

Aspects of Nolan - The proposals for Parliament

Research Paper 95/109

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On Monday 6th November the Commons is due to debate the latest report from the Select Committee on Standards in Public Life (HC 816 Session 1994/95). This paper gives a summary of the original proposals made by the Nolan Committee (Cm 2850) in May 1995, the recommendations of the first report of the Select Committee on Standards in Public Life (HC 637 Session 1994/95) in July 1995, and the subsequent Commons debate on 19th July on motions tabled by Tony Newton, Leader of the House. Finally it gives a summary of the latest Select Committee recommendations and some brief reactions. An Appendix summarises the Griffiths Report into Declaration and Registration of Interest in the House of Lords (HL Paper 90 Session 1994/95).

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Summary

The publication of the Nolan Report in May 1995 has prompted the Commons into detailed consideration of its rules on registration and declaration of financial interests. The Select Committee on Standards in Public Life has now published two reports on the implementation by Parliament of the Nolan recommendations. The first report in July 1995 accepted the creation of a Parliamentary Commissioner for Standards, the creation of a new Select Committee on Standards and Privileges to replace the existing Committees of Privileges and Members Interests, the introduction of a Code of Conduct for Members, and an extension of the requirement for relevant interests to be declared by means of symbols on the Order Paper in relation to all written Parliamentary proceedings except Division Lists. The Report's recommendations were accepted in principle by the Commons on 19 July 1995.

The Committee on Standards in Public Life met subsequently in the recess and in the overspill period to resolve the outstanding issues: a re-drafting of the 1947 Resolution on contractual agreements with outside bodies, a consideration of the Nolan proposals to ban work for multi-client consultancies, and the disclosure of employment agreements and remuneration relating to Parliamentary activities. The Committee expanded the 1947 resolution, and recommended against a ban on multi-client consultancies, favouring instead a ban on paid advocacy within the House. Finally, it rejected the Nolan recommendations on the public disclosure of agreements and remuneration, recommending that they be deposited with the Commissioner. This last recommendation has occasioned the most press reaction.

The Lords proposals to ban paid advocacy and to introduce a limited register are described in an Appendix which summarises the Griffiths Report of July 1995 which was agreed to in principle by the Lords on 1 November.

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I Background

Background to the Nolan recommendations is contained in a series of Library Papers; *Aspects of Nolan - Members' Financial Interests* 95/62, *Aspects of Nolan - MPs and Lobbying* 95/60, and *Aspects of Nolan - Parliamentary Self-regulation* 95/65. This paper is designed to give a summary of the Nolan recommendations relating to Members of Parliament and the subsequent reports of the Select Committee into Standards of Public Life.¹ Both these reports should be studied for an analysis of the issues to be debated by the House on 6th November.

II The Nolan recommendations

The report was published on 11th May 1995.² The principal recommendations relating to Members were as follows:

- MPs should remain free to have paid outside interests unrelated to the work of Parliament.
- The 1947 Resolution on contractual agreements with outside bodies should be reaffirmed. The resolution is as follows:-

"it is inconsistent with the dignity of the House, with the duty of a Member to his constituency, and with the maintenance of the privilege of freedom of speech, for any Member of the House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action of 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 constituency and to the country as a whole, rather than to any particular section thereof.

- In view of the growth in paid Parliamentary consultancy by MPs in recent years the Nolan Committee did not favour an immediate ban but recommended that Parliament should debate urgently what the Law of Parliament should be in this area. The Nolan

¹ HC 637 1994/5 Session and

² Cm 2850

Committee would return to the subject after one year to review progress. However, the Committee considered that the contrast between the 1947 resolution and the rules governing the Register of Members Interests was totally unsatisfactory. It considered that the register rules did envisage material benefits for MPs which might reasonably be thought by others to influence their actions, speeches or votes in Parliament.

- Work for multi-client consultancies should be banned. Nolan considered that this ban would extend to relationships with public relations or lobbying firms; in relation to legal or other professional firms MPs should separate their interest so that they take no part in offering clients general Parliamentary services.
- The House should require agreements and remuneration relating to Parliamentary services to be disclosed. The Committee recommended that the full term of consultancy and sponsorship agreements, should be deposited in writing with the registrar and made publicly available, along with details of the remuneration, possibly in banded form. It envisaged the new requirements beginning from November 1995, the start of the 1995/6 Parliamentary session.
- The rules and guidance on avoiding conflict of interest should be expanded to cover the whole range of business pertaining to Parliament, with particular attention to Standing Committees. Nolan was concerned that in Standing Committees there would be circumstances where a Bill is sufficiently relevant to a sectional interest to make it against the public interest for Members with a financial interest to serve on such a Committee (para. 85). It recommended an extension of the principles applied to Select Committees by the Members Interest Select Committee recommendations (1990/91 First Report) where a Member, in certain circumstances, should not participate or should withdraw from the Committee.
- A Code of Conduct for MPs should be adopted, to provide a framework against which acceptable conduct should be judged. The Committee gave a draft version of the Code, but recommended that the Commons itself draw up its own version.
- A Parliamentary Commissioner for Standards should be appointed as a independent official along the lines of the Comptroller and Auditor General. The PCS would take over responsibility for maintaining the Register of Members Interests, advising on the Code of Conduct and questions of propriety, and have responsibility for providing guidance and induction.

- The Commissioner would have discretion to initiate an investigation, with a sub-committee of the Committee of Privileges taking forward individual cases recommended by the Commissioner. Nolan considered that there might be a case for dispensing with the Select Committee on Members Interests. It recommended public hearings, and an adviser for a Member called before the Committee.
- Self-regulation of MPs conduct should continue, but the House of Commons needed to develop a culture in which Resolutions of the House were automatically regarded as binding on Members. However, Nolan noted that a number of eminent witnesses favoured procedures which were on a statutory basis and it did recommend legislation to clarify the law relating to bribery of or the receipt of a bribe by an MP.

Reactions to the recommendations

The Prime Minister, John Major welcomed the Nolan report but said that the recommendations addressed to the House were a matter for the House itself to consider.³ A debate was held on 18 May 1995 on the adjournment, with no resolutions brought forward. Ann Taylor, Shadow Leader of the House, pressed for early implementation of the whole of the Nolan recommendations, so that the framework was in place by the autumn.⁴ A number of speakers however, expressed concern about the effect of the Nolan proposals on the workings of the House, and disliked the constitutional innovation of a Commissioner for Standards. In response, Tony Newton, Leader of the House, considered that a group of senior and respected MPs might be appointed to make recommendations on how to proceed in the light of the report.⁵ He thought that "this place and its rules work best when we move forward in a careful and considered way and seek to achieve the maximum consensus".⁶

After negotiations between the front benches, a Select Committee on Standards in Public Life was appointed on 13 June 1995 with a brief to provide an interim report on the implementation of Nolan by 7 July 1995. Both Tony Newton and Ann Taylor were members together with the Chairman of the Members Interest Select Committee, Sir Geoffrey Johnson Smith and other senior Members.

³ HC Deb 11/5/95 c.544W

⁴ 18/5/95 c.4997

⁵ HC Deb c.568

⁶ c.570

III The Select Committee Report of July 1995⁷

The report examined the Nolan recommendations in some detail, and was critical of some aspects of the Nolan report, notably imprecise drafting.

A. Parliamentary Commissioner for Standards

The Select Committee noted that this proposal had occasioned some controversy in the House in the debate on 18th May, and that the Nolan recommendations lacked detail as to the method of appointment and the operations of the Commissioner. Nevertheless, the Select Committee recommended that the appointment be set in hand under arrangements to be made by Madam Speaker on the advice of the House of Commons Commission.⁸ They further recommended that the PCS could be removed from office only by a substantive resolution of the House. However, the Committee noted that without statutory authority the PCS could only operate under the procedures of the House, through the Privileges and Standards Committee.⁹ For example, reports by the PCS would only be published by the authority of a Committee. The principal duties of the PCS were recommended as follows:

14. We recommend that the principal duties of the Parliamentary Commissioner for Standards should be:

- Maintaining and monitoring the operation of the Register of Members' Interests.
- Providing advice on a confidential basis to individual Members and to the proposed Select Committee on Standards and Privileges (the Committee) about the interpretation of the Code of Conduct and about questions of propriety.
- Preparing guidance and providing induction courses for new Members on matters of conduct, propriety and ethics.
- Monitoring the operation of the Code and, where appropriate, proposing possible modifications of it to the Committee.
- Receiving and investigating complaints about the conduct of Members (whether related directly to alleged breaches of the Code or not) and reporting his findings to the Committee through the Sub-Committee appointed for that purpose.

⁷ HC 637 1994/95 session - Select Committee on Standards in Public Life 1st Report

⁸ para. 18

⁹ para. 24

B. Select Committee on Standards and Privileges

The Committee recommended the abolition of both the Committee of Privileges and the Select Committee on Members Interests, and the establishment of a new Select Committee on Standards and Privileges"which would subsume the investigating functions of both existing Committees and in addition would exercise a continuing advisory and monitoring role on standards of Parliamentary conduct".¹⁰

The Committee made the following recommendations on publication of reports:

26. 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.

Recommended powers, and functions of the new Committee and the relationship with the Commissioner were set out in Appendix 2. Briefly, the recommendation was that the new Committee would examine the traditional privilege cases, as well as complaints about declaration and registration of Members interests, and complaints arising more generally about Members conduct, particularly if in breach of the Code. Traditional privilege cases would, as now, be referred by the House on a motion with the Speaker filtering out unsubstantiated complaints. Other cases would be referred via the Commissioner.

The Committee would have power to appoint sub-committees to receive reports either where the Commissioner had decided that there was no prima facie case to answer or where the Commissioner had reached an agreed course of action with a Member. Only where the imposition of a penalty (such as suspension) needed the authority of the House would the sub-committee refer the case to the full committee which would make a formal recommendation to the House. Where a Member did not come to an agreement with the PCS the case would be referred to the full committee.

¹⁰ para. 35

The report recommended that the committee would need to extend the power to send for persons to cover Members, in a way not available to any existing Select Committee.¹¹ Other recommendations were that the committee should have the power to meet during adjournments of the House, that committees and sub-committees should deliberate in private, and that the new committee would need to determine whether it would take evidence in public, and that the House have an opportunity to debate a proposed power to exclude broadcasters from meetings. Members needed to have the right to be accompanied by an adviser, and other measures to protect natural justice was recommended.

C. Code of Conduct for MPs and Guidance

The Committee did not discuss the content of the proposed Code, but recommended that the Clerk of the House begin work in the summer recess on a draft of the Code, reporting to the Committee. Eventually it would be put to the House for approval. The Clerk of the House and the Registrar of Members Interests should set in hand the preparation of new written guidance for MPs.¹²

D. Bribery of Members of Parliament

The Committee recommended that the Law Commission be asked to undertake an immediate review of the common and statute law relating to bribery with specific reference to Members of Parliament.¹³

E. Conflicts of Interest in Standing Committees

The Committee considered the Nolan recommendations would be a matter for the new Committee but noted that there were extremely difficult practical issues highlighted in the Clerk of the House's memorandum to the Committee.¹⁴ The Clerk considered that it was not clear why the Standing Committee stage should be singled out when a Member could also successfully press amendments on report "in general, Standing Committees are often composed of an appreciable proportion of Members with specialist expertise, perhaps because of a registrable interest such as trade union sponsorship or in the light of personal experience outside the House. The Nolan proposal may bear very hardly on a Member with both an

¹¹ para. 8, Appendix 2

¹² paras. 42-48

¹³ paras. 51-52

¹⁴ para. 54

important constituency interest and a personal pecuniary interest with a Bill."¹⁵

F. Declaration of Interests

The Clerk also discussed the practical difficulties of recording interests in Divisions. The Committee agreed that a symbol for divisions would be retrospective and extremely cumbersome to administer, and also considered that oral declaration of interests in supplementary questions would not be practicable. However, it recommended that the present use of symbols to indicate an interest for the sponsor of an Early Day Motion be extended to tabled Questions, written or oral, and amendments to Bills, whether in Committee or at report, and to those who add their names to EDMs, or make amendments to them.¹⁶

G. Operation of the Register

The Committee recommended that the Registrar, and ultimately the new Commissioner continue to seek ways of updating the register and making it more widely available, possibly through the Parliamentary Data and Video Network (PDVN).¹⁷

H. 1947 Resolution

The Committee reviewed the history of the resolution and considered new drafts in order to re-state it more precisely in tune with the principal concerns of the Nolan Committee about advocacy in Parliament. It decided that a final draft should be the responsibility of the new Committee: "we agree that a simple re-statement of the 1947 Resolution now would risk preempting subsequent decisions by the House, both on the rules concerning interests and on the establishment of the Code of Conduct."¹⁸ It recommended that the wording be reviewed in the context of work to be undertaken on the draft codes.

I. Consultancies and Disclosures in the Register

The Committee was divided on this major area of the Nolan proposals. A majority on the Committee considered that a number of key terms in the Nolan proposals, such as "Parliamentary Services" and "agreements", had not yet been defined, and the logical case for

¹⁵ para. 17, evidence

¹⁶ paras. 55-60

¹⁷ para. 66

¹⁸ para. 75

exempting firms with single clients from new rules on consultancies had to be addressed:

81. Other important factors arise. The proposal to ban any agreement "to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or to maintain any direct or active connection with firms, or parts of larger firms, which provide such Parliamentary services" is acknowledged by the Nolan Report itself to raise difficult issues for those Members whose background is in the legal, accountancy or other professions, and who maintain a continuing connection with their firm or partnership. The suggestion in the Nolan Report is that such a connection should not be retained "unless arrangements can be made to separate completely the Member's interest in the firm from that part of its work" (ie the offering of Parliamentary services). But it is far from clear what in practice might be regarded as fulfilling such a requirement.

82. Similarly, the Nolan recommendations relating to disclosure in the Register would appear, on the face of it, to entail the depositing, with an indication of the amount of payment involved, of every contract entered into by a Member undertaking in that capacity a television or radio interview, or writing an article for a newspaper or journal. We doubt that this is what Nolan intended but it is another issue which must be clarified.

83. We believe that we would have failed to carry out the instructions given to us by the House (which referred both to *clarification* and implementation of the Nolan proposals) if we had put forward in this Report resolutions which did not deal with these issues and which left unaddressed the very uncertainties and practical problems which aroused widespread concern when the Nolan report was first published. Indeed, such a course would merely replace the uncertainty referred to in the Nolan Report with fresh uncertainty.

84. We were asked by the House to produce an *interim* report by 7th July; this clearly implies that the House did not expect us to come up with fully worked out proposals on every aspect of the Nolan recommendations. We have sat almost continuously since we were appointed on 13th June. In that very short space of time, we have made substantial progress—probably more than the House could realistically have expected—towards completing our task. We have put forward recommendations to the House on the appointment of the Parliamentary Commissioner for Standards and the establishment of the new Select Committee, two of the three cornerstones of the Nolan proposals. In addition, we have reached conclusions, either in the form of suggested immediate action or of further examination, on a number of subsidiary matters.

85. We believe the right course now would be for us to proceed to tackle speedily the matters which we have identified as requiring further detailed study, in particular consultancies and disclosures in the Register. We have the power to sit when the House is adjourned and we intend to make a further Report to the House as a matter of urgency, if possible by the end of the current Session.

86. We therefore recommend that the following motion be tabled for the debate in July:

"That this House endorses the need for an examination of the recommendations of the Nolan Committee on Standards in Public Life relating to consultancies (including multi-client consultancies) and disclosures in the Register; and instructs the Select Committee on Standards in Public Life to conduct such an examination and to seek to bring forward

proposals on these matters by the end of the current Session."

The Labour Members on the Committee were unsuccessful in their proposals to require that the House consider in July that Members should deposit in full their contracts relating to the provision of services, and give details of remuneration (in bands) from the beginning of the 1995/96 Parliamentary session.¹⁹ The Labour Members also recommended unsuccessfully that the House consider in July a Motion to examine the merits of parliamentary consultancies without delay, and the proposal to ban multiple client consultancies.

J. Summary of Report

In Appendix 1 the specific Resolutions for decision by the House were set out:

SPECIFIC RESOLUTIONS FOR DECISION BY THE HOUSE

1. Parliamentary Commissioner for Standards

That the appointment of a Parliamentary for Standards be set in hand under arrangements to be made by Madam Speaker on the advice of the House of Commons Commission and in accordance with the recommendations of the Select Committee on Standards in Public Life.

2. Select Committee on Standards and Privileges

That, with effect from the beginning of the next Session, a new Select Committee on Standards and Privileges should be established to take over the existing functions of the Committee of Privileges and the Select Committee on Members' Interests and to consider complaints concerning Members' conduct referred to it by the Parliamentary Commissioner for Standards.

3. Code of Conduct

That this House endorses the principle of a Code of Conduct, and instructs the appropriate Select Committee to prepare such a draft Code for approval as soon as possible, taking into account the suggestions of the Nolan Committee and any relevant overseas analogues; and whilst restating its commitment to the objectives of the 1947 Resolution, accepts the need to review its wording in the context of the work to be undertaken on the draft Code.

4. Declaration of Interests

That, with effect from the beginning of the next Session, the resolution of 12 June 1975 relating to Members' Interests (Declaration) (No. 2) be amended by leaving out the words "the giving of any written notice or".

¹⁹ Proceedings of the Committee xxix-xxx

5. *Consultancies and Disclosures in the Register*

That this House endorse the need for an examination of the recommendations of the Nolan Committee on Standards in Public Life relating to consultancies (including multi-client consultancies) and disclosures in the Registrar; and instructs the Select Committee on Standards on Standards in Public Life to conduct such an examination and to seek to bring forward proposals on these matters by the end of the current Session.

6. *Standards in Public Life (General recommendations)*

That this House agrees with the recommendations contained in the First Report from the Select Committee on Standards in Public Life (HC 637).

(The actual Motion tabled for consideration by the House under this heading will need to identify more closely, for example by a paragraph reference, the recommendations contained in our Report).

Motions were tabled by the Leader of the House, Tony Newton, based on these Select Committee recommendations, and which were debated on 19 July 1995. Mr Newton argued that the House "should not replace one set of ambiguities and uncertainties with another".²⁰ In response, Ann Taylor pressed for an immediate decision on disclosure of contracts, and multi-client consultancies. Tom King, a member of the Nolan Committee, said that the Nolan Committee "had left details to be decided by the House".²¹ He argued for further examination of the issues :²²

It is important to consider what activities the category of advocacy covers. The right hon. Member for Bethnal Green and Stepney would agree with me that the Nolan committee found it difficult to reach a decision on that and to determine where to draw the line. As the right hon. Gentleman and I said in the previous debate, to an extent we passed the buck to Parliament, That is why the hon. Member for Caithness and Sutherland is right to say that the Nolan committee recommendations are a challenge for the House. I agree with my right hon. Friend the Member for Worthing that that deliberation is not a delaying tactic.

During the debate less opposition was expressed to the package of Nolan proposals than in

²⁰ HC Deb c.1680

²¹ HC Deb c.1697

²² HC Deb 19/7/95 c.1697

the debate of 18 May, but a number of Members expressed reservations about the Nolan recommendations on disclosure of contract and earnings. Amendments to the resolutions to require immediate disclosure, and a ban on multi-client consultancies were defeated.

According to the *Guardian* 1 August 1995.²³ Lord Nolan commented that he was very satisfied with the response of MPs to his first report. During the recess procedures to appoint the Commissioner were set in motion. At the Labour Party Conference, Tony Blair said that Labour would implement the Nolan recommendations in full.²⁴

On 30th October the new Parliamentary Commissioner for standards was announced: Sir Gordon Downey, a former Comptroller and Auditor General. The House of Commons Commission recommended in its report²⁵ that he be appointed for an initial three year period on the basis of 4 days a week at a salary of £72,000. After the second year, the post should be reviewed to decide whether that level of duties remained appropriate. The appointment could begin on 15 November, and he will initially be located at 7 Millbank, with temporary assistance from the current Registrar. He will have supporting staff composing of the Assistant Registrar and a personal secretary. The Commissioner will assess whether further staff are necessary. A Motion relating to the appointment will be debated on 6 November 1995.

IV The Second Select Committee Report:²⁶

This second report fulfils the Commons Resolution of 19 July which required the Committee on Standards in Public Life to examine the Nolan recommendations on consultancies and disclosures in the Register of Members Interests. It was published on 1 November.

A. Advocacy

The Report took a different approach from Nolan to the question of advocacy by MPs. The Nolan Committee had decided against "an immediate and total ban on all forms of advocacy in the House by Members pursuing the interest of those with whom they hold consultancy or sponsorship agreements"²⁷ as impracticable since it would involve asking three fifths of Members and their clients or sponsors to amend existing arrangements. It recommended that

²³ Nolan set to reject Lords proposals on disclosure of interests too 'secretive'

²⁴ Speech by Tony Blair to Labour Party Conference 3/10/95

²⁵ HC 789 Session 1994/95

²⁶ HC 816 Session 1994/95 - Advocacy and Disclosure

²⁷ Chapter 2, para. 51

"Parliament itself needs to consider the implication for matters such as loss of income and party funding which are outside our terms of reference".²⁸

The Nolan report continued:

"In this context, our recommendations below that agreements and recommendation in relation to Parliamentary consultancies should be disclosed in full are crucial. There is not sufficient information at present to enable a sound judgement to be made on whether the undoubted benefits of having well-informed and remunerated Members are outweighed by the risk of wealthy clients buying undue influence in Parliament".²⁹

By contrast, the Select Committee approach was to recommend a ban on paid advocacy in the House. The Committee 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.³⁰

11. The main source of public anxiety, as identified by Nolan, is the notion that influence, whether real or imagined, can be bought and sold through Members. This suggests that any remedial action, rather than seeking to draw a line of legitimacy between different types of outside body with which Members should or should not be allowed to have paid relationships, ought to concentrate on defining as closely as possible those *actions* by Members which, because they give rise to suspicions about the exercise-or attempted exercise-of improper influence, need to be prohibited.

12. We note that in 1858 the House resolved:

"That it is contrary to the usage and derogatory to the dignity of this House that any of its Members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward",

a prohibition originally directed particularly at Members who were practising barristers.

13. We propose that the rules of the House should now distinguish between paid advocacy in parliament (unacceptable for the reasons outlined above) and paid advice (acceptable provided it is properly registered and declared). Nolan considered the idea of separating advocacy from advice but was not persuaded finally that the difference was sufficiently clear cut to be enforceable. We believe that we have addressed the definitional problems identified by Nolan which arise from making this fundamental distinction.

The Committee's emphasis on distinguishing and banning paid advocacy echoes similar

²⁸ para. 53

²⁹ para. 53

³⁰ paras. 11-13 - HC 816 Session 1994/95

concerns in the 1969 Strauss Committee³¹ which had recommended a code of conduct for Members based on declaration of interest and prohibition of paid advocacy.³² The Strauss report recommendations were never debated in the House, and in 1975 the present system of registration of interests began.

The Select Committee on Standards in Public Life used the 1947 Resolution³³ as a basis for dealing with the issue of advocacy for payment, noting that in its present form it did not indicate the specific kinds of Parliamentary action which ought not to be undertaken for payment:³⁴

18. We therefore recommend that the House be asked to agree to the following addendum to the 1947 Resolution:

"and that in particular no Member of this House shall, in consideration of any remuneration, fee, payment, 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-

- (i) advocate or initiate any cause or matter on behalf of any outside body or individual, or
- (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 Bill."

The Committee considered that the interpretation of the resolution would be a matter for the Select Committee on Standards and Privileges, as advised by the Parliamentary Commissioner for Standards³⁵

The effect of the proposed Resolution on specific activities within the House were considered. For speaking in the House the Committee judged that Members would be able to consult the Code of Conduct for Members and the Commissioner in cases of doubt where participation in a debate might not count as advocacy.³⁶ For questions, motions, amendments to bills and introduction of bills, the emphasis was on initiation, rather than merely taking part. "Any Member who is a paid Parliamentary adviser, or who receives any form of remuneration from any outside body, should not initiate proceedings of this sort if they relate specifically and directly to the affairs and interests of that body."³⁷ For voting, no changes in the Houses rules were considered, and voting would not be included as a Parliamentary activity capable of

³¹ HC 57 Session 1969/70

³² For fuller detail see Library Research Paper no. 95/62 'Aspects of Nolan - Members' Financial Interests' pp 1-5
³³ see p.1 above

³⁴ para. 18

³⁵ paras. 19-20

³⁶ paras. 21-26

³⁷ para. 27

constituting advocacy.³⁸

It is important to note that the Committees proposed resolution is concerned only with paid advocacy within the House, since it defines advocacy as "any speech Question, Motion, introduction of a Bill, or amendment to a Motion or a Bill".³⁹ There was some division within the Committee on the question of regulating activities such as deputation to Ministers. The Committee Report recommended "that any deputations to Ministers or officials introduced or accompanied by a Member with a relevant declarable interest should be recorded in the Register alongside the initial declaration".⁴⁰ The four Labour and one Liberal Democrat Members had unsuccessfully moved amendments to insert a recommendation that a Member with a paid interest should not initiate or participate in a delegation about an issue affecting only the body from which he had a paid interest.⁴¹

The Committee did not consider detailed recommendations about the use of the facilities of the House, since this was a matter for the relevant domestic committees to take up in the light of the recommended Resolution. The report did, however, point out in Appendix 2 the existing rules on the use of private dining facilities and Committee and interview rooms. Briefly, since January 1995, Members hosting a function in a private dining room have been required to indicate a relevant registered interest on the booking form. Thus the Committee on Standards in Public Life did not include the facilitation activities of MPs within the ambit of its proposal to ban paid advocacy.

Further sections of the report dealt with the definitions of outside body and payment, the application to an MP's family and the treatment of sponsorship. The key test was whether the donation to a constituency party was linked to the Member's candidacy and whether it was arranged or solicited by the Member or was paid via him or her. If this is the case, then the sponsorship is registrable in the Register of Members Interests, and therefore the Committee considered that a Member should not be able to engage in advocacy on behalf of a sponsoring organisation, whether a trade union or company, where the sponsorship is of a kind which already has to be registered. But no such prohibition should apply in respect of sponsorships which are not registrable under existing rules.⁴² Trade union sponsorships are normally registrable if they are based on the Labour movements. Hastings Agreement of 1933.

B. Disclosure

The Committee agreed with the Nolan proposal that agreements relating to Parliamentary

³⁸ para. 29

³⁹ para. 18

⁴⁰ para. 31

⁴¹ Minutes of Proceedings p.xx

⁴² para. 36

activities should be put in writing, considering that it 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.⁴³

The Nolan Report had commented on the value of disclosure of agreements and remuneration as a public right.⁴⁴

69. Depositing the agreement will inevitably involve disclosure of the remuneration. We believe that the public, and in particular Members' constituents, have a right to know what financial benefits Members receive as a consequence of being elected to serve their constituencies. We consider it right, therefore, that remuneration should be disclosed in these cases. We also believe that information about the remuneration or other financial consideration received by a Member for Parliamentary services, or by way of sponsorship, should be entered in the register itself, possibly in banded form. It has been argued that actual remuneration is irrelevant, and that the mere existence of a financial relationship is what matters. That argument is not at all convincing. A Member who gets £1000 a year as a Parliamentary adviser is less likely to be influenced by the prospect of losing that money than one who receives £20,000 a year. The scale of the remuneration is in practice relevant to a full understanding of the nature of the service expected. We have noted that several MPs with whom we raised this issue did not object to disclosure of remuneration so long as this related strictly to Parliamentary services.

70. We are aware that in a number of other countries the practice is to require full disclosure of assets and income. But it is by no means clear that full disclosure of financial matters unrelated to Parliamentary business is relevant to the public interest. No-one has put a convincing case to us as to why that might be necessary.

The Committee was divided on the issue of disclosure of agreements and remuneration. The Report argued that the proposed ban on paid advocacy meant that public disclosure of agreements and remuneration was no longer necessary.⁴⁵

V. DISCLOSURE OF AGREEMENTS AND AMOUNTS RECEIVED, ETC.

43. The concern which the Nolan Report as a whole sought to address was the perception-albeit stimulated by a small number of cases-that outside interests are able to buy influence in the House. We have set out our reasons for believing that the better course is to go further than Nolan suggested, and straightforwardly to ban, agreements involving paid advocacy. In these cases, therefore, the question of disclosure would no longer arise.

⁴³ paras. 38-42

⁴⁴ paras. 69-70

⁴⁵ paras. 43-49

44. As we have made clear, other agreements relating to Parliament should be put into writing and deposited with the Parliamentary Commissioner for Standards, to ensure both that they are within the rules and that the ban on advocacy is effective. Where any doubt arises, the Commissioner will of course be able to pursue the matter with the Member and, if necessary, the Select' Committee.

45. Given the ban on paid advocacy, which was not envisaged by Nolan, we are not persuaded that it should be a requirement to disclose the amount of remuneration paid in respect of deposited agreements.

46. Nolan refers to the declaration of the "financial benefits Members receive as a consequence of being elected to serve their constituents". In practice, many of the consultancy agreements which are at present registered and which are in future likely to be deposited with the Commissioner do not arise because the individual had become a Member of the House but are a continuation of a previous occupation. Some of the consultancies, and in particular non-executive directorships, may not arise from membership of the House at all and affairs in the House will rarely or never be relevant to them.

47. The Nolan report seemed to imply that the amount paid should be declared as an indication of how much time was being spent on outside activity rather than on the duties of a Member. But in reality any payment made will reflect not the amount of time spent in providing the advice, but the resources of the client and the quality of the advice.

48. Moreover, Nolan's reference to the "financial benefits Members receive as a consequence of being elected" would in practice, if it were to be fairly applied, range far more widely than the Nolan Committee itself appeared to envisage. It would, for example, be hard to argue that most payments for broadcasting, newspaper articles and interviews, lecturing etc, would not be embraced.

49. In reality we judge that the real choice is between the view that compulsory disclosure of remuneration for legitimate activity is an unjustified intrusion, and the view that full disclosure of all income-in effect, the publication of the tax return-should be required. Nolan concluded that "no-one has put a convincing case" for full disclosure. We agree.

The four Labour and one Liberal Democrat Members of the Committee had unsuccessfully proposed amendments recommending that the agreements should be open for public inspection once lodged with the Commissioner, and that the amount of remuneration be disclosed in bands of up to £1,000, £5-£10,000 and thereafter in bands of £5,000.⁴⁶

C. Implementation

The Committee recommended that new agreements entered into by Members should conform with the proposals with effect from the beginning of the 1995/96 Session, that existing agreements falling within the new rules be deposited in written form by the 31st March 1996,

⁴⁶ Minutes of Proceedings pp xx-xxi

and that existing agreements outside the new rules be redrawn or withdrawn from by 31 March 1996. Paid advocacy as defined by the Committee should cease from the start of the new Session.⁴⁷ Appendix 1 set out the specific resolutions which had to be put before the House:⁴⁸

APPENDIX 1

SPECIFIC RESOLUTIONS FOR DECISION BY THE HOUSE

1. Conduct of Members

That the Resolution of the House of 15th July 1947 relating to the conduct of Members shall be amended by adding at the end the words:

"and that in particular no Member of the House shall, in consideration of any remuneration, fee, payment, 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:

- (i) advocate or Initiate any cause or matter on behalf of any outside body or individual or
- (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 Bill".

2. Employment agreements

That-

- (a) with effect from 6th November 1995, 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; and that a copy of any such agreement, excluding the amount of any fee or benefit payable, shall be deposited with the Parliamentary Commissioner for Standards at the same time as it is registered in the Register of Members' Interests;
- (b) 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, but which is not in written form, shall take steps to put the agreement into written form; and that no later & m 31st March 1996 a copy of any such agreement, excluding the amount of any fee or benefit payable, shall be deposited with the Parliamentary Commissioner for Standards

⁴⁷ paras. 50-55

⁴⁸ Appendix 1

and registered in the Register of Members' Interests;

- (c) any Member who has an existing agreement which does not conform to the Resolution of the House of 6th November 1995 shall, by 31st March 1996, either redraw the agreement so that it conforms to the said Resolution or withdraw from the agreement; and that a copy of any such redrawn agreement, excluding the amount of any fee or benefit payable, shall be deposited with the Parliamentary Commissioner for Standards and registered in the Register of Members' Interests by that date.

3. Standards In Public Life (General Recommendations)

That this House agrees with the recommendations contained in the Second Report from the Select Committee on Standards in Public Life (HC816).

V Reactions to the Committee recommendations

The Committee's recommendation against the public disclosure of agreements and remuneration relating to Parliamentary services has attracted wide attention. The justification for rejecting what has been viewed as a key Nolan recommendation is the proposed immediate ban on paid advocacy within the House. There is little doubt that the ban on advocacy is more radical than the Nolan proposals in this area and that Nolan did appear to link full disclosure of agreements with the rejection of an immediate ban on paid advocacy.⁴⁹ However, the Labour and Liberal Democrat members of the Committee did not accept that a ban on paid advocacy necessarily undermined the Nolan recommendation on disclosure. Some commentators have argued that it is essential to have full public disclosure of agreements relating to provision of Parliamentary services, even if these services are of an advisory and facilitative nature, in order to restore public confidence. The Nolan report did not recommend disclosure of agreements and remuneration in cases unrelated to the provision of Parliamentary services and was not therefore recommending general publication of the assets and income of Members of Parliament.

Press comment on the report has differed on the real impact that the ban on paid advocacy would have. Tony Newton has been quoted as saying "These are undoubtedly the most significant changes in the rules relating to the House of Commons since the introduction of the Register of Members Interest in 1974".⁵⁰ Andrew Marr in the *Independent*⁵¹ and Hugo Young in the *Guardian*⁵² have argued that the proposed ban on paid advocacy will have a marked effect on the culture of the Commons and that Labour emphasis on disclosure might involve an unacceptable intrusion of privacy. Both argued for a substantial increase in Members' and Ministers' salaries. However, Andrew Marr, like many other commentators

⁴⁹ para. 53, chapter 2 Cm 2850

⁵⁰ *Independent* 2/11/95 "PM in storm over curbs on sleaze

⁵¹ 2/11/95 A House of better repute

⁵² Piety that would keep MPs ? and poor

argued that disclosure might have to be the price paid for the restoration of public confidence in the Commons.

The *Financial Times*⁵³ considered that the proposed ban on paid advocacy amounted to little more than a codification of existing prohibitions on the sale of votes and influence, since MPs remain able to offer advice to commercial firms on how to pursue their interests in Parliament. Patrick Wintour in the *Guardian*⁵⁴ argued that MPs would still be able to arrange privilege access to Ministers and that disclosure was required to police these informal activities. The *Times*⁵⁵ also regarded the ban on paid advocacy as easy to circumvent, with the consequence of driving parliamentary lobbying underground. It considered that the correct approach was disclosure; "The public has no right to know how much an MP earns from his Bar practice; it has every right to know how much he earns as a direct consequence of his parliamentary position".

The Prime Minister, John Major has backed the Select Committees recommendations on advocacy and disclosure. Michael Heseltine, Deputy Prime Minister, argued that "we are very preoccupied to make sure that we don't change the way the country chooses its MPs and alter the composition of the House of Commons in a way that will change the whole of the parliamentary process into a sort of cord-carrying, politically correct establishment from the left of politics, many of whom wouldn't earn any serious money outside politics."⁵⁶ Tony Newton told BBC Newsnight on 1 November that, as a House of Commons matter, there would be a free vote on 6 November debate.

When the Nolan report was first debated in the Commons on 18th May there was as much concern over the constitutional innovation of a Parliamentary Commissioner for Standards as with the issue of disclosure. Concern over the Commissioner's appointment appears to have died away since May; however, some commentators consider that the implementation of this aspect of the Nolan recommendations from the 1995/96 Session may have a major impact on the culture of the Commons.

⁵³ 2/11/95 "Time to disclose"

⁵⁴ 2/11/95 "Ban on advocacy leave loopholes"

⁵⁵ 2/11/95 "Perilous course"

⁵⁶ *Guardian* 2/11/95 "Tories rebel on sleaze"

Appendix

Declaration and Registration of Interests in the House of Lords

The House of Lords debated reports from the Procedure Select Committee on the declaration and registration of interests on 1st November 1995, and accepted recommendations to set up a register of interests, and to revise existing guidance on the declaration of interests. The Griffiths Committee, a subcommittee of the Procedure Committee, appointed to consider declaration and registration had reported in July 1995 recommending the following⁵⁷:

SUMMARY OF CONCLUSIONS

60. (1) The practice of the House in relation to Lords' interests should be governed by the following principles (Paragraph 18):

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

(2) The existing guidance on declaration of interest should be replaced by guidance along the following lines (Paragraph 38):

"Lords' outside interests

The practice of the House is based on the principle that Lords should act always on their personal honour. Accordingly, Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence.

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

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

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

⁵⁷ Declaration and Registration of Interests HL Paper 60 Session 1994/95

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

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

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

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

(3) The House should institute a register covering "any arrangements, such as consultancies, whereby members of the House accept payment or other incentive or reward for providing Parliamentary advice or services, or any similar arrangement; and any financial interest in a business involved in Parliamentary lobbying on behalf of clients". (Paragraph 46)

(4) Lords should be free to enter in the register any matters which they consider may affect the public perception of the way in which they discharge their Parliamentary duties. Such registration would not do away with the need to declare interests in debate. It should be made clear that no Lord should feel obliged to register any wider interests: declaration when appropriate would be sufficient. (Paragraph 48)

(5) The register should be public. It should be published annually, and an up-to-date version should be available for inspection, both on-line in electronic form and on paper, at all times. Arrangements should be registered within one month of being agreed. (Paragraph 50)

(6) Oversight of the register should be made the responsibility of an existing sessional committee, the Committee for Privileges. (Paragraph 51)

(7) The keeping of the register should be overseen by the Clerk of the Parliaments, who would also be available to give advice. (Paragraph 53)

(8) The investigation of allegations of failure to declare interests or to register should be undertaken by a subcommittee of the Committee for Privileges. Allegations should be referred directly to the Sub-Committee, through its Chairman, rather than raised on the floor of the House. The Sub-Committee should satisfy itself that the allegations have sufficient substance to warrant investigation before proceeding further. Further proceedings would normally, in accordance with the practice of the House, be held in public, but the Sub-Committee should have the option of hearing evidence in private where appropriate. Any Lord under investigation would have the right to be present when evidence was being taken, to question witnesses, to see and comment upon any written evidence, and to be represented by counsel.

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The Committee's report to the House would set out the facts as found, and the Committee's conclusion as to whether the Lord concerned was in contravention of the practice of the House. Normally there would be no need for the report to be debated in the House; its publication would conclude the proceedings. (Paragraph 57)

(9) It would be helpful to establish, by Standing Order, that there were always three Lords of Appeal taking part in any investigation by the sub-committee. (Paragraph 58)

The Lords last considered these issues in 1990,⁵⁸ and a re-examination was prompted by the appointment of the Nolan Committee, which is expecting to consider the House of Lords in 1996. However, Lord Nolan has indicated to the Leader of the House that it would not cause his Committee any difficulty if the House were to accept the whole or part of the Griffiths recommendation in advance of that consideration.⁵⁹

The Griffiths Report commented on the development of Parliamentary lobbying and consultancy since 1974, and reviewed representations that the current guidance contained in the 1994 edition of the Companion to Standing Orders⁶⁰ was imprecise and allowed abuses. The report concluded that the advice that a Lord should not "advocate, promote or oppose in the House any Bill or subordinate legislation if he is acting or has acted personally in direct connection with it for a specific fee or reward has been interpreted as allowing members of the House to accept a fee by way of retainer and then to promote or oppose legislation (for example by moving amendments), provided only that the interest is declared." The Committee did not "see the significance of the distinction between a 'specific' and a more general fee or reward."⁶¹

The Griffiths Report therefore 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.⁶² The report saw no objection to Parliamentary consultancies limited to advice.⁶³ The approach taken by the latest report from the Commons Select Committee on Standards in Public Life has some clear similarities here.

The Committee reviewed earlier arguments in a 1974 Report against the establishment of a register of interests.⁶⁴ But the Griffiths Report concluded that "the time has come when the House should have a register."⁶⁵ The argument for a register of interests in the case of

⁵⁸ HL Paper 50 Session 1989/90

⁵⁹ Fifth Report from the Select Committee on Procedure of the House HL 98 Session 1994/95

⁶⁰ pp 65-70

⁶¹ para. 20

⁶² paras. 22-24

⁶³ para. 22

⁶⁴ 1st Report from the Procedure Committee Session 1974 HL 51

⁶⁵ para. 44

Parliamentary consultancies and similar arrangements was compelling.⁶⁶ Any Lord registering such an arrangement would be expected to refrain from seeking to exercise Parliamentary influence in relation to that arrangement.⁶⁷ The report considered that legislation would be necessary to establish a compulsory register, and that such a step was not necessary.⁶⁸ There was some division in the Committee over the status of the register; a minority favoured a comprehensive register, along the lines of that of the House of Commons.⁶⁹ The Griffiths Report cast doubt on the need for full disclosure of all outside interests, and similarly saw no need to deposit the full terms of contracts relating to the provision of services in their capacity as Members, or make them publicly available.⁷⁰ Thus the Register will only apply to Parliamentary consultancy-type arrangements although peers will be free to register other interests as well.

In the debate on 1 November there appeared to be a broad consensus in favour of the Griffiths proposals, although some doubt was expressed about the value of a register,⁷¹ and the difficulties of definition.

⁶⁶ para. 45

⁶⁷ para. 46

⁶⁸ para. 47

⁶⁹ Appendix 3 - Minutes of Proceedings pp 22-23

⁷⁰ para. 52

⁷¹ HL Deb 1/11/95 c.1430-1488

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