the Committee under-estimated their capacity to reach a judgement on the evidence provided. This was not a criminal case involving criminal sanctions. They were entitled to adopt "balance of probabilities" as a standard of proof. The findings were supported by evidence. The former Committee had endorsed the procedures and these were followed meticulously. I

---

<sup>100</sup> Published in HC 30-IV 1997-98 and HC 261 1997-98

<sup>101</sup> The Committee found that in relation to the alleged payments to Mr Hamilton by Mr Al Fayed 'there can be no absolute proof that such payments were, or were not, made' (para 8)

<sup>102</sup> HC 261, para 7

believe the Committee were satisfied on these points and that, without additional evidence, there were no grounds for a further appeal.

Some concern was expressed about the investigatory and appeals process in the debate in the House on 17 November 1997, when the Committee's recommendations were sanctioned. Similar concerns were raised on the Committee's report relating to Teresa Gorman in the debate on 1 March 2000.<sup>103</sup> See Appendix 2 for a list of debates on reports from the Select Committee on Standards and Privileges.

## **G. The Select Committee reports on appeal procedures in 1998**

The Select Committee published a consultative report on Appeal Procedures in March 1998 in which it published the evidence of a number of witnesses.<sup>104</sup> Lord Nolan, the former Chairman of the Committee on Standards in Public Life gave evidence as follows:

5. I do not think that it is right that the Commissioner should be instructed or asked to resolve disputed issues of fact - certainly not issues involving the honour or credibility of a Member. There are, of course, precedents in other areas of public life for an individual (although seldom one alone) being asked to seek the truth by means of an inquisitorial approach, and I have nothing but praise for the care and thoroughness with which Sir Gordon conducted the Hamilton inquiry. But I do not regard it as a sound precedent for Parliamentary self-regulation.

6. I accept that, for a number of reasons, the Neil Hamilton case probably could not have been dealt with in the manner contemplated by the Committee on Standards in Public Life. The Commissioner would have no difficulty in finding a case to answer and could have done so a long time before he produced his report, but the issues involved were so complex that their examination by the sub-committee could scarcely have been completed before the General Election; and it would have been undesirable to delay the hearing until after the Election. Perhaps the only way of dealing with that particular case satisfactorily would have been the appointment of a Tribunal having the powers conferred by the Tribunals of Inquiry (Evidence) Act 1921.<sup>105</sup>

7. In all but the most exceptional cases, however, I would submit that the procedure recommended by the Committee on Standards in Public Life should be adopted. There are certain features of the procedure which I would emphasise, namely:

(i) The case should be heard by a sub-committee of not more than seven members. Normally I would hope that five would be enough. So far as I am aware, no such sub-committee has been appointed. But the latter part of paragraph (4) of Standing Order No. 149 is mandatory.

---

<sup>103</sup> HC 260 1999-2000

<sup>104</sup> HC 633 1997-98

<sup>105</sup> Although Lord Nolan's suggestion perhaps failed to take into account the fact that an inquiry under the 1921 Act procedure would not have been able to examine parliamentary proceedings, which would have been protected by parliamentary privilege. See above, Part V,A

(ii) The sub-committee should consist of very senior members. This I would suggest is crucial.

8. The details of the procedure to be adopted by the sub-committee on any given occasion should depend upon the particular circumstances. If it was a straight issue between the Commissioner and the Member I would suggest that the case against the Member should be presented by Counsel for the Commissioner rather than the Commissioner himself. In a serious case the Member also should have the opportunity of being represented by Counsel, or some other advocate.

If the contest essentially lay between the Member and a complainant the Commissioner should occupy a more neutral role, acting - again. I would suggest, through Counsel - as an *amicus curiae*. In this case it might be that both the Member and the complainant should have the opportunity of being represented by Counsel or some other advocate.

In all cases the proceedings should be adversarial, and should permit cross-examination. In all cases the sub-committee should have the power to award costs against the unsuccessful party, and also to provide assistance with the costs of representation.

9. Turning now, and on that basis, to the questions which you ask, I suggest that an appeal from the sub-committee to the full committee should be open to any dissatisfied party. It should not be limited to the judicial review format but should include a reconsideration of the facts, as in the Court of Appeal. Again as in the Court of Appeal, there should normally be no re-hearing of witnesses, nor introduction of further evidence, save for fresh evidence which had come to light since the original hearing. At the end of the case the Committee would, of course, report to the full House, which would have the final word, but it is to be hoped that further debate would not be necessary.

10. I believe that the adoption of a procedure on these lines would satisfy the requirements of natural justice, and would meet the criteria implicit in your questions. If, in practice, it proved unworkable, or if it were rejected without a trial, then it seems to me that there would be no alternative but to abandon the idea of self-regulation and to refer disputed cases to the Courts or to some external body (I would prefer the latter) which would reports its conclusions to the Committee.

In November 1998 the Committee published its final report on appeal procedures.<sup>106</sup> It noted that several witnesses, including Lord Neill, had argued in favour of a sub-committee to examine a disputed case, using adversarial procedures, but stated that the Committee was not persuaded by the arguments.<sup>107</sup>

11. Several witnesses argued that the Commissioner should not be expected to resolve disputed matters of fact. Lord Nolan reminded us that the Committee on Standards in Public Life had suggested that, if unable to agree a remedy with the Member concerned, the Commissioner should find a case to answer and refer the matter to a small sub-committee of the Committee on Standards and Privileges,

---

<sup>106</sup> HC 1191 1997-98

<sup>107</sup> paras 11-15

composed of very senior Members. Proceedings before the sub-committee should be adversarial and should allow for cross-examination, and the parties to the complaint (including the Commissioner) should be represented by counsel or some other advocate. Any appeal would then be heard by the full Committee.<sup>[6]</sup> Lord Nolan's basic approach was supported by his successor, Lord Neill,<sup>[7]</sup> and by several other witnesses, including past and present members of the Committee on Standards in Public Life.<sup>[8]</sup>

12. Witnesses such as these clearly carry great weight and their evidence merits the most serious consideration. Nonetheless we see a number of significant disadvantages in what they have proposed, and particularly in the leading role envisaged for a committee of Members in establishing the facts surrounding a complaint.

13. It seems to us most unlikely that busy Members—particularly senior Members—would be able to devote the time to what may be a long and complicated inquiry. The experience of the former Members' Interests and Privileges Committees indicates that select committees are not particularly well-equipped to carry out tasks of this kind: indeed the perceived shortcomings of inquiries carried out by these committees was one of the considerations which lay behind the Nolan Report's recommendation that the post of Parliamentary Commissioner for Standards should be created.<sup>[9]</sup> Most seriously, perhaps, any inquiry conducted by politicians is likely to be seen by many people—rightly or wrongly—as partial, party-political, or lacking in objectivity and independence.

14. Furthermore, the involvement of members of a sub-committee of the Committee on Standards and Privileges in the initial findings of fact could compromise the possible role of the Committee at the appeal stage. It would in our view be inappropriate for the members of the sub-committee to take part in the proceedings of the full Committee when it heard an appeal against their findings, and in comparable organisations outside that would not be permitted. But if they were excluded, and the remaining members of the Committee heard the appeal, the judgement of a group of senior Members would be overridden by that of another group, less senior and less well acquainted with the case.

15. Some of the defects suggested earlier would be remedied if legally qualified assessors were to sit with an investigating sub-committee. Even so, that would not place the independence of the investigation beyond question, and the difficulties we have identified to relate to appeals would remain.

16. We are therefore not persuaded that an investigating sub-committee would be desirable, and indeed we have not appointed a sub-committee to receive the Commissioner's reports on complaints. Instead we consider that in serious cases the Commissioner might invite the Committee to appoint a legally qualified assessor who would assist in the investigation and (where appropriate) share responsibility for the findings. This would not remove the need for an adequate appeal procedure, with which we deal shortly, but it would give extra confidence in the conclusions of the original investigation.

The Committee therefore did not accept the need for further changes in procedure beyond the possible appointment of a legal assessor in appropriate cases. It noted that 'the



Commissioner's present procedures have the substantial advantages of speed and convenience, and have given rise to no difficulty in the overwhelming majority of the cases which have come before the Commissioner'.<sup>108</sup>

But the Committee accepted that re-hearings might be necessary in particular circumstances. It reviewed the evidence on the type of appellate body, considering that the Committee was suitable as an appeal body where it had to carry out a type of judicial review procedure, but not where rehearing of evidence was necessary. For this, it recommended an ad hoc tribunal of three people appointed by the Committee, with no sitting Members appointed. It would determine its own procedures, and the Commissioner would not have any part in its proceedings. Its role would be limited to inquiring into disputed questions of fact and reporting its conclusions to the Committee which would continue to decide on interpretation of the rules or possible penalties.. An important motivation of the Committee was to preserve self- regulation. It noted:<sup>109</sup>

We believe that by reserving these matters for the consideration of the Committee, advised where appropriate by the Commissioner, whilst leaving matters of fact to be determined independently by the Commissioner or in disputed cases by an independent tribunal, the criteria we laid down at the outset are met, and in particular all the essential features of parliamentary self-regulation are preserved.

The Committee recommended the following changes to Standing Orders:

#### **Amendments to Standing Orders**

34. We recommend that Standing Orders be amended so as to make possible the appointment of a legally qualified assessor to assist the Commissioner and the appointment of an independent tribunal to assist the Committee. We recommend that the provision in SO No. 149(4) which requires the Committee to appoint a sub-committee to receive reports from the Commissioner relating to investigations into specific complaints should be deleted.

There have not yet been any changes to Standing Orders on the lines of these recommendations, nor have the recommendations been debated by the House.

The procedures adopted by the Standards Committee in the Scottish Parliament have been set out in a report.<sup>110</sup>

---

<sup>108</sup> para 18

<sup>109</sup> HC 1191 November 1998

<sup>110</sup>For full references, see Standards Committee Second Report of 2001 SP 312. [http://www.scottish.parliament.uk/official\\_report/cttee/stan-01/str01-02-02.htm#04](http://www.scottish.parliament.uk/official_report/cttee/stan-01/str01-02-02.htm#04) The Standards Committee will also have the power to refer the report back to the Commissioner for further investigation, to conduct its own investigation into the complaint or to reject the Commissioner's report.

## H. Joint Committee on Parliamentary Privilege

In 1999 the Joint Committee on Parliamentary Privilege (the Nicholls Committee) published its report.<sup>111</sup> In its comments on the disciplinary and penal powers of the House it noted the relevance of the European Convention on Human Rights:

283. Further, any person who has a personal interest in the matter under investigation, including a person who made the complaint, should be disqualified from participating in relevant proceedings of the committee or the House, other than as a witness. Again, this is elementary fairness, because those accused are entitled to a hearing by an impartial tribunal: no one should be judge in his own cause. This is also in accordance with the European Convention of Human Rights. In *Demicoli v Malta* the editor of a political satirical magazine criticised the parliamentary behaviour of two members of the Maltese House of Representatives. The House found the editor guilty of contempt. The two members whose conduct was criticised, and who had raised the breach of privilege claim in the House, participated throughout in the proceedings. The European Court of Human Rights held this violated the editor's right to have a fair hearing by an independent and impartial tribunal. Since the editor faced the possibility of imprisonment for 60 days or a fine, the proceedings warranted classification as criminal and attracted the protections guaranteed by article 6 of the European Convention of Human Rights. In that case the person charged with contempt was a non-member, but it would be unwise to assume the requirements of fairness would be significantly less for members.

284. Several witnesses drew our attention to the possible application of the European Convention on Human Rights to Parliament. Although proceedings in Parliament are excluded from the Human Rights Act 1998 and from the jurisdiction of United Kingdom courts, they may nevertheless be within the jurisdiction of the European Court of Human Rights. The existence of this jurisdiction is a salutary reminder that, if the procedures adopted by Parliament when exercising its disciplinary powers are not fair, the proceedings may be challenged by those prejudiced. It is in the interests of Parliament as well as justice that Parliament should adopt at least the minimum requirements of fairness.

The Neill Committee report *Reinforcing Standards*<sup>112</sup> also has an appendix examining the implications of the ECHR on parliamentary disciplinary procedures.

The Nicholls Committee noted the minimum requirements of fairness in dealing with serious accusations against a member:

281. While fairness is fundamental to any disciplinary procedure, the more serious the consequences, the more extensive must be the safeguards if the procedure is to be fair. Some allegations of contempt are more serious than

---

<sup>111</sup> HL Paper 43-I and HC 214 1998-99

<sup>112</sup> Cm 4557 January 2000 Appendix III

others. In dealing with specially serious cases, we consider it is essential that committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies. At this level the minimum requirements of fairness are for the member who is accused to be given:

- a prompt and clear statement of the precise allegations against the member;
- adequate opportunity to take legal advice and have legal assistance throughout;
- the opportunity to be heard in person;
- the opportunity to call relevant witnesses at the appropriate time;
- the opportunity to examine other witnesses;
- the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.

In determining a member's guilt or innocence, the criterion applied at all stages should be at least that the allegation is proved on the balance of probabilities. In the case of more serious charges, a higher standard of proof may be appropriate.

282. These safeguards accord with recommendations of previous select committees, most recently the select committee on standards in public life which advocated comparable protections.

The Nicholls Committee considered that the recommendations of the Standards and Privileges Committee could meet the tests of natural justice, with some elaboration of the procedures:

291. The Joint Committee considers the revised procedures recommended by the standards and privileges committee are attractively flexible and that, with some elaboration, they could accommodate adequately the safeguards we have mentioned. In particular, when deciding an appeal on a disputed issue of fact central to a complaint, the tribunal will need to ensure the necessary safeguards are available to the member. The tribunal should afford the member the opportunity to question witnesses and call relevant witnesses of his own, if he did not have this opportunity during the commissioner's investigation. If the tribunal decides to adopt an adversarial type of procedure, with one of the law officers or another lawyer leading the questioning of the member, fairness will normally require that the member also should have the opportunity to be legally represented. In order to carry out its fact-finding role satisfactorily, the tribunal may also consider it necessary to identify the ingredients of the alleged offence. This is the context in which the tribunal will make its findings.

292. The standards and privileges committee has not, however, considered the procedure relating to complaints alleging contempt referred to them by resolution of the House. In this area the requirements of fairness set out above will call for changes in procedure. The standards and privileges committee has devised machinery for appeals on factual disputes in 'conduct' cases. It should now devise and recommend to the House a comparable procedure for 'privilege' cases.

It expressed some concern about the procedures currently used for a finding of contempt by a committee, which led to a decision for punishment being taken by the House as a whole. It considered that the House should have no power to increase a penalty above that

recommended by the committee, for reasons of procedural fairness, since the House was acting as the appeal stage. It also noted:

298... Accordingly, none of the members of the committee should vote in the House, although the chairman and other members of the committee should be eligible to participate in the debate. Traditionally, such debates are well attended, and members do not divide on party lines. We see no reason to doubt that this tradition will be carefully respected.

The Joint Committee believed that a review by the whole House of the committee's report furnished adequate protection for a member, in matters such as procedures adopted and penalty imposed. Where matters of fact were concerned, the proposals for appeals by the Standards and Privileges Committee would suffice. A strong motivation was the maintenance of self-regulation:

299. In reaching our conclusion we have been influenced by the constitutional implications of a member having a right of appeal, even of a limited nature, from a decision of the House of Commons to a court of law or other tribunal. Such a right of appeal would detract from the sovereignty of Parliament over proceedings in Parliament, and accordingly it is intrinsically undesirable. Had we considered that fairness to a member called for such an innovation, we would have so recommended. Since fairness does not so require, we do not recommend that Parliament should embark upon such a course, inherent in which is a real prospect of conflict between the courts of law and Parliament.

## **I. *Reinforcing Standards-* the report from the Committee on Standards in Public Life**

The Committee on Standards in Public Life examined the procedures adopted by the Standards and Privileges Committee in its report *Reinforcing Standards*.<sup>113</sup> It attempted a classification of allegations, and concentrated its attention on contested allegations of serious misconduct.<sup>114</sup> Here it expressed some concern about the Standards and Privileges procedures and the proposals to use a legal assessor:

3.33 We have significant reservations about this proposal. First, in our Issues and Questions paper we noted our concern that the legally qualified assessor should "*share responsibility for the findings*". We suggested that extending the role of legal adviser to fact-finder was a departure from the precedents set by other professional disciplinary bodies (where the role of legal assessor is confined to legal advice only). The evidence we have received has not allayed this concern.

3.34 Secondly, there is the (by no means theoretical) point to consider in relation to the role of the Parliamentary Commissioner as the 'trier' of an MP involved in

---

<sup>113</sup> Cm 4557 January 2000

<sup>114</sup> paras 3.22-3

a serious, contested case. One of the roles of the Parliamentary Commissioner is to tender advice to MPs on such matters as the registration of relevant interests. Other aspects of conduct may be the subject of advice from the Parliamentary Commissioner. It could well happen that a disputed case could involve an area of conduct on which the Parliamentary Commissioner had already tendered advice in the same or similar circumstances. The requirement mandated by Article 6 of the European Convention on Human Rights for an impartial and independent tribunal might well be compromised in such circumstances.

3.35 Thirdly and most importantly, we believe that the Committee's proposal fails to meet the criterion of fairness which the Committee itself applied as a measure of the effectiveness of any investigation procedure. We believe also that it fails to meet the "*minimum requirements of fairness*" set out in the Nicholls Report...

3.38 In serious, contested cases, we believe that the accused MP should be afforded the procedural safeguards set out above[see Nicholls extract above], including a requirement that an allegation should be proved to a high standard of proof. We recommend therefore that in such a case, the Committee on Standards and Privileges should be invited by the Parliamentary Commissioner, when reporting her findings of a prima facie case against the accused MP, to refer the case to an investigative tribunal.

3.39 In fairness to the accused MP, we believe that he or she should have an opportunity to make representations at the meeting of the Committee on Standards and Privileges at which the decision to refer his or her case to the tribunal is considered. We do not envisage any avenue of appeal from that decision.

3.40 Again as a measure of fairness, we believe that when cases are referred to the tribunal, the accused MP should be given financial assistance to fund his or her legal representation.

3.41 It is likely that a contested case will involve a range of complex legal issues -conflicts of evidence, legal debates on procedural and substantive points, issues relating to the onus of proof and so forth- which will be difficult for non-lawyers to control and decide. For this reason, we propose that the investigative tribunal should be chaired by an independent lawyer of substantial seniority.

3.42 We recognise, however, that a lawyer may lack the necessary background knowledge as to Parliamentary procedure, the conventions governing the registration of interests and so forth. This raises the question as to who else should form part of the tribunal.

3.43 In paragraph 3.31 above, we noted that the Standards and Privileges Committee had taken the view that our recommendation in favour of a sub-committee would be unworkable because of the time-consuming nature of complex investigations. In oral evidence, Mr Sheldon MP indicated that he remained of the same view. He said of the recommendation: "*it would be impossible. It cannot be done.*" We are sympathetic to Mr Sheldon's position. We fully understand that the members of the Committee on Standards and Privileges already have a very full workload and that it may not be reasonable to expect them to take on any more. Yet we would be surprised and somewhat dismayed if it should turn out to be the case that no MPs would be willing to serve.

3.44 We agree with the Committee on Standards and Privileges that "*except . . . in the case of criminal charges Members should, so far as possible, be judged by their peers.*"

We therefore propose that the first instance tribunal should consist of a legal chairman sitting with either two or four MPs (making a total membership, including the chairman, of either three or five persons) and that they should be MPs of substantial seniority.

3.45 If MPs are unable or unwilling to participate in their own disciplinary procedures, then it is difficult to avoid the conclusion that Parliamentary self-regulation in this area is unworkable.

We acknowledge that it is possible that a contested case could be very time-consuming. We think it likely, however, that such cases will be very rare; and, on the rare occasions that they do arise, then, in our view, MPs should be prepared to devote whatever time is needed to ensure procedural fairness at the first instance stage.

The Committee also made recommendations in relation to the appeal stage for serious, contested cases:

### **B.2 Appeal stage**

3.46 The Committee on Standards and Privileges, in its report on appeal procedures, recommended that an MP should be able to appeal against a first instance decision in cases where the Committee was satisfied that the appeal was neither frivolous nor unsubstantiated. The Committee proposed a system under which if the appeal related to a procedural matter only, then the appeal would be by way of a review of procedures by the Committee itself, and if the appeal related to a finding of fact, then a re-hearing would be conducted by an external appellate body comprising three individuals (one an experienced lawyer). The appellate body would be free to determine its own procedures. Its role would be confined to determining the facts and it would be for the Committee on Standards and Privileges to decide whether the rules of the House had been breached.

3.47 In our Issues and Questions paper we made the following comment in response to this proposal:

This division of responsibility is most unusual. In general, experience has shown that the fact-finding exercise carried out by a judicial body is inextricably linked with the legal rule or statutory provision which has to be satisfied or shown to be infringed (as the case may be). Facts are not found in the abstract.

Our view remains the same.

3.48 We agree with the Committee on Standards and Privileges that an accused MP should have a right of appeal in cases involving an allegation of serious misconduct. We have considered the disciplinary procedures of a number of professional bodies and have noted that in nearly all cases a right of appeal exists. Although the House is not concerned with establishing breaches of the criminal law, we have also borne in mind the provisions of Article 14.5 of the International Covenant on Civil and Political Rights (ratified by the United Kingdom on 20 May 1976) and of Article 2 of Protocol No 7 of the European Convention on Human Rights (yet to be ratified by the United Kingdom), which require that everyone convicted of a criminal offence by a tribunal shall have the right to have the conviction or sentence reviewed by a higher tribunal. As at the 'trial' stage, we believe that an MP should be given financial assistance to fund his or her legal representation on appeal.

3.49 We do not take the view that an appeal should extend to a full re-hearing of a case (a possibility apparently contemplated in some circumstances by the Committee on Standards and Privileges). We believe that an appeal should be founded on the written record of what transpired at the first instance hearing, including the full transcript of evidence. Witnesses should not themselves be recalled and oral testimony would arise only if the rigorous rules for the admission of fresh evidence were satisfied.

3.50 We believe that the appeal should be heard by an ad hoc appellate tribunal, possibly a retired senior appellate judge sitting alone. If the accused MP is unsuccessful on appeal, the case would return to the Committee on Standards and Privileges, which would, in turn, recommend any penalty to the House of Commons. In the usual way, the imposition of the penalty would ultimately be the responsibility of the House.

A tribunal system of appeal was not considered necessary for contested allegations of less serious misconduct. Here, the Committee recommended as follows:

**R5. ‘Trial’ and appeal procedure in other contested cases**

1. In cases which, in the opinion of the Parliamentary Commissioner, do not warrant a referral to the full tribunal, the Parliamentary Commissioner should make a recommendation to the Committee on Standards and Privileges accordingly. The Committee should decide whether to uphold the recommendation of the Commissioner on the basis of the Commissioner’s report and of the representations (if any) by the accused MP.
2. In those cases that remain with the Parliamentary Commissioner, the Commissioner should investigate the complaint and, on the basis of the facts found, decide whether the complaint should be upheld or dismissed. The Commissioner’s decision should be reported to the Standards and Privileges Committee, which should, in turn, decide whether or not to adopt the Commissioner’s report and what penalty (if any) should be recommended to the House.
3. In cases where an accused MP disputes the Commissioner’s findings or conclusions, that MP should be able to appeal against the Commissioner’s decision, such an appeal to be heard either by the Committee itself or by such *ad hoc* appellate body as it decides to appoint.

**J. The response to *Reinforcing Standards***

The Government response to *Reinforcing Standards* noted that the response on these matters was solely for the Commons, on the advice of the Committee on Standards and Privileges. It continued: ‘The Government have some reservations about the details of these recommendations, but, as the Committee suggests, will await any further comments on this by the Committee on Standards and Privileges’.<sup>115</sup>

The Select Committee did not publish a detailed report in response to the *Reinforcing Standards* proposals. Instead, the former Chairman, Robert Sheldon, had an exchange of correspondence with Lord Neill.<sup>115</sup> Mr Sheldon rejected the Neill recommendations for a 'trial' procedure in serious, contested cases, arguing that Members could not be involved in the process of investigation due to time constraints, and perceptions that the process would be considered partial. He also noted:

We also have serious reservations about the role of lawyers in internal House of Commons disciplinary matters. Whilst a lawyer might be well equipped to ensure procedural fairness, we are not convinced that the lawyer would be better placed than an independent Parliamentary Commissioner for Standards to assemble and evaluate the evidence in inquiries. The assistance of a legal assessor to the Parliamentary Commissioner in complicated cases, as we have recommended, would be a more appropriate measure to ensure that procedures are properly followed and that legal advice is available to the Commissioner as required

The Chairman considered that the Neill recommendation of an ad hoc appellate tribunal would 'be to take the decision from the hands of the House to those of a retired judge, breaking the principle of self-regulation entirely'. He insisted that the Committee should retain the right to give the verdict and penalty.

In response, Lord Neill clarified that his Committee had not envisaged that Members could carry out all the investigative work:

Although we refer (in the text of the report) to the tribunal in Recommendation 3 as an "*investigative tribunal*", our meaning was not that the tribunal would investigate in the sense of assembling the facts of a case. This task is one properly undertaken by the Parliamentary Commissioner. The role of the tribunal would be to 'try' the case: that is, it would act as adjudicator and fact-finder (that is, draw conclusions about the facts on the basis of the evidence amassed by the Parliamentary Commissioner and any evidence adduced by the Member complained about).

It is a fundamental principle of procedural fairness that the functions of 'investigator' and 'adjudicator' should be carried out independently of each other. Although we accept that in contested cases which are not serious and complex it is reasonable for the Parliamentary Commissioner to perform both roles (which is the current practice), we believe that such a convergence of functions would fail to meet (or would be perceived not to meet) the requirement of fairness in serious, complex cases.

There have been no further recent developments on changes to the appeals procedure. And Parliament has yet to decide on the recommendations made by the Select Committee. There is likely to be continued tension over appeal procedures, especially when a serious case is under investigation. The former Attorney General, Sir Nicholas Lyell, criticised

---

<sup>115</sup> Cm 4817 July 2000 Response to Chapter 3, p 5

<sup>116</sup> Printed in Appendix 1 to HC 267, 2000-2001



the practice of the Commissioner, in not necessarily assessing which rule of conduct was being infringed by the allegations being made.<sup>117</sup> He suggested that the Commissioner should have some quasi-legal training and that the Committee should have greater guidance on the standard of proof which should be established.<sup>118</sup> The Committee acknowledged the value of a legal perspective in its work, and recommended once again that it should have power to appoint a legal assessor.<sup>119</sup>

The Joint Committee on Parliamentary Privilege accepted that investigative procedures needed to meet concerns about natural justice because of the existence of ECHR.<sup>120</sup> The procedures used by the Select Committee are therefore likely to come under continued examination.

## **K. Interaction between the Commissioner and the Committee**

Some differences of approach in relation to individual inquiries have been observed between Committee and Commissioner in a minority of investigations.

In the Mr Neil Hamilton case in 1997-98<sup>121</sup>, discussed briefly above, the Committee did not fully uphold the Commissioner's conclusions. Despite finding his conduct well below the standard expected of a Member, it also found that there was no 'absolute proof' that Mr Al Fayed made cash payments to Mr Hamilton. It concluded: 'The Committee did not arrive at a practicable way of reaching a judgement which adds to or subtracts from the Commissioner's findings.' The only way forward was the question of an appeal system: 'there is no agreement on whether there could be an appeal against the Commissioner's findings or conclusions by the Select Committee except in consideration by the House.'<sup>122</sup> The former Commissioner observed in his valedictory report that he felt that the Committee 'under-estimated their capacity to reach a judgement on the evidence provided. This was not a criminal case involving criminal sanctions. They were entitled to adopt "balance of probabilities" as a standard of proof. The findings were supported by evidence.'<sup>123</sup>

Mr Bob Wareing was found to have failed to register an interest in a particular company and apologised to the former Commissioner.<sup>124</sup> The Committee recommended a suspension for a week, which the then Commissioner noted in his valedictory report seemed 'relatively severe' compared with similar failures to register, where a personal

---

<sup>117</sup> HC 267 2000-2001, Q117

<sup>118</sup> HC 267 2000-2001, Q137

<sup>119</sup> HC 267, 2000-2001, para 54

<sup>120</sup> The Joint Committee noted 'the disciplinary procedures of both Houses should be revised to bring them into line with contemporary standards of fairness, including rights guaranteed by the European Convention of Human Rights,*Executive Summary*

<sup>121</sup> HC 30 1997-8

<sup>122</sup> HC 261 1997-98

<sup>123</sup> HC 1147 1997-98

statement was sufficient. The complainant in the Wareing case was the Chief Whip, then Nick Brown.<sup>125</sup>

In an investigation concerning Mr John Maxton and Dr John Reid in 2000-2001, the Commissioner upheld complaints that Dr Reid and Mr Maxton had misled the Fees Office of the Commons about the employment arrangements of two research assistants, which meant that Office Costs Allowance was being used to supplement Labour Party salaries. Dr Reid was at that time Secretary of State for Scotland. The Committee did not uphold the complaints. It did find that the Commissioner's enquiry 'was properly conducted and met appropriate standards of care, fairness and competence.'<sup>126</sup>

The standard of proof used by the Commissioner was the balance of probabilities,<sup>127</sup> but the Committee concluded that they needed to be persuaded that these allegations were significantly more likely to be true than not to be true before they could properly be upheld.<sup>128</sup> Some witnesses gave oral evidence to the Committee. It concluded that the evidence for an improper arrangement did not reach the standard required to uphold the complaint, and therefore the committee did not consider in detail the Members' responses to the evidence of those witnesses.<sup>129</sup>

The Commissioner reported difficulties with obtaining full information from certain witnesses and that others had felt under pressure from the Members under investigation. Mr Maxton made an apology to the Commissioner for his antagonistic attitude towards the investigation.<sup>130</sup> Further differences were evident when the Commissioner investigated further allegations against Mr Maxton, by now an ex-Member, in 2001-2. The Commissioner recommended that oral evidence on oath be taken from Mr Maxton and several other possible witnesses, but the Committee concluded, on a division, that the evidential value of the new material was not sufficient to justify a review of the conclusions of the Committee in the previous Parliament.<sup>131</sup>

During the investigation of allegations against Mr Keith Vaz, the Commissioner experienced great difficulty in obtaining information from Mr Vaz, then a junior Foreign Office minister. Mr Vaz himself expressed dissatisfaction at not receiving a full list of the alleged transgressions which were being investigated. Eventually, he refused to answer any more questions from the Commissioner, and insisted on giving evidence to the Committee.

The Committee criticised Mr Vaz and other witnesses for failing to provide full and prompt answers. The Committee emphasised that it had taken evidence 'not to assist us in

---

<sup>124</sup> HC 182 1997-98

<sup>125</sup> HC 1147 1997-98

<sup>126</sup> HC 89 2000-2001, para 11

<sup>127</sup> HC 89 2000-2001, para 16

<sup>128</sup> para 20

<sup>129</sup> para 34

<sup>130</sup> para 61

<sup>131</sup> HC 320 2001-2

considering the Commissioner's conclusions, but to enable us to reach conclusions at all on a number of outstanding complaints...we felt that if we had not taken inquiries in this case forward it would be much more difficult for the Commissioner to obtain evidence from reluctant witnesses in future cases. If it came to be believed that if a witness prevaricated or procrastinated for long enough the Commissioner and the Committee would eventually lose interest and go away, the entire system which the Committee has put in place for the investigation of complaints would be at risk.'<sup>132</sup>

The Committee took evidence from Mr Vaz and a number of other witnesses. In a number of areas, however, the Committee could not uphold complaints as there was insufficient information to make a decision, which would achieve the higher standard of proof needed where serious allegations were concerned. Overall, the Committee complained that the use of solicitors by witnesses had 'hampered the Commissioner in her task of gathering information in a non-adversarial way. Witnesses are not entitled to be provided with information which the Commissioner provides as a matter of course to a Member complained against'.<sup>133</sup>

Mrs Teresa Gorman was given the longest suspension (one month), since the establishment of the Standards and Privileges Committee. The Committee found that she had misled the Commissioner about a number of matters which should have been registered.<sup>134</sup> What most concerned the Committee was the accuracy or otherwise of information provided by Mrs Gorman to the Commissioner. The Committee noted: 'the most disturbing aspect of this case has been the difficulty the Commissioner has experienced in getting accurate information from Mrs Gorman.'<sup>135</sup> She was also criticised for having improperly contacted a witness and having made false allegations against others. These were however themes which recurred in the Reid and Vaz cases; Dr Reid was criticised for having given 'advice' to a witness (which was seen as threatening by that witness)<sup>136</sup> but no specific punishment was suggested, and Mr Vaz was criticised in some detail for having failed to supply information to the Commissioner. Again no punishment was recommended. Peter Preston, the former editor of the *Guardian* has made a direct comparison between the Reid and the Gorman case, suggesting that the post-Nolan system was being undermined by political considerations.<sup>137</sup>

---

<sup>132</sup> HC 314-I paras 4 and 5

<sup>133</sup> HC 314-I para 72

<sup>134</sup> These principally related to rental income from property. HC 260 1999-2000 paras 11-25

<sup>135</sup> Para 34

<sup>136</sup> HC 89 2000-2001 para 58

<sup>137</sup> *Observer* 24 December 2000 'If Westminster silences its own watchdog, we will all pay the price'

## VI The Advocacy Rule

### A. The operation of the advocacy rule

The first report of the Nolan Committee had recommended against a ban on all forms of advocacy, preferring to recommend the prohibition of agreements committing members to giving parliamentary advice for payment to multi-client lobbying organisations. The Select Committee on Standards in Public Life however considered that the distinction between single and multi-client organisations would be difficult to understand:

10. Having wrestled with this problem at great length and in exhaustive detail we have been driven to the conclusion that the Nolan Committee's attempt to regulate merely *the types of* outside bodies with which Members should be allowed to have a paid relationship will not work. The difficulties of definition, and therefore of enforcement, are simply too great. Our alternative approach, which we explain in the following paragraphs, in fact goes significantly further than the Nolan recommendations. It would address Members' relations with both single client *and* multi-client consultancies, rather than singling out the latter.

The Committee proposed instead that remedial action should concentrate on those activities by Members which ought to be prohibited, rather than the type of body for which the services were being performed. Paid advocacy, but not paid advice, would be prohibited. It believed that it would be possible to address the definitional problems identified by Nolan. The Committee built on the 1947 Resolution in the 6 November 1995 Resolution on advocacy, which is incorporated in the *Code of Conduct for Members* as follows:<sup>138</sup>

53. On 6th November 1995 the House agreed to the following Resolution relating to paid advocacy:-

"It is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof: and that in particular no Members of the House shall, in consideration of any remuneration, fee, payment, or reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received is receiving or expects to receive-

---

<sup>138</sup> *The Code of Conduct* together with the *Guide to the rules relating to the conduct of members*. Approved by The House of Commons on 24 July 1996 HC 688 of Session 1995/96)

- (i) advocate or initiate any cause or matter on behalf of any outside body or individual, or
- (ii) (ii) urge any other Member of either House of Parliament, including Ministers, to do so,
- by means of any speech, Question, Motion, introduction of a Bill or Amendment to a Motion or a Bill."
- (Resolution of the House of 15th July 1947, amended on 6th November 1995)*

54. This Resolution prohibits paid advocacy. It is wholly incompatible with the advocacy rule that any Member should take payment for speaking in the House. Nor may a Member, for payment, vote, ask a Parliamentary Question, table a Motion, introduce a Bill or table or move an Amendment to a Motion or Bill or urge colleagues or Ministers to do so.

55. The Resolution does not prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad.

56. The Resolution extends and reinforces an earlier Resolution of the House in 1947 that a Member may not enter into any contractual arrangement which fetters the Member's complete independence in Parliament by any undertaking to press some particular point of view on behalf of an outside interest. Nor, by virtue of the same Resolution, may an outside body (or person) use any contractual arrangement with a Member of Parliament as an instrument by which it controls, or seeks to control, his or her conduct in Parliament, or to punish that Member for any parliamentary action.

57. In addition to the requirements of the advocacy rule, Members should also bear in mind the long established convention that interests which are wholly personal and particular to the Member, and which may arise from a profession or occupation outside the House, ought not to be pursued by the Member in proceedings in Parliament.

*The Code of Conduct* contained guidance on the operation of the advocacy rule in paras 58 to 64.<sup>139</sup> These explain the distinction between initiation and participation:

:

1. *Initiating a parliamentary proceeding:* When a Member has received, is receiving or expects to receive a pecuniary benefit from a body (or individual) outside Parliament the Member may not initiate any parliamentary proceeding which relates specifically and directly to the affairs and interests of that body (or individual); any client of such a body (or individual); any group, sector, category

---

<sup>139</sup> These guidelines can be reached from the following website: <http://www.parliament.the-stationery-office.co.uk/pa/cm199697/cmselect/cmstand/688/code3.htm>

or organisation whose affairs and interests are substantially the same as those of the outside body (or individual).

Initiation included the following:

- *presenting a Bill;*
- *presenting a Petition;*
- *tabling and asking a Parliamentary Question;*
- *initiating, or seeking to initiate an adjournment (or other) debate;*
- *tabling or moving any Motion (e.g. an "Early Day Motion" a Motion for leave --*
- *to introduce a Bill under the "Ten Minute Rule" or a Motion "blocking" a -*
- *Private Bill;*
- *tabling or moving an Amendment to a Bill;*
- *proposing a draft Report, or moving an Amendment to a draft Report, in a Select Committee;*
- *giving any written notice, or adding a name to such notice, or making an application for and introducing a daily adjournment debate, or an emergency debate.*

During participation, advocacy is prohibited which seeks to confer benefit exclusively upon a body (or individual) outside Parliament, from which the Member has received, is receiving, or expects to receive a pecuniary benefit, or upon any registrable client of such a body (or individual). Otherwise a Member may speak freely on matters which specifically and directly relate to the affairs and interests of a body (or individual) from which he or she receives a pecuniary benefit, provided the benefit is properly registered and declared.

Participation included the following:

- *making a speech in the House, in Committee of the whole House, or in Standing Committee;*
- *making an intervention in a debate or asking a supplementary question to a Question, statement or other proceeding;*
- *asking a question in a Select Committee when taking formal evidence.*

Members could pursue constituency interests in the House, following these guidelines on initiation and participation. They were warned against using a constituency interest as the means by which to raise a matter which related primarily to the wider interest, if otherwise unable to pursue that interest.

A specific query was laid to rest by the guidance that private members successful in the Ballot for Bills were not prevented from introducing a bill by reason of receiving

assistance from an organisation connected with the purposes of the bill, provided that there was no pre-existing financial arrangement.<sup>140</sup>

A report from the Standards and Privileges Committee on the Advocacy Rule in February 1999 drew attention to the rule following a note from the then Parliamentary Commissioner for Standards. He had noted particular problems relating to certain foreign visits:<sup>141</sup>

3. Foreign visits are registrable and that imposes certain constraints under the Advocacy Rule. It is unlikely to be much of a problem if the Member were merely participating in debate because in that case the requirement is only to avoid advocacy which seeks to confer benefit *exclusively* on the organisation from which benefit is received. It is usually quite easy for a Member to couch any comments in a way which does not fall foul of that definition.
4. A difficulty is more likely to arise if a Member wished to "initiate a parliamentary proceeding" e.g. by tabling PQs, Motions or Amendments to a Bill. This is prohibited under the Advocacy Rule if the proceeding relates "specifically and directly to the affairs and interests" of the outside body or its clients or of "any group, sector, category or organisation whose affairs and interests are substantially the same as those of the outside body".
5. This, of course, is quite a severe constraint and it bears particularly severely on Opposition front bench spokesmen who have wide responsibilities but who often do not have access to official funding.
6. Many visits are exempt from registration on the grounds that they are paid for by public funds, or by a variety of quasi-official bodies, or by a Member's own party (paragraph 28 of the Rules). But there are still a number which are not.
7. This is a problem over which the former Standards and Privileges Committee agonised in drawing up the rules. They recognised that it could cause genuine problems (particularly for Opposition spokesmen) but nevertheless felt that overseas visits could not be distinguished from other benefits in defining interests "which might reasonably be thought by others to influence [a Member's] actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament".

The report noted that many Members appeared to be unaware of the rules, and restated them.

The Committee on Standards in Public Life examined the rule as part of its *Reinforcing Standards* report which reviewed the conclusions of its 1995 report.<sup>142</sup> It found the evidence about the operation of the advocacy rule in relation to foreign visits 'troubling'.

---

<sup>140</sup> HC 604 1995-96, para 62(6). Mike Watson MSP faced accusations of paid advocacy when he introduced his anti-hunting bill in the Scottish Parliament. See Standards Committee Fourth Report 1999. [http://www.scottish.parliament.uk/official\\_report/cttee/stan99-00/str04-c.htm](http://www.scottish.parliament.uk/official_report/cttee/stan99-00/str04-c.htm)

<sup>141</sup> HC 257 1998-99

<sup>142</sup> Cm 4557 January 2000 paras 3.80-3.96

It recommended that the restriction on initiation of proceedings in relation to all overseas visits be removed:

3.94 In proposing the removal of the restriction on initiation of proceedings in relation to all overseas visits, we are not compromising the prohibition on paid advocacy but rather suggesting a change in the guidelines on how that prohibition should be effected. Further, we endorse the thought expressed in the guidelines that MPs should, in accepting an invitation to undertake a foreign visit, be mindful of the reputation of the House. We would also expect MPs to honour the rule that the acceptance of any invitation should not involve any obligation which could act as a fetter on an MP's independence and freedom of action in Parliament.

The Committee on Standards in Public Life also considered that the current guidelines on advocacy were 'operating unnecessarily harshly' and that the guidelines relating to participation should be extended to include both participation and initiation:<sup>143</sup>

R10. The guidelines relating to the ban on paid advocacy, set out in the *Guide to the Rules relating to the Conduct of Members*, should be amended so as to make it possible for an MP who has a personal interest to initiate proceedings which relate in a general way (and not exclusively) to that interest, subject to the following safeguards:

- . the MP is prohibited from engaging in 'paid advocacy' on behalf of that interest;
- . he or she is required to register and declare the interest in accordance with the guidelines;
- . he or she must identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol when initiating a debate.

The recommendation to relax the advocacy rule was addressed in correspondence between the former Chairman of the Committee, Robert Sheldon, and the former Chairman of the Committee on Standards in Public Life. Mr Sheldon stated that the Committee was:<sup>144</sup>

We are reluctant to propose any more general change to the rule. Your recommendation would amount to a considerable relaxation of the current guidelines, as it would allow the initiation of any parliamentary proceeding which did not seek to confer benefit *exclusively* upon the body or individual with whom the Member had a registrable connection. The prohibition could therefore be avoided by framing questions, amendments, &c., in general terms; for example, a Member remunerated by an oil company would not apparently be precluded from moving an amendment to the Finance Bill to benefit *all* oil companies. In our

---

<sup>143</sup> Cm 4557 para 3.96

<sup>144</sup> HC 267 2000-2001, Appendix 1



view to relax the rules to such an extent would fatally undermine the ban on paid advocacy which we have agreed we need to retain.

In July 2000 the Select Committee on Standards and Privileges issued a consultation report on proposed amendments to the rules relating to the conduct of members.<sup>145</sup> One of the proposals related to foreign visits. It recommended that paragraph 62(7) of the Guidance to the *Code* be amended so that overseas visits would not be taken into account when applying the advocacy rule. The report summarised the practical effects as follows:

10. The practical consequence of this change for a Member who has been to a country at the expense, for example, of that country's Government will be that:
- (a) the Member will be required to register the visit, as now;
  - (b) the Member will be allowed to initiate parliamentary proceedings, such as tabling questions and early day motions and seeking adjournment debates which relate specifically and directly to the affairs and interests of the host Government, subject to the appropriate declaration of interest; *but*
  - (c) the Member may neither initiate nor participate in parliamentary proceedings in which the Member might reasonably be thought to be acting as a representative of the host government. Specifically, Members must not advocate increased United Kingdom financial assistance directly to the host government, nor may they initiate any proceeding which seeks to bring specific and direct benefit to the host Government. If Members had visited, for example, a country in Africa at the expense of that country's government, it would not be permissible for them to advocate a liberalised trade regime with that country alone or with that country and its immediate neighbours; but it would be permissible for them to advocate such a regime across Africa, or across the world.

This report from the Standards and Privileges Committee recommended a series of minor changes to the advocacy rule, (including its renaming to 'lobbying for reward or consideration') but did not otherwise examine the recommendation of the Committee on Standards in Public Life for a general relaxation of the guidelines relating to initiation. It did however recommend that supplementary questions should be regarded as initiation if asked by the Member who tabled the original question, and as participation if asked by another Member.<sup>146</sup>

The Committee published its response to the consultation in March 2001.<sup>147</sup> It repeated its recommendation that overseas visits by Members undertaken at someone else's expense should not be taken into account when applying the advocacy rule. It also considered that the advocacy rule should be tightened to prevent Members from making approaches to Ministers where they have a relevant financial interest.<sup>148</sup>

---

<sup>145</sup> HC 710 1999-2000

<sup>146</sup> HC 710 para 41

<sup>147</sup> *Proposed amendments to the rules relating to the conduct of Members* HC 267 Session 2000-1, para 5

<sup>148</sup> HC 267, para 16

It should be noted that the Standards and Privileges Committee recommended in November 1999 that the advocacy rule should not apply for dual mandate Members from the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly; this would enable them to initiate relevant debates. Membership of other elected bodies however should be registered.<sup>149</sup> This recommendation was repeated in the March 2001 report from the Committee.

Following the 2001 election, there was some concern from Conservative sources when the decision of Geoffrey Clifton-Brown to step down as agriculture spokesman became known. He was reported as having taken advice from the Registrar of Members' Interests concerning his farming interests. Mr Clifton-Brown has asked the Speaker to review the rules on advocacy.<sup>150</sup>

## **B. Employment agreements**

The first Nolan report had considered that work by Members for multi-client consultancies should be banned and in relation to legal and other professional firms Members should separate their interests so that they took no part in offering clients general Parliamentary services.

The Second Report from the Select Committee on Standards in Public Life could find no merit in attempts to distinguish between single and multi-client consultancies and concluded that the actions of Members, rather than the type of clients should be the object of regulation.<sup>151</sup> The Committee agreed with the Nolan proposal that agreements relating to Parliamentary activities should be put in writing, considering that this would apply principally to arrangements whereby an MP offered advice on Parliamentary matters. However, the Committee thought that it should also include frequent, rather than occasional, commitments outside Parliament such as newspaper articles, or television programmes. Advice should be sought from the Commissioner when it was not immediately obvious that a particular employment agreement arose directly from or related directly to membership of the House.<sup>152</sup>

It recommended that agreements relating to the provision of Parliamentary services be put in writing and deposited with the Parliamentary Commissioner for Standards to ensure both that they were within the rules and that the ban on advocacy was effective. But it recommended against the public disclosure of the agreements and against the disclosure of the amounts of remuneration paid in respect of deposited agreements (paras. 43-49 HC 816).

---

<sup>149</sup> HC 928 1998-99

<sup>150</sup> *Financial Times* 22 October 2001 'Tories want review of Commons rules'

<sup>151</sup> HC 816 1994-95, paras 11-13

<sup>152</sup> paras. 38-42

The House did, however, agree to disclosure to the public of both the written agreements and the level of remuneration in banded form in the subsequent debate in November 1995.

The employment agreements can be inspected physically on the same terms as the updated loose-leaf register of members' interests in the Registry office, but the agreements are not made available on the internet, nor are they published. The number of such agreements fell substantially in the late 1990s. In the register for October 1997, the first Commissioner for Standards, Sir Gordon Downey, noted that the number of agreements had fallen 'by some two thirds' compared with the register published in March 1996. No figures have been published as to the number of employment agreements deposited annually. However, later editions of the register continue to note that the number of agreements had not altered substantially from the October 1997 assessment. He also noted in his forewords to the March 1996 and January 1997 editions of the published register that there were apparent inconsistencies in the interpretation of the requirements on relevant remuneration.

The Commissioner and Committee considered the question of whether frequent speaking engagements carried out by a Member on behalf of a number of agencies involved an agreement to provide Parliamentary services in a report relating to Ken Livingstone.<sup>153</sup> The decision was summarised by the Commissioner in a later report on John Major:<sup>154</sup>

6. The Guide to the Rules gives the following guidance (para 41):

*"The new requirement for employment agreements to be put in writing will apply principally to any arrangement whereby a Member may offer advice about parliamentary matters. We think it right, however, that it should also include frequent, as opposed to merely occasional, commitments outside Parliament which arise directly from membership of the House. For example, a regular, paid newspaper column or television programme would have to be the subject of a written agreement, but ad hoc current affairs or news interviews or intermittent panel appearances would not."...*

8. The question of whether frequent speaking engagements carried out by a Member on behalf of a number of agencies involved an agreement to provide Parliamentary services was raised in a previous complaint relating to Mr Ken Livingstone on which I recently reported to the Committee (Seventh Report of the Committee on Standards and Privileges, Session 1999-2000). In that case, the Committee agreed with my conclusion that the Rules required the Member to register, in appropriate bands, the remuneration he received from each company to which he frequently provided such services in his capacity as a Member of Parliament and to deposit an employment agreement. For this purpose the Committee has taken the view that 3 speeches or articles in a calendar year constitute "frequent". With the Committee's agreement, I suggested to Mr Livingstone that where he was required to deposit an employment agreement, because of an arrangement to provide frequent speeches through an agency, he

---

<sup>153</sup> HC 342 1999-2000

<sup>154</sup> HC 479 1999-2000

would be well advised also to list the persons or organisations paying the fee as clients in Category 3 of the Register.

The Commissioner concluded that Mr Major should deposit an employment agreement with the agency:

24. It is clear that Mr Major does have frequent commitments outside Parliament through the WSB which arise directly from his membership of the House. The arrangements between Mr Major and WSB are not significantly different from those which obtained in the previous case concerning Mr Livingstone, in that the agency promotes lecture tours on Mr Major's behalf as well as handling their administration, and receives in return a standard percentage of the fees. The relationship between the Member, his ultimate clients and the intermediate agency is for all practical purposes the same in both cases. WSB's business is arranging speeches and lectures for specific audiences. Speakers such as Mr Major are the means by which it does this and, through the agreed share of fees, its source of income. In that sense Mr Major is providing a service to WSB. The fact that Mr Major does not have a formal contract with WSB does not in my view alter that position. On that basis I must conclude that Mr Major should deposit an employment agreement with WSB with my office, should register the annual fees he receives in the appropriate bands and list the individual bodies who pay the fees as clients. In addition, if any of the fees from one-off lectures exceeds £500, he should make a separate Register entry for that engagement, specifying the body which pays the fee.

The Commissioner noted that she had been minded to uphold the complaint but for the fact that Mr Major had sought advice from the Registrar in good faith and had acted on that advice. The Committee agreed with the Commissioner in not upholding the complaint.

In subsequent evidence to the Committee in 2001, the then Leader of the House, Margaret Beckett, stated that it was 'frankly bizarre' to require a Member to register an agreement with an agency to manage speaking engagements as an employment agreement<sup>155</sup>

The Select Committee report of March 2001 reminded Members of the scope of the requirement to register employment agreements, while noting the extent of opposition to the rule. It recommended some simplification of the rules when relating to media engagements and some minor changes:

- employment agreements should be renamed 'agreements for the provision of services,
- Members registering media work under category 2 (remunerated employment, office, profession etc) could simply deposit a declaration that they did no lobbying for reward on behalf of their employment, and declare the

---

<sup>155</sup> HC 267 2000-2001 Appendix 2, p xxiii

- remuneration for each commitment or group of commitments in bands of £5,000. No separate employment agreement would then need to be deposited.
- The threshold for registration should be raised to the same as for a single gift under category 5
  - The November 1995 resolution should be amended to allow the reproduction of employment agreements

### C. The future of the advocacy rule

In summary, the rules on advocacy have been criticised as over-complex. In evidence to the Committee, Margaret Beckett, then Leader of the House, complained that ‘if the rules are interpreted with an extreme rigour or stringency, there is a danger that Members will be restricted in deploying their knowledge about areas in which they have professional expertise within Parliament.’<sup>156</sup> The Committee defended its position, noting:<sup>157</sup>

42. The rules relating to the conduct of Members are not always entirely intuitive and cannot cover all eventualities. They may require interpretation in the light of a complaint or query. We contest the suggestion that the rules are being "extended" or becoming more stringent incrementally; we simply provide interpretation of the rules in new contexts.

43. It is not our intention when making judgements to make the rules stricter or to change their interpretation; it would be arbitrary and unfair to do so. We work on the presumption that Members' private activities, those wholly unrelated to Parliament, should be beyond the scope of the rules. There can be some dispute over whether a particular activity is related to a Member's parliamentary duties—as in the case of speaking arrangements. Where there is doubt, registration is the correct option. This does *not* imply, as the Leader of the House suggested:

"... in practice it is becoming rarely—if at all—that anyone approaching the registrar for advice is told there is no need to register".<sup>[33]</sup>

The Commissioner often gives such advice.

44. Members should not be concerned that they will be "caught out" by new interpretations of the rules. Any more detailed guidance provided by this Committee is not applied retrospectively. We will not uphold complaints where a Member has sought the advice of the Registrar or the Commissioner in good faith and has acted upon it.

45. On occasion we have taken the opportunity of a report on a complaint to provide new guidance for Members. **We recommend that where she considers it appropriate, the Commissioner may at the end of an investigation decide not to produce a report dealing with the specific complaint. She may instead report to the Committee with a recommendation that the Committee issue a guidance note for Members on her intention to interpret the rules in a particular way on receipt of further complaints.**

---

<sup>156</sup> HC 267 2000-2001, Appendix 2, p xxiii

<sup>157</sup> HC 267 2000-2001, paras 42 and 43

The Committee noted that detailed guidance by the Committee was not applied retrospectively and that members seeking and acting on the advice of the Registrar or Commissioner in good faith would not be censured.<sup>158</sup> There continues to be criticism of the complex nature of the guidance, on the grounds that it is producing a formalised system inappropriate for the type of activity being investigated. Lord Neill stated in his exchange of correspondence with Mr Sheldon:<sup>159</sup>

Having reflected not only on the individual elements of your consultation paper but also on its collective effect, I would like to make a general point. You will recall that when you kindly came to give evidence in our recent enquiry into the House of Lords, you said the following about the development of the present House of Commons' Code: "... as one finds out more details of what people have done, one keeps adding a bit more and the result is a very complicated code. Our task is to try to simplify it." (Volume 2 of the Seventh Report (Cm 4903), page 206, paragraph 2705).

My colleagues and I share your disquiet about this development and fear that there is a risk that the general principles of the House of Commons' Code will be obscured by the detail of the accompanying guidance. We are therefore concerned lest the general effect of the proposals set out in your consultation paper will exacerbate rather than ameliorate the trend to which you alluded in your evidence.

## VII Parliamentary Standards in the House of Lords

It is a long-standing custom of the House for Lords to speak on their personal honour, set out in successive editions of the *Companion to Standing Orders and Guide to the Proceedings of the House*. The Lords Procedure Committee established a sub-committee in 1974 at the same time as the Commons, in order to review the case for a compulsory register. The report was neither published nor debated in the House and no register was introduced.<sup>160</sup> In 1990 the Procedure Committee reported and the Lords adopted revised guidance in relation to the declaration of interests.<sup>161</sup>

In 1995 the Lords adopted procedures based on a report from a sub committee of the Procedure Committee (the Griffiths Committee).<sup>162</sup> It set out guidance on the treatment of Lords' outside interests and provided for a register. The review was prompted by the establishment of the Nolan Committee, which had originally intended to consider the

---

<sup>158</sup> HC 267 2000-2001, Appendix 1, paras 43 and 44

<sup>159</sup> HC 267 2000-2001, Appendix 1

<sup>160</sup> See Cm 4903 para 4.8

<sup>161</sup> HL Paper 50 1989-90. The proposals were debated on 10 May 1990

<sup>162</sup> HL Paper 60 1994-95 *Declaration and Registration of Interests*

Lords at the same time as the Commons.<sup>163</sup> In the event, the Nolan Committee turned to other more pressing subjects after its first report. The House resolved that the practice of the House should be governed by the following principles:<sup>164</sup>

- a) Members of the House should act always on their personal honour; and
- (b) Members should never accept any financial inducement as an incentive or reward for exercising parliamentary influence.

The Griffiths report favoured stricter guidance on the prohibition of paid advocacy and considered that this would obviate the need for a ban on paid agreements with lobbying firms, whether multi or single client. The report saw no objections to Parliamentary consultancies limited to advice. It considered that the arguments in favour of a register of interests in the case of parliamentary consultancies and similar arrangements was compelling. It argued that legislation would be necessary to establish a compulsory register and that was unnecessary at that stage.

The principal recommendations were:

- Members who held paid parliamentary consultancies or who had financial interests in a business involved in parliamentary lobbying on behalf of clients should not speak, vote lobby or take advantage of their position as Members of the Lords on behalf of their clients
- A publicly available register consisting of three categories; consultancies or similar arrangements for offering parliamentary advice, financial interests of Members in businesses involved in parliamentary lobbying on behalf of clients, and any other particulars which Lords wished to register. The first two categories were compulsory and the third voluntary. A senior clerk would act as Registrar.
- A sub-committee of the Committee of Privileges would review allegations on failure to register interests in the first two categories.<sup>165</sup>

These recommendations were adopted by the House.<sup>166</sup>

As the Neill Committee noted, in fact the Committee of Privileges was not required to investigate any allegations in a published report.<sup>167</sup>

---

<sup>163</sup> Lord Nolan indicated to the Leader of the House that it would not cause his Committee any difficulty if the House accepted the Griffiths recommendations in advance of a consideration by his Committee. Letter in Procedure Select Committee HL 98 1994-95

<sup>164</sup> Lords Journal 1994-95, 696-697

<sup>165</sup> HL Paper 90 1994-95

<sup>166</sup> HL Paper 98 1994-95, HL Deb 7 November 1995 c1630-1641

<sup>167</sup> Cm 4903 para 4.17

## A. The Neill Committee report

In 2000, then chaired by Lord Neill of Bladen, the Committee on Standards in Public Life returned to the subject of the Lords. It was careful to note that this decision was not prompted by any ‘scandal or crisis’, but that the Lords had always been included in the original terms of reference of the Committee.<sup>168</sup> A review would be appropriate, having regard to the changed nature of the membership of the House.<sup>169</sup>

In response to concerns about the necessity for a review, the Neill report was careful to emphasise the role of Members of the Lords as legislators and public office holders, albeit unsalaried and unelected.

The difficulties of imposing sanctions on Members of the Lords was noted; in particular the lack of power to suspend a Member, the uncertainty about the power to fine, and the absence of any power to expel.<sup>170</sup>

The Neill report examined concerns about the volume and nature of allegations being reported to the Parliamentary Commissioner on Standards,<sup>171</sup> but did not venture into a detailed discussion of the need or otherwise for a Commissioner. It noted the lack of complaints against individual Members and concluded that it was not necessary to recommend the appointment of an independent advisor.<sup>172</sup>

Despite evidence from the Leader of the Opposition in the Lords that peers were not professional politicians and that some members and potential members would be deterred from participation if they had to list their financial interests, the report recommended:<sup>173</sup>

- A short code of conduct for Members of the Lords, incorporating the seven principles of public life and the 1995 resolution, as well as the principles governing registration
- A mandatory register of all relevant interests, both financial and non-financial, without the extensive guidance governing the Commons register. There should be a more objective test of relevant interests measured against what could be reasonably thought to affect public perception of how a Member carries out his parliamentary duties.
- Members should be allowed to hold parliamentary consultancies, subject to the existing prohibition on paid advocacy, but parliamentary services agreements should be deposited and made publicly available on request, with details as to remuneration.

---

<sup>168</sup> Cm 4903 November 2000 para 1.7 See also response by John Major, the then Prime Minister in a PQ HC Deb 31 October 1994 c913w

<sup>169</sup> Lord Rees-Mogg initiated a debate about the role of the Neill Committee in relation to the Lords in May 2000. See HL Deb 15 May 2000c1657-1714

<sup>170</sup> For further detail, see the Joint Committee on Parliamentary Privilege HC 1998-99

<sup>171</sup> para 4.39

<sup>172</sup> para 7.25

<sup>173</sup> para 5.34



It should be clear that parliamentary consultancies and agreements applies also to agreements with professional firms (such as lawyers and accountants) involved in parliamentary lobbying.

- The Sub-Committee on Lords' Interests should publish general advice on the application of the guidance, through the Committee for Privileges. The Sub-Committee would be responsible for investigation and adjudication of complaints, with the use of an ad hoc independent investigator for allegations of serious misconduct. The presence of three Lords of Appeal on the sub-committee was noted. Appeals would lie to the full Committee for Privileges. Naming and shaming would be sufficient sanction.

On 17 January 2001 the then Leader of the Lords set up a group under Lord Williams of Mostyn to consider the Neill Committee recommendations. The group published a report before the 2001 election which recorded unanimous agreement on all but one of the Neill recommendations.<sup>174</sup> It agreed on a majority decision that the remuneration for agreements related to parliamentary services should be disclosed and that it should be possible for Members to submit details of remuneration in relation to a relevant interest.

The Group encountered some difficulty in listing interests which had to be registered as part of the proposed code of conduct. In particular the Group could not agree on the scope of:

- Employment as a non-parliamentary consultant
- Shareholdings amounting to a controlling interest

It also received objections from Conservative members of the Group as to the scope of certain registrable interests. In particular, shareholdings not amounting to a controlling interest, land holdings, and the financial interests of a friend.<sup>175</sup>

The Code of Conduct proposed by the report noted that a 'Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of a Code of Conduct'.<sup>176</sup> The Group accepted the Neill recommendation of an ad hoc independent investigator for serious misconduct cases and recommended that three Members with relevant knowledge (such as retired Law Lords) should be nominated as a standing panel of possible investigators.<sup>177</sup> The minimum requirements of procedural fairness set out by the Joint Committee on Parliamentary Procedure should be applied to

---

<sup>174</sup> HL Paper 68 2000-2001

<sup>175</sup> See Letter from Lord Elton and Lord Kingsland to the Leader of the House of Lords Annex 2 HL Paper 68 2000-2001. See also *Financial Times* 2 May 2001 'Tory peers set to reject plans for new conduct code'

<sup>176</sup> Annex 1 HL Paper 68 2000-2001, para 17. During the 2 July debate Lord Nolan drew attention to the potential burden placed on the Registrar and suggested that he should be able to formally refer disputed questions to the Chairman of the Sub-Committee

<sup>177</sup> Lord Neill of Blaydon commented during the 2 July debate that sometimes other skills than those possessed by retired law lords might be necessary. HC Deb c660

all investigations into alleged failures to disclose relevant interests.<sup>178</sup> It agreed that there should be a right of appeal to the Privileges Committee (excluding those members of the sub-committee).

## **B. The debate on 2 July 2001**

The House debated the Williams Group report on 2 July. Lord Williams, by then Leader of the Lords, moved the adoption of a resolution to adopt a Code of Conduct. Lord Kingsland moved an alternative Code, which briefly exempted the requirement to disclose remuneration from parliamentary consultancy agreements, and exempted from a mandatory register shareholdings and interests of a friend. This Code was seen as less onerous than the Williams Code. The Code proposed by Lord Kingsland was rejected by 152 votes to 149, and the Code in the Williams Report was subsequently adopted.<sup>179</sup>

During a second debate on 24 July, designed to debate a procedural motion consequent on 2 July debate, Lord Williams announced a new para 6A which provided for the immediate establishment of a register, and an amendment to ensure that any allegations of misconduct were made privately to the Sub-Committee.<sup>180</sup> He promised a review of the operation of the Code eighteen months after its implementation from April 2002. A leading member of the Lords, Viscount Cranborne, has however announced that he is to take leave of absence stating: ‘the new compulsory register of interests has conditions so onerous that I could not possibly accept them’.<sup>181</sup>

## **C. The Code of Conduct**

The Code of Conduct is set out in Appendix 3. It does not come into effect until 31 March 2002.

---

<sup>178</sup> HL Paper 68 2000-2001, para 45

<sup>179</sup> HL Deb 2 July 2001 c685

<sup>180</sup> HL Deb 24 July 2001 c1850

<sup>181</sup> Quoted in *Daily Telegraph* November 2 2001 ‘Cranborne ends 500 year family link and leaves Lords’

## Appendix 1 Extracts from *The Code of Conduct for Members*<sup>182</sup>

### I. Purpose of the Code

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

### II. Public duty

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

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

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

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

#### *"Selflessness*

*Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*

#### *Integrity*

*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*

#### *Objectivity*

*In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

#### *Accountability*

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

#### *Openness*

*Holders of public office should be as open as*

---

<sup>182</sup> Taken from <http://pubs1.tso.parliament.uk/pa/cm199697/cmselect/cmstand/688/code1.htm>

*possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.*

*Honesty*

*Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

*Leadership*

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

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

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

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

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

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

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

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

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with

those duties, and that such information must never be used for the purpose of financial gain.

---

## **The Categories of Registrable Interest**

[Note: Each of the boxes in this section contains a description of one of the Categories of interest which the House has agreed should be registered and which appear in the registration form]

### **Category 1**

**Directorships:** Remunerated directorships in public and private companies including directorships which are individually unremunerated, but where remuneration is paid through another company in the same group.

14. In this Category, and in others, "remuneration" includes not only salaries and fees, but also the receipt of any taxable expenses, allowances, or benefits, such as the provision of a company car. It is necessary to register the name of the company in which the directorship is held and to give a broad indication of the company's business, where that is not self-evident from its name. In addition to any remunerated directorships, a Member is also required to register any directorships he or she holds which are themselves unremunerated but where the companies in question are associated with, or subsidiaries of, a company in which he or she holds a remunerated directorship. Otherwise, Members are not required to register unremunerated directorships (see [Category 10](#)).

15. Companies which have not begun to trade or which have ceased trading need not be registered, either under this Category or under Category 9 (shareholdings). "Not trading" should, however, be interpreted in a strict sense; if a company is engaged in any transaction additional to those required by law to keep it in being, then a remunerated directorship in that company should be registered. If a Member wishes to register a directorship in a company which is not trading the Member should make the position clear by adding the words "not trading" after the name of the company.

### **Category 2**

Remunerated Employment, Office, Profession, etc: Employment, office, trade, profession or vocation (apart from membership of the House or ministerial office) which is remunerated or in which the Member has any pecuniary interest. Membership of Lloyd's should be registered under this Category.

16. All employment outside the House and any sources of remuneration which do not fall clearly within any other Category should be registered here. When registering employment, Members should not simply state the employer company and the nature of its business, but should also indicate the nature of the post which they hold in the company or the services for which the company remunerates them. Members who have paid posts as consultants or advisers should indicate the nature of the consultancy, for example "management consultant", "legal adviser", "parliamentary and public affairs consultant".

17. Members who have resigned from Lloyd's should continue to register their interest as long as syndicates in which they participated continue to have years of account which are open or in run-off. The date of resignation should be registered in such circumstances. Members of Lloyd's are also required to

disclose the categories of insurance business which they are underwriting. Any member of Lloyd's receiving financial assistance (including relief from indebtedness or other loan concessions but excluding any general settlement available to all Lloyd's members) from a company, organisation or person within or outside the United Kingdom should register that interest under Categories [5](#) or [7](#), as appropriate.

18. Members who have previously practised a profession may wish to register that profession under this Category with a bracketed remark such as "[non practising]" after the entry. This is particularly desirable in cases of sleeping partnerships and where it is likely that the Member will resume the profession at a later stage.

### **Category 3**

**Clients:** In respect of any paid employment registered in Category 1 (Directorships) and Category 2 (Remunerated employment, office, profession, etc.), any provision to clients of services which depend essentially upon, or arise out of, the Member's position as a Member of Parliament should be registered under this Category. All clients to which personal services are provided should be listed together with the nature of the client's business in each case. Where a Member receives remuneration from a company or partnership engaged in consultancy business which itself has clients, the Member should list any of those clients to whom personal services or advice is provided, either directly or indirectly.

19. The types of services which are intended to be covered here include those connected with any parliamentary proceeding, or other services relating to membership. A Member who has clients in a non-parliamentary professional capacity (for example as a doctor, solicitor or accountant) is not required to register those clients, provided it is clear beyond doubt that the services which are being provided do not arise out of or relate in any manner to membership of the House.

20. Under this Category, if a Member is employed as a parliamentary adviser by a firm which is itself a consultancy and therefore is providing such advice and services to its clients, the Member should disclose those of the consultancy's clients with whom he or she has a personal connection or who benefit from the Member's advice and services. The same requirement applies where a Member, on his or her own account, accepts payment or material benefit for providing such services, but not on such a regular basis as to warrant registration as employment under Category [2](#). Where a company is named as a client, the nature of the company's business should be indicated.

### **Category 4**

#### **Sponsorships:**

(a) Any sponsorship prior to an election where, to the Member's knowledge, the financial support in any case exceeded 25 per cent of the election expenses at that election.

(b) Any other form of sponsorship or financial or material support as a Member of Parliament which involves any personal payment, benefit, or advantage. If any of these arrangements involve payment to the Member or any material benefit or advantage which the Member personally receives this should be indicated.

21. This Category deals with sponsorship by companies, trade unions, professional bodies, trade associations and other organisations. Under subsection (a) the Member is required to register the source of any contribution to his or her election expenses in excess of 25 per cent. of the total of such expenses. Subsection (b) relates to other forms of sponsorship, which is interpreted to cover any regular or continuing support from companies or organisations from which the Member receives any financial or material benefit in support of his or her role as a Member of Parliament. Members should register any sponsorship arrangement in which they are personally involved and irrespective of whether they receive personal payment. If a company is the sponsor the nature of its business should be indicated.

22. Members are also required to register (and declare where relevant) any substantial donations which are made by an organisation or company on a regular basis to their constituency party when such donations are linked directly to their own candidacy or membership of the House. For this purpose "substantial" means any payment (or benefit in kind of an equivalent value) of £500 or more per annum. However, donations made directly to a constituency party as an expression of general political support, not linked to the Member's candidacy or membership of the House, should not be registered. Similarly it is not necessary to register a trade union donation to a constituency party which is not linked to the promotion of a particular parliamentary candidate.

23. The provision of services of a research assistant or secretary whose salary, in whole or in part, is met by an external organisation, and the provision of free or subsidised accommodation for the Member's use, other than accommodation provided solely by the constituency party, should be registered, as appropriate, either in this section or under Category 5 "Gifts, benefits and hospitality"; except that accommodation provided by a local authority at no cost, or at a subsidised cost, to a Member for the sole purpose of holding constituency surgeries is exempt from registration.

### **Category 5**

**Gifts, benefits and hospitality (UK):** Any gift to the Member or the Member's spouse of greater value than £125 or any material benefit of a value greater than 0.5 per cent of the current parliamentary salary from any company, organisation or person within the UK which in any way relates to membership of the House.

24. The specified financial values above which gifts, hospitality and any other benefit must be registered are:-

- (a) for tangible gifts (such as money, jewellery, glassware etc.), £125;
- (b) for other benefits (such as hospitality, tickets to sporting and cultural events, relief from indebtedness, loan concessions, provision of services etc.), 0.5 per cent of a Member's annual parliamentary salary. (About £215 as at 12th July 1996.)

The rule means that any gift, or other benefit, which in any way relates to membership of the House and which is given gratis, or at a cost below that generally available to members of the public, should be registered whenever the value of the gift or benefit is greater than the amounts specified in (a) or (b) above. Any similar gift or benefit which is received by any company or organisation in which the Member, or the Member and the Member's spouse

jointly, have a controlling interest should also be registered.

25. There are two important exceptions to this rule: gifts and benefits known to be available to all Members of Parliament need not be registered; and a Member need not register attendance at a conference or a site visit within the United Kingdom where the organiser meets reasonable travel costs and subsistence only.

26. Gifts and material benefits in this Category (and other Categories) are exempt from registration if they do not relate in any way to membership of the House. The extent to which this exemption applies in any particular case is necessarily a matter of judgement. Both the possible motive of the giver and the use to which the gift is put have to be considered: if it is clear on both counts that the gift or benefit is entirely unrelated to membership of the House, or would not reasonably be thought by others to be so related, it need not be registered. If there is any doubt it should be registered.

### **Category 6**

**Overseas visits:** With certain specified exceptions, overseas visits made by the Member or the Member's spouse relating to or in any way arising out of membership of the House where the cost of the visit was not wholly borne by the Member or by United Kingdom public funds.

27. The Member should enter in the Register the date, destination and purpose of the visit and the name of the Government, organisation, company or individual which met the cost. Where only part of the cost was borne by an outside source (for example the cost of accommodation but not the cost of travel), those details should be stated briefly. When an overseas visit was arranged by a registered All-Party or parliamentary group or by a party backbench group, it is not sufficient to name the group as the sponsor of the visit: the Government, organisation, company or person ultimately meeting the cost should be specified.

28. The following categories of visit, which are mainly paid for from United Kingdom public funds or which involve reciprocity of payment with other Governments or Parliaments, together with any hospitality associated with such a visit and available to all participants, are exempt from registration:-

(i) Visits which are paid for by, or which are undertaken on behalf of, Her Majesty's Government or which are made on behalf of an international organisation to which the United Kingdom Government belongs;

(ii) Visits abroad with, or on behalf of, a Select Committee of the House;

(iii) Visits undertaken on behalf of, or under the auspices of, the Commonwealth Parliamentary Association, the Inter-Parliamentary Union (or the British-Irish Parliamentary Body), the British American Parliamentary Group, the Council of Europe, the Western European Union, the Westminster Foundation for Democracy, the North Atlantic Assembly or the OSCE Parliamentary Assembly;

(iv) Visits arranged and paid for wholly by a Member's own political party;

(v) Visits paid for wholly by an institution of the European Union or by a political group of the European Parliament;

(vi) Visits as part of an Industry and Parliament Trust fellowship.

Visits which are entirely unconnected with membership of the House are also exempt from registration.



**Category 7**

**Overseas benefits and gifts:** Any gift to the Member or the Member's spouse of greater value than £125 or any material advantage of a value greater than 0.5 per cent of the current parliamentary salary from or on behalf of any investment, organisation or person which in any way relates to membership of the House.

29. The financial limits and guidelines which apply to the previous Category also apply here. Members should enter a cross-reference under this Category where an interest already entered in Categories 1, 2 or 3 entails the receipt of payments from abroad.

**Category 8**

**Land and Property:** Any land or property, other than any home used for the personal residential purposes of the Member or the Member's spouse, which has a substantial value or from which a substantial income is derived. The nature of the property should be indicated.

30. Second homes need not be registered under this Category unless regularly let at commercial rents; but a farm on which the Member has a residence should be registered because it has a substantial value aside from the residential use. Entries should be reasonably specific as to the nature of the property and its general location, for example:-

"Woodland in Perthshire"

"Dairy farm in Wiltshire"

"3 residential rented properties in Manchester".

**Category 9**

**Shareholdings:** Interests in shareholdings held by the Member, either personally, or with or on behalf of the Member's spouse or dependent children, in any public or private company or other body which are: (a) greater than 1 per cent of the issued share capital of the company or body; or

(b) less than 1 per cent of the issued share capital but more than £25,000 in nominal value. The nature of the company's business in each case should be registered.

31. When determining whether or not shareholdings are registrable under the criteria set out above, Members should include not only holdings in which they themselves have a beneficial interest but also those in which the interest is held by, or on behalf of, their spouse or dependent children. For each registrable shareholding, the entry should state the name of the company or body, briefly indicate the nature of its business, and make clear which of the criteria for registration is applicable.

32. In considering whether to register any shareholdings falling outside (a) and (b) Members should have regard to the definition of the main purpose of the Register: "to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament". If a Member considers that any shareholding which he or she holds falls within this definition, the Member should register the shareholding either in this Category or under Category [10](#).

### **Category 10**

**Miscellaneous:** Any relevant interest, not falling within one of the above categories, which nevertheless falls within the definition of the main purpose of the Register which is "to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches, or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament," or which the Member considers might be thought by others to influence his or her actions in a similar manner, even though the Member receives no financial benefit.

33. The main purpose of this Category is to enable Members to enter in the Register any interests which they consider to be relevant to the Register's purpose, but which do not obviously fall within any of the other categories. As the Select Committee on Members' Interests pointed out in its First Report of Session 1991-92: "it is a cardinal principle that Members are responsible for making a full disclosure of their own interests in the Register; and if they have relevant interests which do not fall clearly into one or other of the specified Categories, they will nonetheless be expected to register them". [2]

34. The general principle of the Register is that the requirement to register is limited to interests entailing remuneration or other material benefit. [3] Members are not, therefore, required by the rules to register unremunerated directorships (e.g. directorships of charitable trusts, professional bodies, learned societies or sporting or artistic organisations) and the Category should not be used to itemise these or other unremunerated interests. However, when a Member considers that an unremunerated interest which the Member holds might be thought by others to influence his or her actions in a similar manner to a remunerated interest, such an interest may be registered here.

### **Employment Agreements**

"Any Member proposing to enter into an agreement which involves the provision of services in his capacity as a Member of Parliament shall conclude such an agreement only if it conforms to the Resolution of the House of 6th November 1995 relating to Conduct of Members; and a full copy of any such agreement including the fees or benefits payable in bands of: up to £1,000, £1,000-£5,000, £5,000-£10,000, and thereafter in bands of £5,000, shall be deposited with the Parliamentary Commissioner for Standards at the same time as it is registered in the Register of Members' Interests and made available for inspection by the public."

"Any Member who has an existing agreement involving the provision of services in his capacity as a Member of Parliament which conforms to the Resolution of the House of 6th November 1995 relating to Conduct of Members, but which is not in written form, shall take steps to put the agreement in written form; and no later than 31st March 1996 a full copy of any such agreement including the fees or benefits payable in bands of: up to £1,000, £1,000-£5,000, £5,000-£10,000, and thereafter in bands of £5,000 shall be deposited with the Parliamentary Commissioner for Standards and registered in the Register of Members' Interests and made available for inspection by the public."

(Part of a Resolution of the House of 6th November 1995)

[Note: To avoid overlap between bands, the Committee on Standards and Privileges has adopted bands of: up to £1,000, £1,001-£5,000, £5,001-£10,000, etc]

35. Under a Resolution of the House of 6th November 1995 the House agreed that Members should deposit certain employment agreements with the Parliamentary Commissioner for Standards. The two Resolutions set out above have continuing effect. Any Member who has an existing agreement or proposes to enter into an agreement which involves the provision of services in his or her capacity as a Member of Parliament should:

- ensure, that the agreement does not breach the advocacy rule (see paragraphs [53-65](#));

- put any such agreement in written form;

- deposit a full copy of the agreement with the Parliamentary Commissioner for Standards. The agreement should indicate the nature of the services to be provided and specify the fees or benefits the Member is to receive in bands of (1) up to £1,000; (2) £1,001 to £5,000; (3) £5,001 to £10,000 (and thereafter in bands of £5,000).

- make the appropriate entry in the Register of Members' Interests; and

- declare the interest when it is appropriate to do so (see paragraphs [37-52](#)).

Deposited agreements may be inspected in the Committee Office of the House of Commons. The terms of the Resolution of the House do not permit the taking of copies.

36. The Select Committee on Standards in Public Life [\[4\]](#) gave the following guidance in respect of their application of the rule:-

"39. The present rule is that all remunerated outside employment must be included in the Register, irrespective of whether it has any bearing on a Member's actions in Parliament. We have no doubt that this discipline should continue to be observed.

40. If our recommendation that paid advocacy in Parliament should be prohibited altogether is adopted by the House, it is essential that no future agreements should require Members to take part in activities which can be described as advocacy.

41. The new requirement for employment agreements to be put in writing will apply principally to any arrangement whereby a Member may offer advice about parliamentary matters. We think it right, however, that it should also include frequent, as opposed to merely occasional, commitments outside Parliament which arise directly from membership of the House. For example, a regular, paid newspaper column or television programme would have to be the subject of a written agreement, but ad hoc current affairs or news interviews or intermittent panel appearances would not.

42. It may not always be immediately obvious whether a particular employment agreement arises directly from, or relates directly to, membership of the House. At one end of the spectrum are those Members whose outside employment pre-dates their original election, whilst at the other extreme are those who have taken up paid adviserships since entering the House. In between there will be many cases which are difficult to classify. Some Members, for example, may provide advice on Parliamentary matters incidentally as part of a much wider employment agreement covering matters wholly unrelated to the House. In these circumstances, it would be for an individual Member to decide how far it would be proper to isolate the

Parliamentary services within a separate, depositable agreement; in reaching that decision he may wish to consult the Commissioner."

On the basis of this guidance the Committee on Standards and Privileges has agreed that:

-a regular paid newspaper column, or regular contribution to a radio or television programme, need not be the subject of a written agreement if its subject is wholly unrelated to parliamentary or public affairs (e.g. a sports column); and

-disclosing the remuneration for parliamentary services separately from remuneration for other services would be justified only in exceptional circumstances; e.g. where the parliamentary services are separately identifiable and form only a small proportion of the services as a whole. In any such case the entry in the Register should make it clear that the remuneration is for parliamentary services as part of a wider agreement.

The scope of the Resolutions is not limited to employment registered under Category [2](#) (Remunerated employment, office, profession, etc.) but includes other forms of employment, such as directorships (including non-executive directorships), when these involve the provision of services by the Member in his or her capacity as a Member of Parliament.

## Appendix 2 Commons debates on Standards and Privileges Committee reports

24 July 1996	Third Report HC 604 1995-6 Motion to approve Code of Conduct and Guide to the Rules
30 October 1997	Sixth Report HC 182 1996-7 Complaint against Mr Robert Wareing
17 November 1997	Seventh and Eighth Reports HC 240 and 241 Allegations against a number of Members 1996-7
12 July 1999	Eighth Report HC 607 1997-8 Premature disclosure of reports of the Foreign Affairs Committee*
21 October 1999	Tenth and Eleventh Reports HC 747 1997-8 Unauthorised receipt of a draft report of the Social Security Committee
1 March 2000	Fifth Report HC 260 1999-2000 Complaint against Mrs Teresa Gorman
31 October 2001	First Report HC 297 2001-2 Complaint against Mr Geoffrey Robinson: Supplementary Report

\* indicates that these reports involved a breach of privilege, rather than a conduct case and so the Parliamentary Commissioner for Standards did not carry out an investigation

## Appendix 3 The House of Lords Code of Conduct

### Purpose of the Code

1. The purpose of this Code of Conduct is:
  - (a) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary and public duties;
  - (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the House of Lords perform their parliamentary and public duties.
2. This Code applies to all Members of the House of Lords who have not taken leave of absence.

### Public duty

3. By virtue of their oath, or affirmation, of allegiance, Members of the House have a duty to be faithful and bear true allegiance to Her Majesty The Queen, Her heirs and successors, according to law.

### Personal conduct

4. Members of the House:
  - (a) must comply with the Code of Conduct
  - (b) should act always on their personal honour;
  - (c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;
  - (d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).
5. Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:
  - (a) Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - (b) Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - (c) Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - (d) Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - (e) Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - (f) Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
  - (g) Leadership: Holders of public office should promote and support these principles by leadership and example.

Primacy of the public interest

6. In the conduct of their parliamentary duties, Members of the House shall resolve any conflict between their personal interest and the public interest in favour of the public interest.

#### **Register of Interests**

7. There shall be established a register of Lords' interests referred to in this Code. The register shall be maintained under the authority of the Clerk of the Parliaments by a Registrar appointed by him.

A Member of the House must register relevant interests before 31st March 2002 and thereafter within one month of acquiring them. The register shall be available for public inspection in accordance with arrangements made by the Registrar. The register shall be regularly updated and shall be reprinted annually. The annual publication shall include all interests registered since the previous edition and all continuing interests unless their termination has been notified to the Registrar.

Registration and Declaration of Relevant Interests

8. Members of the House must:

- (a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their actions;
- (b) declare when speaking in the House, or communicating with ministers, government departments or executive agencies, any interest which is a relevant interest in the context of the debate or the matter under discussion. This is necessary in order that their audience may form a balanced judgment of their arguments. In cases where Members of the House vote in a division where they have a relevant interest that they have not been able to declare, they should register that interest within 24 hours of the division.

What is a relevant interest?

9. The test of relevant interest is whether the interest might reasonably be thought by the public to affect the way in which a Member of the House of Lords discharges his or her parliamentary duties.

10. The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether the public might reasonably think that this might be the case.

11. Relevant interests include both financial and non-financial interests.

Relevant financial interests

12. The following financial interests are always relevant and therefore must be registered:

- (a) any consultancy agreement under which Members of the House provide parliamentary advice or services. A copy of any such agreement, and the remuneration received by Members for advice in relation to parliamentary matters, must be deposited with the Registrar of Lords' Interests, so that details are available for public inspection.
- (b) employment or any other financial interest in businesses involved in parliamentary lobbying on behalf of clients, including public relations and law firms but Members of the House involved with organisations that offer commercial lobbying services are not obliged to refrain from participating in parliamentary business in connection with all clients of that organisation but only their personal clients;
- (c) any remunerated service which Members of the House provide by virtue

of their position as members of Parliament, and the clients of any such service;

- (d) employment as a non-parliamentary consultant;
- (e) remunerated directorships;
- (f) regular remunerated employment (excluding occasional income from speeches, lecturing, broadcasting and journalism);
- (g) shareholdings amounting to a controlling interest;
- (h) provision by an outside body of secretarial and research assistance;
- (i) visits with costs paid in the United Kingdom and overseas, made as a member of Parliament, except any visits paid for from public funds.

13. The list in paragraph 12 above is not exhaustive. For example, relevant financial interests may also include (depending on their significance):

- (a) shareholdings not amounting to a controlling interest;
- (b) landholdings (excluding Members' homes);
- (c) the financial interests of a spouse or relative or friend;
- (d) hospitality or gifts given to a Member which could reasonably be regarded as an incentive to support a particular cause or interest.

14. Except for remuneration received by Members for advice in relation to parliamentary matters, Members of the House are not required to disclose how much they earn from the financial interests set out in paragraphs 12 and 13, but they may do so if they wish.

Relevant non-financial interests

15. The following non-financial interests are always relevant and therefore must be registered:

- (a) membership of public bodies such as hospital trusts, the governing bodies of universities, colleges and schools, and local authorities;
- (b) trusteeships of museums, galleries or similar bodies;
- (c) acting as an office-holder or trustee in pressure groups or trade unions;
- (d) acting as an office-holder or trustee in voluntary or not-for-profit organisations.

16. The list in paragraph 15 above is not exhaustive. For example, relevant non-financial interests may also include (depending on their significance):

- (a) other trusteeships;
- (b) unpaid membership of voluntary organisations.

17. Members of the House are not obliged to register membership of Churches, religious bodies and quasi-religious organisations. But it may be necessary to declare such interests (see paragraph 8).

Advice

18. The operation of the register shall be overseen by a Sub-Committee of the Committee for Privileges on Lords' Interests and the Registrar shall consult the Sub-Committee when necessary. The Registrar is available to advise Members of the House. A Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct.

Enforcement of the Code of Conduct

19. Allegations of non-compliance with this Code are dealt with as follows:

- (a) Any allegation should normally be raised first with the Member complained against. However, there may be circumstances when it is more appropriate to raise the matter with a party Leader or Chief Whip, or the Convenor of the Cross Bench Peers.



- (b) If the complainant chooses to pursue the matter, he or she should refer the allegation in private directly to the Sub-Committee on Lords' Interests, through its chairman.
  - (c) The Sub-Committee will then examine the allegation and may decide to investigate it further or to dismiss it.
  - (d) In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies.
  - (e) If after investigation the Sub-Committee finds the allegation proved, the Member complained against has a right of appeal to the Committee for Privileges.
  - (e) The conclusions of the Sub-Committee and of the Committee for Privileges are reported to the House.
20. Paragraph 7 shall have effect forthwith; the remainder of this Code shall have effect from 31st March 2002; and the resolution of the House of 7th November 1995 on the practice of the House in relation to Lords' interests shall cease to have effect on the same date.