Aspects of Nolan - Members' Financial Interests

Research Paper 95/62

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The Nolan Committee (Standards in Public Life Cm 2850 -I May 1995) has recommended significant changes in the Regulation of Members financial interests. Parts I-III of this Paper, which updates Library Paper no. 94/86 describes the development of the current rules on registration and declaration, and the workings of the Select Committee on Members Interests. Since the Paper is arranged thematically a certain amount of overlap in subject areas exist.

Part IV presents with some commentary on the Nolan recommendations. A related Library Research paper: Aspects of Nolan - MPs and Lobbying - discusses the relationship between MPs and lobbyists and looks at more detail at the nature of MPs consultancies and the recommendations of Nolan in that area. This Paper does not offer guidance on the registration and declaration of Members Interests; the Registry has produced rules on the Registration and Declaration of Financial Interests (1994) which should be consulted.

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Summary

In the 1970s new Parliamentary Rules were developed for the Registration and declaration of Members Financial interests. A registry and a Select Committee on Members Interests were set up to monitor and develop these rules which last reviewed in detail in 1992. However the cash for questions affair of July 1994 reopened debate on the operation of the Rules and Madam Speaker called for an urgent clarification of the Rules. The Nolan Committee now considers that these Rules require a thorough overhaul.

The Nolan recommendations introduce an independent note into the current system of self regulation, and return to some of the names of the 1969 Strauss Report on advocacy and codes of conduct. The report concluded that current weaknesses in the procedures for monitoring and enforcing standards meant that people in public life were not always as clear as they should be about where the bound

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I Registration of Interests

Introduction

It is worth noting that until comparatively recently Members were expected to have outside interests, if only for a means of supporting themselves; an official salary for Members was introduced only in 1911. Until the TSRB report of 1971[56] the fixing of the level of remuneration was made difficult by the facts that many MPs were clearly of the opinion that membership was part-time and that many (if not most) had access to other kinds of income. The Boyle Committee found that only 1 Member in 16 spent fewer than 40 hours a week on parliamentary work. The report stated "it is essential that the level of remuneration should be adequate to provide for full-time Members without other sources of income"[57]. The report also proposed considerable improvements in meeting the necessary expenses of MPs. See also Part IV where the question of full time MPs is discussed (p.35). Library Research Paper 93/98 Members Pay looks at the history of MPs pay. Library Research Paper 95/61 Parliamentary Pay and Allowances: The Current Rates is also relevant.

A register of financial interests began to be advocated in the post-war period; academic writers such as S E Finer[58], Professor Richards[59] furthered the cause of a register and Andrew Roth's *Business Background of MPs* highlighted the proposal. William Hamilton MP introduced a Ten Minute Rule Bill on the subject in 1967[60]. In 1967 a voluntary register of the interests of Liberal MPs began, available for public inspection.

A. The Strauss Report

A select committee, chaired by Mr George Strauss MP, (the "Strauss Committee") was appointed on 14 May 1969 to consider the rules and practice on the House on the declaration of Members' interests[61]. It was set up following newspaper revelations that a Labour MP, Gordon Bagier, was working for a public relations firm to improve the image of the Greek Government. It undertook a wide ranging review of the subject; it rejected suggestions for a register of Members' interests, placing emphasis instead on a code of conduct for Members encapsulated in two proposed resolutions[62]:

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56 Cmnd 4836 [Boyle Committee]

57 para 36

58 *Anonymous Empire* 1958

59 *Honourable Members* 1959 and *The Backbenchers* 1972

60 HC Deb 10 May 1967 cc1415-1422

61 HC 57 Session 1969/70

62 para 114

CONCLUSION

114. Your Committee have recommended that the House should adopt two resolutions which together would comprise a code of conduct for Members. These resolutions are:-

(i) That in any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have (paragraph 103).

(ii) That it is contrary to the usage and derogatory to the dignity of this House that a Member should bring forward by speech or question, or advocate in this House or among his fellow Members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect, which he has received, is receiving or expects to receive (paragraph 110).

The Report argued that the first of the resolutions would provide guidance for Members "on the hitherto tenuous custom of declaring an interest"[63], and the second would draw on the existing resolution forbidding Members who are barristers from practising as counsel before the House, or its committees, or advising as counsel on a private Bill or parliamentary proceeding[64]:

19. In this connection two resolutions of the House have a particular application. On 6 November 1666 the House ordered:

"That such Members of this House as are of the long robe shall not be counsel on either side, in any bill depending in the Lords' House, before such bill shall come down from the Lords' House to this House".

20. Again, on 22 June. 1858. the House forbade professional advocacy, by Members in the following terms: -"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".

The Prohibition against advocacy was laid on barristers during tile centuries when legislation of a local or sectional or personal nature comprise a large part of the business of the House (Q. 62-64). The resolution 1858 is in wide terms, though reference to the debate on it makes clear that it relates, as does the order of 1666, to advocacy by members of the bar.

The Report considered that there was a clear analogy with Members who acted in professional capacities such as solicitors, accountants, management consultants, merchant bankers or public relations consultants[65]. It was particularly concerned with public relations[66]:

106. In this connection puLIic relations activities are particularly important because their express purpose is to further a client's interest in any relevant sphere including the political one. The Chairman of a public relations consultancy which has chosen to interest itself in the political arena described its function in this way:-

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63 para 103

64 paras 19 and 20

65 para 105

66 paras 106-111

> "In both the commercial and the 'political' spheres of public relations practice, (using the latter term broadly to embrace activities undertaken on behalf of foreign governments) a consultant may be required to advise his client on issues affecting Parliament, Government departments or statutory organisations in Britain. Such issues may include actual or proposed legislation or the ventilation of a matter of public interest in which the client has a case to represent. The advice of a Member of Parliament may be sought on such matters as time-tables, the proper use of parliamentary procedures or the trend of opinion in the House on a topic in which the client is interested " (Appendix XVIII).

107. If the role of a retained Member of Parliament is restricted to advising the public relations consultancy on those specified matters, no problem arises. But as the consultancy is likely to be advising its client on "actual or proposed legislation" or "the ventilation of a matter of public interest in which the client has a case to represent", the temptation to extend the role the retained Member of Parliament from advice to advocacy, must be strong. According to the President of the Institute of Public Relations, one of the general objects of any organisation in making contact with an individual Member was to establish "some kind of link. with Parliament to further their aims . . ." (Q. 292).

108. How far would it be proper for a public relations consultancy to pay a fee to a Member of Parliament for advocacy in Parliament on its behalf and so on behalf of its client? The answers given by witnesses from the Institute of Public Relations were illuminating. Three specific cases were put to them: where a Member was to advocate a specific measure or raise a specific matter in Parliament; where he was to express the views of a client on any matters arising in Parliament which affected that client's interest; and where he carried out general public relations duties on the understanding, express or implied, that he would act as advocate on matters arising in Parliament which affect these general duties. In each case the Institute's witnesses thought it would not be proper to pay a retainer to the Member (Q. 323-336).

109. Your Committee agree with the spirit of those answers. They also believe that the House's own standards in respect of its own Members should not be lower than those set by the Institute of Public Relations. The effect of the three answers given by the Institute's witnesses would be to fobid any form of advocacy by a Member of Parliament who is receiving a retainer. His position would be exactly the same as a barrister who is already forbidden by the House to accept fees for professional services connected with proceedings in Parliament.

110. Your Committee are satisfied that in extending its prohibition on advocacy to all forms of professional and analogous activities the House would not be depriving itself of well informed contributions to debate. Such a prohibition will make it mandatory for Members who belong to the professions and kindred occupations to keep their parliamentary and professional or kindred work absolutely separate especially in cases where an approach to Ministers might be involved. The distinction to be drawn is between advocacy of a cause in Parliament for a fee or retainer and the advancement of an argument by a Member who, through a continuing association with an industry, service or concern from which he may obtain some remuneration, is able to draw upon specialist knowledge of the subject under debate. Your Committee appreciate that the distinction may not always be precise. Nevertheless they consider the establishment of this principle and its general acceptance by the House so important that they recommend the passing of a resolution extending the provisions of that of 1858 in the following way:

That it is contrary to the usage and derogatory to the dignity of this House that a Member should bring forward by speech or question, or advocate in this House or among his fellow Members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect which he has received, is receiving or expects to receive.

Modern forms of reward

111. Your Committee have already rehearsed, in the context of a proposed register of foreign journeys by Members, the advantages which the House derives from frequent and extensive travel overseas by its Members. They believe that the danger to the reputation of Members and so of the House lies in the journeys made by Members and paid for by governments or organisations overseas as part of a deliberate campaign to influence opinion in Parliament. The choice of visits to be made overseas is primarily a political one and must therefore be a matter for the judgment of each Member in the first instance. It is not, in Your Committee's opinion, desirable to bring these journeys within the ambit of their proposed resolution in paragraph 110 relating to advocacy. But Your Committee emphasises again the need to make known in the relevant context all such journeys. The resolution which they proposed in paragraph 103 to govern declaration of a pecuniary interest contains the words "or benefit of whatever nature", which are expressly intended to cover journeys abroad and associated benefits.

The Strauss Committee rejected suggestions that that the acceptance of money by MPs should cease to be breach of privilege, noting that the proper relationship between a Member and an organisation giving financial assistance was considered in the cases of Alderman Robinson (1944) and Mr M J Brown in 1947 (para. 23) when the House resolved "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 any 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 particular section thereof."

The Committee therefore laid stress on creating a modern code of conduct for MPs to be reviewed once a session by the Committee of Privileges concluding that "a code of conduct comprising these two resolutions [p. 1-2 above] is the most effective way of regulating the Parliamentary activities of Members where these may overlap with their personal financial interests" (para. 17). Breaches of the code could be treated as a contempt of the House to be examined by the Committee of Privileges.

Arguments for a public register of Members' interests were analysed and rejected with only one Member, Eric Lubbock, supporting a register[67]. The Report concluded that "it would be difficult to cater for every imaginable circumstance, and an attempt to do so might confuse rather than clarify the purpose of the code"[68].

The Strauss Report was published in December 1969 but was never debated, and in response to a Parliamentary Question on 10 February 1971 the new Leader of the House (then William Whitelaw) stated "following the Report there was very careful consideration of whether the Resolutions proposed would be suitable or would, in certain circumstances, be very much more restrictive than would be wise. It was felt that they would be so restrictive"[69]. On 3 March 1971 he added "there is widespread support in the House for the view that it is right to rely on the general good sense of Members rather than on formalised rules. That is certainly the view of the official opposition"[70]. Press reaction was mainly critical, favouring the establishment of a register.

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67 Minutes of Proceedings xlii

68 para 115

69 HC Deb c522

70 HC Deb c1704

However, the naming of Members in the Poulson bankruptcy case in the early 1970s led to renewed pressure for a register of Members' interests. The incoming Labour Government tabled three motions for resolutions in May 1974, the first concerning declaration of interests, the second affirming the principle of a compulsory public register of pecuniary interests and the third providing for the appointment of a select committee to sort out the details. Thus there was no further inquiry into the merits or otherwise of a public register before specific proposals were brought forward, nor was there further consideration of updating the various Resolutions of the House into a code of conduct for MPs.

The resolutions were debated on 22 May 1974[71]. Edward Short, the then Leader of the House, explained that the draft resolution on declaration of interests was identical with the first recommendation of the Strauss Committee, and argued that "the long term disadvantages to the House and its reputation of not establishing such a register are, in our view, more important than the minor imperfections and inequities that may arise"[72]. The debate was subject to a free vote; an amendment by the shadow Leader of the House (then James Prior) to give Members full discretion to decide what interests were relevant was defeated, and the motion for a compulsory register carried by 363 votes to 168, with 63 Conservatives voting with the Government[73].

The Select Committee appointed as a result of the resolutions of 22 May 1974 had the following terms of reference[74]:

"to consider the arrangements to be made pursuant to the Resolutions of the House this day relative to the declaration of Members' interests and the registration thereof, and, in particular: -

(a) what classes of pecuniary interest or other benefit are to be disclosed;

(b) how the register should be compiled and maintained and what arrangements should be made for public access thereto;

(c) how the resolutions relating to declaration and registration should be enforced;

(d) what classes of person (if any) other than Members ought to be required to register;

and to make recommendations upon these and any other matters which are relevant to the implementation of the said Resolutions;
to report to the House, within the shortest reasonable period, their recommendations, especially with regard to paragraphs *(a)*, *(b)*, and (c)."

The scope of the inquiry was therefore quite different from the Strauss Committees concerns about ethical behaviour. It did not recommend any changes in the rules concerning breaches of privilege, or examine the possible codification of the historic resolutions of the House or bribery or undue

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71 HC Deb cc391-538

72 HC Deb c398

73 *New Law Journal* 4 September 1975 "Declaring MPs interests"

74 HC 102 974/75 Session para 2

influence, relying on registration and declaration to provide transparency.

In its report, completed at the end of 1974, the Select Committee rejected for reasons of privacy[75] any concept that the register should in effect consist of a Member's income tax return and instead proposed nine specific classes of pecuniary interests or other benefits, as follows[76]:

(1) remunerated directorships of companies, public or private
(2) remunerated employments or offices
(3) remunerated trades, professions or vocations
(4) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House
(5) financial sponsorship (a) as a Parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent. of the candidate's election expenses, or (b) as a Member of Parliament, by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect :
(6) overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds .

(7) any payments or any material benefits or advantages received from or on behalf of foreign Governments, organisations or persons
(8) land and property of substantial value or from which a substantial income is derived:
(9) the names of companies or other bodies in which the Member has, to his knowledge, either himself or -with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.

The report emphasised that the requirement to list clients arose only when the Member had "personally rendered a service arising out of or related in any manner to his membership of the House"[77]. It also noted that the proposed definition of sponsorship was fairly narrowly drawn, and referred to the extensive analysis in the Appendix to the Strauss Report[78]. The Committee concluded that attempts to use fixed figures in relation to material benefits and advantages in Category 7 would be arbitrary and need constant revision[79]. It admitted that the definition relating to property might seem 'vague' but the Committee had had difficulty in proposing a precise and specific definition[80]. The Committee did not recommend that every shareholding be registered, fearing the administrative difficulties and unnecessary burden on Members[81]:

24. For similar reasons, Your Committee do not recommend that there should be registration in every case where the Member holds shares of greater than a stated value. The register is not designed to indicate a Member's wealth but only the sources of those interests which might influence his Parliamentary conduct.

25. What is relevant, it seems to Your Committee, is the relationship between the Member's shareholding and the company. Accordingly, Your Committee propose that the obligation to

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75 para 10
76 para 13
77 para 15
78 HC 57 1969/70
79 para 20
80 para 21
81 paras 24-27

register should depend on the proportion of the issued share capital-held by the Member. The provision for one-hundredth was regarded by the Stock Exchange witnesses as reasonable (Q. 292). Quite apart from the register the Member will remain obliged to declare the nature of any shareholding which might affect any particular Parliamentary activity.

26. In determining whether the proportion of the share capital of a company held by a Member requires him to register his interest, he must bring into account any shares held by a spouse or infant children in companies where the Member has himself a holding of shares. Your Committee were informed of the requirement on directors of companies to make a disclosure where there was a family interest (Q. 311-317). heir proposals with regard to Members are rather different, since it is the potential influence on the Member rather than on the company which is relevant.

27. Your Committee have deliberately made the obligation to register subject to the shareholdings being within the knowledge of the Member. He may be a beneficiary under a trust and unaware of the nature of the trust's shareholdings. He may be unaware of his wife's holdings. If a Member has no knowledge of a particular holding he cannot be thought to be influenced by it.

B. Implementation

In its proposals for the compilation, maintenance and accessibility of the Register the Committee incorporated to a large extent detailed proposals made by the Clerk of the House[82]. The creation of a permanent Select Committee to oversee the Register was the main component[83]:

30. The essence of the scheme is the establishment of a permanent Select Committee on Members' Interests. Proposed terms of reference for the Committee are given in Annex, 2. There may well be occasions, particularly during the first few years, when difficulties of interpretation will arise over whether a particular interest should be registered. Many of these will be able to be solved by discussions between the Registrar and the Member concerned, but some will have to be referred for decision, and a Select Committee rather than the House itself is the appropriate body to rule on such questions in the first instance. Provision is made, however, for the House to be the final judge when a Member does not accept the decision of the Committee. It should be noted that provision is made to preserve the rights of the Members concerned to confidentiality; no mention will be made of the name of the Member.

31. The Committee will also be charged with the task of hearing complaints by Members against other Members and complaints by other persons referred to them by the Registrar. The proposals they make are designed to ensure that in such instances, charges should not be made on the floor of the House until a proper investigation has been carried out.

32. Mr. English, while agreeing that there should be a Committee, suggested that it should be a sub-committee of the Privileges Committee or Services Committee (Q. 209). Your Committee cannot accept this. Certainly for the first few years it is in their view essential to have a separate

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82 para 29

83 paras 30-34

Committee, not only to deal with ad hoc problems or complaints but also to keep under review the whole subject of Members' interests and to make recommendations. For this reason it would be advisable to make provision for the Committee and the members thereof to be established for the duration of a Parliament.

33. Given the need for a permanent Select Committee it is clearly essential for the Registrar of Members' interests to be Clerk to the Committee. He will then act on the instructions of the Committee as well as under the authority of the Resolutions of the House. It may be argued that the Registrar should be someone with a particular expertise outside the normal range of the Clerk's Department, perhaps a lawyer or an accountant. Such arguments are based on a misunderstanding of the purpose of the register quite apart from the fact that legal and financial advice are readily available to the Clerk's Department (Q. 19, 36). A large proportion of the time of the Registrar will be spent in discussions with individual Members on a confidential basis. This is something for which Clerks are specially qualified; it is indeed an essential part of their relationship with Members. It is parliamentary expertise and experience of dealing with Members that are the primary qualifications for the Registrar.

34. The Clerk of the House recognised that the Clerk appointed as Registrar would need to be a senior member of his Department,' and Your Committee endorse this. He will also need supporting staff. Your Committee are content to leave it to the Clerk of the House to make detailed dispositions as to numbers and grades of staff.

The Committee proposed a form for Members to complete, incorporating the various classes of interest, which would be the responsibility of Members to complete, for editing and publication by the Registrar noting "it will also be the responsibility of Members to notify the Registrar of any changes of registrable interests which may occur"[84]. Annex I (which gave the Guidelines for the Registrar) made clear that the form should be sent and completed within four weeks of the Member taking his seat, and changes were to be notified within four weeks.

The requirement for public inspection was to be met as follows[85]:

36. The Resolution of the House of 22nd May requires the register to be "available for inspection by the public". Your Committee envisage that this requirement will be largely met by the proposal to publish the register from time to time as a House of Commons paper available through the Stationery Office. Such arrangements cannot, however, preclude the rights of the public and of Members to inspect an up-to-date copy of the register. They have accordingly suggested certain rules, which are designed not to take away the legitimate rights of the public to know the interests of Members, but simply for administrative convenience. These rules will require revision from time to time in the light of experience.

Annex I (Guidelines for Registrar) provided for public access by appointment on a daily basis except for August.

The Registrar was to be given discretion under the Guidelines for Registrar to settle differences of opinion between himself and a Member, but where a dispute over the inclusion or otherwise of an item could not be resolved the Registrar was to be put under a duty to refer the matter to the Select Committee in general terms, without mentioning the Member by name, except with the consent of

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84 para 35

85 para 36

the Member. If the Committee were to recommend inclusion and the Member remained unsatisfied the Committee would report to the House in general terms[86].

C. Enforcement

The Committee stressed that the Registrar was not to be seen as an enforcement officer[87]:

Enforcement of the requirements to register

37. One of the specific tasks of Your Committee was to consider "how the resolutions relating to declaration and registration should be enforced". They wish there to be no misunderstanding occasioned by the use of the word "enforced". Under no circumstances should the Registrar and his stall be sum as enforcement officers, with powers to enquire into the circumstances of Members. lie underlying principle behind the register is that Members are responsible for their entries; the House will trust them in this respect, but at the same time such trust involves obligations. As the Clerk of the House pointed out, "The ultimate sanction behind the obligation upon Members to register would be the fact that it was imposed by Resolution of the House ... There can be no doubt that the House might consider either a refusal to register as required by its Resolutions or the wilful furnishing of misleading or false information to be a contempt". The sanction of possible penal jurisdiction by the House should be sufficient.

Annex I (Guidelines for Registrar) set out the procedure for dealing with complaints by Members and the public:

E. Complaints by Members

(1) Any allegation by one Member against another Member relating to the Register or to the disclosure of interests, shall be in writing to the Registrar, who shall refer the matter to the Select Committee and shall furnish to the Member concerned details of the allegation.

(2) The Select Committee may hear both Members, together with other evidence, as they think fit and may then make a Report to the House together with a recommendation as to what action should be taken. Before making any such Report the Committee shall give the Member concerned the opportunity to make written representations and of being heard with such witnesses as he may desire to call.

F. Complaints by the Public

(1) If any member of the public wishes to allege that a Member is in breach of the Resolutions of the House relating to registration or disclosure of interests he must make a complaint in writing to the Registrar.

(2) The Registrar shall inform any member of the public who wishes to complain that before taking any further action he should know that any communication between them is not covered by Parliamentary privilege or privileged at law.

(3) The Registrar shall have discretion to require from any member of the public wishing to make a complaint details of his name and address together with prima facie evidence as to the accuracy of his allegation ; in the event of this not being supplied, he shall have the discretion to refuse to consider the matter further.

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86 Annex, para D

87 para 37

(4) If the Registrar is satisfied that a failure to comply with the Resolutions of the House has been established, he shall report the matter to the Select Committee.

(5) The Selection Committee may, if they think fit, call for an explanation from the Member, to whom the details of the case shall be communicated by the Registrar.

(6) If the Member confirms that the allegation is true, the Committee shall forthwith make a Report to the House together with a recommendation as to what action should be taken.

(7) If the Member disputes the allegation, the Committee shall take evidence from such persons including the Member and his witnesses if he so wishes, as they think fit, and shall then after due consideration make a Report to the House together with a recommendation as to what action should be taken.

D. The Current Rules on Registration

In response to the Browne affair (see p.25) the Select Committee produced a report in session 1991/92[88]. It noted:

24. Although the opinions presented to the Committee in evidence were diverse, one point noticeably recurred more frequently than any other, and was voiced in different ways both by Members and non-Members. This was that the rules of registration required clarification. The Leader of the House, among others, said that he thought there was uncertainty among many Members about exactly what should and should not be registered under different headings. The Committee has therefore devoted most of its attention to the registration form and to the definitions of the categories of registrable interest set out in it. The objective of the changes we propose is two-fold: first, to make the Register a more informative, useful and respected document; and secondly, to give Members clearer and more explicit guidance on their obligations with regard to registration.

25. As to the first of these objectives, we were struck by the fact that those journalist sand outside academic commentators who gave evidence all (to a greater or lesser extent) criticised the Register as "inconsistent and uninformative". We do not accept all the criticisms that were made; but considering that one of the principal motives for the original introduction of the Register was to enhance public confidence in Parliament as an institution and in Members of Parliament as individual legislators, this expression of opinion from outside should be a matter of some concern to the House.

26. The second objective, to give Members clearer and more explicit guidance about the registration of their interests, is also of great importance. We agree with those who told us that "a great deal can be achieved by making the guidelines more precise" and that "detailed rules are . . . for the benefit of all honourable Members".

Recommendations for change were almost exclusively directed at the form of the register and the rules and procedures for registration[89]. Once again, the Committee rejected proposals for disclosure of levels of remuneration:

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88 Registration and Declaration of Members' Interests HC 326

89 para 23

Disclosure of amounts of remuneration

32. Several witnesses, mainly from outside the House, advocated the disclosure of levels of remuneration in the Register, either as precise amounts or through use of a banding structures The principal argument advanced in favour of the registration of amounts of remuneration is that it is difficult for a reader of the Register properly to assess the nature and extent of a Member's interests without knowing the amounts involved. " The bigger the reward, the more likely is a Member to be influenced in the event of a conflict of interests; publishing its size might serve to modify his vigour in furthering the interests of outside bodies."

33. We have reconsidered these arguments; but on balance we do not accept them. As Mr Speaker succinctly put it, "it is the nature of the interest, not the actual sum of money, that is important". Nor is it necessarily the case that amounts of remuneration would be a reliable guide to the degree of influence which an interest might exert on a Member of Parliament: this could depend at least as much on the personal circumstances of the individual Member and on other, non-pecuniary, considerations. To require the disclosure of amounts would represent a significant intrusion into the privacy and personal affairs of a Member of Parliament, and we can find no substantial Justification for recommending such a step.

It retained the broad outline of the existing nine categories of registration:[90]

The nine categories of registration

36. The Willey Committee defined nine categories of registrable interests. We propose the amalgamation of category 2 (Remunerated employments or offices) and category 3 (Remunerated trades, professions and vocations), on the grounds that this distinction is now somewhat blurred and artificial. At the same time we propose the division of the present category 5 (Financial sponsorships) into two separate categories: one covering sponsorship (which we further define as meaning predictable, regular or continuing support in money or kind), and the other covering more occasional gifts, hospitality and benefits received from United Kingdom sources. The distinction between these two new categories may not always be clear cut; but we believe that the change is necessary because the present form sometimes leads Members to forget that they are required to disclose United Kingdom gifts in the same way as those from overseas sources. We explain the two new categories in more detail below. As a result of these changes, the proposed new form contains nine categorised sections, as did the old one, but the categorisation is slightly different. In addition we propose the inclusion of a Miscellaneous box at the end of the form, for the registration of interests which Members consider to be relevant and covered by the definition of the Register's purpose, but which do not obviously fall within any of the specified categories.

The report retained the general principle that the requirement to register should be limited to interests entailing remuneration or other material benefit; it did, however, recommend a new requirement to register directorships of subsidiary and associated companies, even if not directly remunerated[91]. The proposals regarding Categories 2 and 3 are worth noting in full:

Remunerated, employment, office, profession etc (Category 2)

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90 The reference to Willey is to the 1974 report

91 para 40

42. This section of the form is the amalgamation of the existing categories 2 and 3, already mentioned in paragraph 36 above. It will be the principal catch-all category for registering outside employment and sources of remuneration not clearly covered elsewhere in the form.

43. There is at present no clear rule requiring Members to register membership of Lloyd's. Since the Register was established, Members who have consulted the Registrar on this point have consistently been advised to register an interest in Lloyd's under what is currently Category 3, and the great majority have done so. We propose a note in the new amalgamated Category 2 to make this requirement explicit. When a Member resigns from Lloyd's, the entry should remain in the Register until all the Member's outstanding obligations have been discharged and all outstanding benefits realised. We also believe that membership of individual Lloyd's syndicates can be of considerable significance. We therefore believe that members of Lloyd's should be required to disclose their syndicate numbers for the current year and their membership of any syndicates which remain unclosed.

44. Entries should be as clear and informative as possible, consistent with brevity. Many Members already provide quite sufficient information in their current entries: for example, a short description of activity as barrister", "author" or "occasional lecturer" seems to us to be adequate for the purpose. Consultant ", however, is not adequately clear, and we consider that 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". Similarly, it is not adequate under this category simply to name a company and indicate the nature of its business without at the same time indicating the nature of the post which the Member holds in the company or the services for which the company remunerates him.

45. Several Members who have practised a profession but have ceased to practise on being elected to Parliament or taking up ministerial office continue to register the profession with a bracketed remark such as "non-practising" after it. We approve of this form of entry, particularly in the case of sleeping partnerships and where it is likely that the Member will resume the profession at a later stage.

Clients (Category 3)

46. The only substantial innovation in this section of the proposed new form is the second explanatory note. Members are increasingly accepting positions which involve advice or consultancy deriving from their knowledge or expertise as parliamentarians or in other ways related to their parliamentary activities. In some cases consultancy or advice of this sort is provided to companies or partnerships which are themselves consultancies. Some of these lobby Parliament and Government on behalf of clients. It is the normal practice in such circumstances for Members to register the consultancy firm to which they provide advice or other services; but it is less normal to identify the ultimate beneficiaries of the advice or services, that is to say the clients of the consultancy firm. We accept that it is unreasonable and impracticable, especially in the case of a large consultancy firm, to require a Member to register all of the firm's clients; but we do believe it both reasonable and necessary to require that a Member should be able to identify, and should register, those of the consultancy's clients with whom he has a personal connection or who benefit, directly or indirectly, from his advice and services.

47. The types of services which are intended to be covered by this category of registration were clarified in a resolution of the House of 17 December 1985. The first explanatory note in this section of the new form is based on that resolution. A Member is exempt from the requirement to register a professional client only where it is clear beyond doubt that the services being provided to the client do not arise out of or relate in any manner to the Member's membership of the House.

This note is as follows: "Where you receive remuneration from a company or partnership engaged in consultancy business which itself has clients, you should list any of those clients to whom you personally provide [such] , services or advice, directly or indirectly."

It also made detailed recommendations to improve understanding of the sponsorship category, and to clarify rules on the acceptance of gifts, benefits and hospitality[92] and overseas visits[93]. It recommended more detail on the location and nature of property[94]. The report noted on Category 9:

Shareholdings (Category 9)

62. This category of the register has been subject to much criticism and misinterpretation. The Willey Committee concluded that to require Members to register all their shareholdings would "create serious administrative difficulties for the Registrar [and] would be an unnecessary burden on Members". They also accepted the opinion of Stock Exchange witnesses that it could have undesirable consequences in other ways. Believing that what was chiefly important was " the relationship between the Member's shareholding and the company", the Committee recommended that the obligation to register should be limited to holdings in excess of one per cent of the issued share capital of any company; and that is the rule which still stands. It has been criticised principally on the grounds that it catches minor shareholdings in small, even tiny, companies but does not reveal substantial shareholdings in large companies. This means, among other things, that Members known to have large personal wealth can often, with perfect propriety, make a "nil" return in the Register.

63. Nonetheless, we believe that the reasoning of the Willey Committee was fundamentally sound. It would be both impracticable and an intolerable invasion of personal privacy to require publication of share dealings made by a Member or on his behalf, and any rule requiring the disclosure of shareholdings above a certain monetary value would be open to the additional objection that market values are constantly changing. The new,,rule which we propose therefore represents only a modest modification of the old one. It is in essentially the same terms as the rule being proposed for the registration of shareholdings held by members of local authorities, 3 and would require the registration of shareholdings which have a *nominal* value of more than £25,000 or which constitute more than one per cent of the issued share capital o the company. This will not eliminate the need to register some shareholdings of quite small value; but it will go some way to meet the criticism that very large holdings can escape registration under the existing rule.

64. It is noticeable that some Members presently register shareholdings which do not fall within the requirements of the rule. Normally this is obvious from the terms of the entry, but occasionally real misunderstanding may result. Although in general we support the right of Members to register any interest which they consider relevant to their parliamentary activities, whether or not strictly required by the rules, this is one case where we would urge them not to do so. If any Member considers it essential to register a shareholding which does not fall within the definition laid down in category 9, we ask that it be done in the Miscellaneous box at the end of the form.

A new registration form was recommended replacing previous resolutions and decisions of the House and Members' Interests Committees, with the exception of the original 22 May 1974

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92 Category 5

93 Category 6

94 Category 8

resolution[95]. The Committee also recommended that it have the authority to make minor modifications to the wording of the form or guidance[96].

A major emphasis of the Committee's recommendations was the production of explanatory material[97]. The Registry, under the authority of the Select Committee on Members' Interests, has subsequently produced a pamphlet of guidance entitled *Rules on the Registration and Declaration of Financial Interests*[98].

There was some division within the Committee on the definitions of sponsorship[99] and whether the amounts of remuneration received under categories 1, 2, 4, 5 and 7 should be indicated[100].

The House approved the recommendations on 28 June 1993[101] without a division, with one minor change; the recommendation in para 84 was amended so that only the sponsor of an EDM will be required to declare an interest at the time of tabling a motion (see below under Declaration of Interests).

The new requirements met some opposition from MPs, particularly in relation to the requirement to list syndicate numbers at Lloyds. When the first new style register was printed in February 1994 the Select Committee noted in a report issued at the same time[102] that 11 MPs had not yet registered their names (paras. 3-4) and that not all MPs who had registered a current or residual interest in Lloyds had complied with the new requirement to disclose details of their syndicate participation. The Committee issued a further report (Registration of Lloyds syndicates)[103] noting that 11 MPs remained in breach of the rules of the House. This report, however, recommended changes to the registration requirement, explaining that the terminology of the rule then in operation had been superseded by the introduction at Lloyds in January 1994 of Members Agents Pooling Arrangements. The Committee also commented on the difficulty of interpreting the information given by Members on their syndicates, and the level of complaint from MP members of Lloyds. The changes were agreed to following a debate on 13th July 1994[104] as follows:

18. Our proposals are therefore as follows:

(i) Members who are underwriting members of Lloyd's should (as now) register that fact in section 2 of their Register entries.

(ii) Members who have resigned from Lloyd's should continue to register their interest in Lloyd's as long as syndicates on 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.

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95 para 65
96 para 66
97 paras 68-70
98 October 1993
99 see Minutes of Proceedings ppxxxv-xxxvii
100 p.xxxv
101 HC Deb cc757-780
102 HC 219 Session 1993/94
103 HC 353 Session 1993/94 on 28th June 1994
104 HC Deb

(iii) **In addition, Members who register an interest in Lloyd's, whether under (i) or (li) above, should also be required to disclose the categories of insurance business which they are underwriting. This disclosure should be by reference to the categories of business used by Lloyd's in its publication of syndicate performance.** These categories are listed in the Annex to this report. In practice, because individual syndicates no longer specialise in particular categories of business to the extent which they used to and because MAPAs cover a range of syndicates,10 some Members who are currently underwriting-particularly those who are participating in the market through MAPAs-may be unable to meet this requirement. On the other hand there may be some whose participation is more limited in its range. In these cases, the categories of business in which the Member is involved can reasonably be regarded as a potential influence, over and beyond the simple fact of membership of Lloyd's, and therefore as something which should be disclosed in the Register.

A printed version of the Register is usually issued in January of each year as a House of Commons paper. Updates are made on a regular basis to the Register itself kept in the Registry (a copy of the updated Register is also available in the Library for Members' use only). The Register is a record of statements of interests given by Members at a particular point in time. It is not formulated as a computer database, and cannot therefore be searched for specific categories of interests. Such research is a manual operation[105]. Members of the public need to make appointments to inspect the updated Register, as information is not given by telephone.

[105] An example of this process is *A Bit on the Side: Politicians - Who Pays Them?* by Paul Halloran and Mark Hollingsworth (1994)

II Declaration of Interests

Members of Parliament have long been expected to declare relevant interests to ensure that other MPs and the public are aware, at the time when a Member makes a speech in the House or standing committee or examining a witness before a select committee of any past, of any present or potential future pecuniary interest which might reasonably be thought to be relevant to the proceedings. This requirement is additional to the requirement to register interests in the Register.

A. Background

Erskine May[106] sets out the relevant cases and past resolutions in the general area of misconduct of Members. Amongst the most important prohibitions which affect Members are the advocacy by Members of any cause in return for any payment, and the entering into any contractual agreement with outside bodies which might control or limit a Member's complete independence and freedom of action in Parliament. Authoritative advice is given in *Erskine May*[107] and the memorandum submitted by the Clerk of the House to the Privileges Committee cash for questions report (HC 351 1994/95 Appendix 6) provides further guidance.

It is important to note that breach of privilege and contempt of the House can only arise in connection with proceedings in Parliament (a term which has proved very difficult to define). Attempts, successful or otherwise, to corrupt or to bribe a Member in any other than his parliamentary capacity would be punishable under the criminal law. The Royal Commission on Standards of Conduct in Public Life, which reported in July 1976, recommended that Parliament should consider bringing such attempts within the criminal law. So far this has not been implemented. See also the consideration by the 1991-92 Committee on conflict of interest (reproduced on pp19-20 of this paper).

The evidence given by the Attorney General to the Privileges Committee (HC 351 1994/95 Appendix 5) indicated that bribery of an MP might already be an offence at common law. See also the evidence of the Clerk of the House on this point at Appendix 6.

Parliamentary rules on the declaration of interests operating before the 1974 resolutions were an anthology of earlier resolutions, and recommendations of the Committee of Privileges. Detail on the pre-1974 conventions on the declaration of pecuniary interest is contained in *Erskine May* 18th ed (1971) pp138-140 and pp398-403 and in the Strauss Report[108] which noted as follows:

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106 21st ed Parliamentary Procedure pp119-121, 128-129

107 21st ed 1989 pp119-120

108 Select Committee on Members' Interest HC 1969-70

41. Your Committee's conclusion is the same as that of the Select Committee on the House of Commons Disqualification Bill in 1956. On the disclosure of a personal financial interest they are not satisfied that the practices of the House are "up to date, comprehensive and clear". There is no mention in Erskine May or in the Manual of Procedure of the custom of declaration. Commenting on this inadequacy the Leader of the House has suggested that "the underlying assumption has been and always must be that hon. Members can be relied upon to assess those delicate matters in an honourable and proper way and that detailed rules are undesirable and unnecessary ".

42. Your Committee agree that this represents the position. But they also believe that if there are to be rules and practices on this subject they should be clear and comprehensive. At present they are defective in this respect. On the one hand there is evidence that Members have on occasion decided not to speak- in debate because of doubts about a pecuniary Interest (Appendix Xlll), perhaps depriving the House of a specially well-informed contribution to debate. On the other the present practices do not achieve the main object of declaration which is that a Member's outside interests should be made known to the House whenever they touch his duty and activity as a Member of the House. It is therefore desirable to clarify the present practice and enlarge the area of declaration in this sense.

The 1974 resolution strengthened previous conventions into a rule. The resolution stated:

> "in any debate or proceedings of the House or its committees, or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit that he may have had, may have, or may be expecting to have"[109]

The original resolution extended the rule to all proceedings of the House or its committees.

The select committee, however, drew attention to the difficulties involved in proceedings when Members do not speak[110] suggesting the use of symbols etc.[111] But the administrative difficulties were great and by resolution of 12 June 1975 it was made clear that the term 'proceeding' of the House should not, for this purpose, be deemed to include the giving of any written notice such as a parliamentary question or the asking of a supplementary question.

B. Declaration of interests - the 1974 Select Committee recommendations

The Committee noted how the convention had been changed by the 22 May 1974 Resolution into a rule imposing the requirements over a far wider area[112]:

Scope of the Resolution

38. Unlike the register, which is something entirely new in the procedure of the House, the requirement to declare an interest is familiar to Members. In Erskine May it is stated that "there is a convention in both Houses that peers and Members should declare such a (pecuniary) interest in

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109 22 May 1974

110 HC Paper 102 1974/75

111 not used

112 HC 104 1974/5 paras 39-41

debate . . . It is not a rule of procedure in the Commons". The Resolution passed by the House on 22nd May goes much further in two respects; it changes a convention into a rule of the House, and it imposes this rule over a far wider area than that to which the former convention applied.

39. There may be an impression among some. Members that the requirement to declare is covered by the requirement to register, in other words, the fact that a particular interest is in the register absolves the Member from having to declare this in any particular proceeding. This is not Your Committee's interpretation of the Resolution, and they are bound to emphasise that by the terms of the Resolution a Member must make a declaration of interest, if appropriate, whether or not that interest is registered. (Particular difficulties arise in the case of voting, and this point is dealt with in a later paragraph.) It will, of course, be sufficient to make the declaration in many cases simply by reference to the register, but it must be made nonetheless.

40. As well as proceedings of the House or committees, the Resolution refers to "transactions or communications which a Member may have with other Member's or with Ministers or servants of the Crown". While stressing that the obligation on Members is just as binding for this aspect of their affairs as for proceedings in the House, Your Committee are content to leave it to their personal judgement. They reiterate the views expressed by the previous Committee: "It should be a matter of honour that a pecuniary interest is declared not only as at present in debate in the House and its Committees but also whenever a Member is attempting to influence his fellow Members, whether in unofficial committees and gatherings, or at any kind of sponsored occasion, with or without entertainment, or simply in correspondence or conversation. Above all it should be disclosed when a Member is dealing with Ministers of the Crown and civil servants. and this obligation becomes of paramount importance when a foreign government is involved either directly or indirectly ".

41. The most important criterion for declaration is relevance, and this must be a matter of judgement in each case. while it would be wise to err on the side of caution, and to declare- in any doubtful case, it must be pointed out that in many cases where interests do require to be registered, they do not require to be declared since they are not relevant to the particular debate or activity in which a Member is taking part. Your Committee are also confident that good sense will prevail on the interpretation of how far past or future interests need to be disclosed. The Clerk of the House drew the attention of Your Committee to possible difficulties caused by the element of confidentiality in future expectations. So far as the register is concerned, Your Committee would not expect the interest to be registered until it was actual rather than potential. So far as the declaration is concerned, Your Committee would expect the Member not to take part in any relevant proceedings until the element of confidentiality was removed; if he did take part, he would have to declare his interest at the cost of forfeiting the confidentiality.

C. Subsequent recommendations and the present position[113][114]

The 1991/92 Select Committee report (see p.27), which was approved as a whole by the House, also included observations on the Declaration of Members' Interests[115]:

3. DECLARATION OF INTERESTS

72. As has already been made clear, the Register of Members' Interests was intended to supplement and not to replace the longer-standing practice of the House that a Member should draw attention to a relevant pecuniary interest when making a speech in the House or in Standing

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113 not used

114 not used

115 HC 326

Committee, or when examining a witness before a Select Committee. This is emphasised by the fact that on the same occasion when the House passed the resolution approving the principle of a Register, it also passed the resolution which strengthened the previous convention about declaration of interest into a rule. The resolution also clarified the application of the rule to communications which a Member may have with other Members or with Ministers or servants of the Crown. In practice the introduction of the Register may well have had the unfortunate consequence of leading Members (and in particular, inexperienced Members) into the belief that registration adequately fulfils their obligations in regard to the disclosure of their financial interests. It is easy to assume that, because a relevant interest is fully noted in the Register, everyone who is concerned already knows about it and that it would therefore be otiose and tiresome to repeat the information when speaking in debate or communicating with Ministers or fellow Members.

73. We do not accept Mr Benn's sweeping judgement that the practice of declaration "has fallen into desuetude", but there are grounds for believing that some Members are less punctilious than they should be in observing the rule. We were especially struck that the Leader of the House, an experienced former departmental Minister, did not even expect that a Member should necessarily declare a relevant financial interest when seeking a ministerial favour.' We are anxious that this trend (if it is one) should be reversed, and that the additional precision and detail of the new registration form should not be regarded by Members as additional justification for neglect or casual observance of the declaration rule.

74. One memorandum submitted to us rightly commented that an important function of the Register is to "sensitise Members to their outside interests and how they might be perceived"; but this is even more true in regard to the declaration rule. The registration rules impinge on Members' consciousness only occasionally, and perhaps only once a year when Members are confronted with the requirement to check or update their entries. The Register is constantly available, but of use only to those who take the trouble to consult it. By contrast the declaration rule operates in respect of particular debates, proceedings and parliamentary activities, and it requires the Member positively to draw attention to any relevant financial interest. As Mr Speaker put it "possession of a particular financial interest might be just the reason why a Member should be silent when a relevant matter is debated". Correct compliance with the declaration rule confronts the Member with this decision much more sharply than the existence of an entry in the Register. We therefore consider it important that Members individually, and the House as a whole, should continue to take the rule seriously and insist on it being properly observed. In the following paragraphs we offer guidance on the interpretation and application of the rule.

The report recommended that the reference to potential pecuniary interests should remain in the 22 May 1974 resolution and recommended a test of relevance for declaration[116]. It considered the possibility of extending the declaration rule to Questions, but concluded regretfully that the practical objections remained strong. It did however argue for declarations of interest by a sponsor of an EDM and the first five supporters[117] (see below for further details). The report concluded with some general observations on conflicts of interest:

4. CONFLICT OF INTEREST

85. The main motive of the House and the Government when establishing the Register and clarifying the declaration rule in 1974-75 was to reassure the public, in the aftermath of the Poulson affair, that the House of Commons was not corrupt. To the extent that the rules of registration and declaration require Members to subject their personal pecuniary interests to public scrutiny, this purpose is being achieved. It may also be the case, as we suggested in paragraph 74 above, that the

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116 para 78-79

117 para 84

obligation to register or declare an interest publicly may occasionally deter a Member from pursuing a course of action which is in conflict with his position as a Member or which is potentially corrupt. However, as the Willey Committee acknowledged, no Register can prevent a Member who is knowingly corrupt from acting corruptly; nor will it deter the Member who has a calculated determination to use his position for personal financial gain.s

86. Indeed, just as there is a danger that the existence of the Register may tempt Members into being casual in their observance of the declaration rule, so there is a danger that some Members may make the mistake of believing that correct registration and declaration adequately discharge their public responsibilities in respect of their private interests.6 Such a mistake could have serious consequences both for the Member concerned and ultimately for the House. As Mr Speaker reminded us, "a Member must be vigilant that his actions do not tend to bring the House into disrepute", in particular "Members who hold consultancy and similar positions must ensure that they do not use their positions as Members improperly".' A financial inducement to take a particular course of action in Parliament may constitute a bribe and thus be an offence against the law of Parliament. In the words of Erskine May:

> "the acceptance by any Member ....of a bribe to influence him in his conduct as such Member or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof is a breach of privilege."

The power of the House to punish contempts against it is the ultimate sanction in such cases, just as it is the ultimate means of enforcing the obligation to register and declare pecuniary interests.

87. The business of the House and the duties of a Member of Parliament are so all-embracing in their scope that inevitably there are occasions when a Member's private pecuniary interests are pulling in a different direction from the policy of his party or his wider responsibilities as an elected legislator. For this reason, and others, some have advocated that Members of Parliament should be debarred from outside employment and pecuniary interests altogether.' Since the Register, and therefore the existence of this Committee, is based on the premise that Members should retain the freedom to undertake outside activities, we have not thought it appropriate to pursue that line of argument.

88. An alternative approach is to suggest that the long-standing practice and resolutions of the House concerning misconduct by its Members (outlined in paragraph 86 above) should be restated to apply in explicit terms to modern circumstances. The Select Committee on Members' Interests of 1969, chaired by Mr George Strauss 4 proposed a resolution with that intention; at the same time it rejected the concept of a Register. The proposed resolution was never put to the House because, as Mr William Whitelaw (then Leader of the House) told the House in 1971, it was considered that it would be too restrictive.' The idea of a more detailed code, defining what types of conduct and activity are unacceptable for a Member of Parliament, raises comparable difficulties. Our recommendations in relation to conflict of interest as it applies to the Chairmen and Members of Select Committees' represent a small step in that direction; and we await the House's reactions to those recommendations with interest. Those proposals are aimed at a specific aspect of a Member's parliamentary activities, and one which is readily amenable to control by the House, because of the House's power to nominate and replace the members of Select Committees. To attempt to define, on a much wider and hypothetical basis, the types of conduct which the House might in particular circumstances judge to be contempts, would be a far more hazardous enterprise and one doomed to almost certain failure. As we have already indicated, we believe that if such a code were eventually to be considered essential, it would have to take a statutory form and that such a step would be regrettable. We hope that the measures which we have proposed in this report to make the rules of registration and declaration clearer and more explicit will sharpen Members' perceptions of these issues and make such a development still more unlikely.

The Rules on the Registration and Declaration of Financial Interests published by the Registry of Members' Interests October 1993, gives guidance to Members on the types of interests to be declared (which are **not** necessarily identical to those to be registered)[118]:

Past and potential interests

44. The terms of this rule mean that, whereas the Register records interests that are current or (in the case of visits, gifts etc.) date from the recent past, the obligation to declare relevant interests extends also to past and potential future interests. In practice it is rare for a past interest to be sufficiently relevant to the matter in hand to justify a declaration. Potential interests, on the other hand, may be far more significant. Where, for example, a Member is debating legislation or making representations to a Minister on a matter from which he has a reasonable expectation of personal financial advantage, candour is essential. In deciding when a possible future benefit is sufficiently tangible to necessitate declaration, the key word in the rule which the Member must bear in mind is "expecting". Where a Member's plans or degree of involvement in a project have passed beyond vague hopes and aspirations and reached the stage where there is a reasonable or realistic expectation that in certain circumstances a financial benefit will accrue, then a declaration explaining the situation should be made.

The test of relevance

45. It is for the Member to judge whether a pecuniary interest is sufficiently relevant to particular debate, proceeding, meeting or other activity to require a declaration. The Select Committee on Members' Interests has given the guidance that the basic test of relevance should be the same for declaration as it is for registration of an interest, namely that an interest should be declared if it might reasonably be thought by others to influence the speech, representations or communication in questions A Member who acts as a paid consultant to an outside finn or organisation should invariably make a declaration when speaking or making representations on a subject which affects the interests of that firm or organisation. Members who practise a profession such as banking, medicine or the law, should declare that fact when the pecuniary interests of the profession are clearly and directly affected by the issue under discussion. Otherwise Members with professional interests should use their discretion and personal judgement in deciding when a declaration is appropriate. The same applies to Members sponsored by a trade union.

Content of declaration

46. A declaration should be brief but sufficiently informative to enable a listener to understand the nature of the Member's pecuniary interest without recourse to the Register or other publications.

There are two specific requirements to declare an interest.

1. EDMs

The Select Committee on Members' Interests recommended in its First Report of 1991/92[119] that sponsors of EDMs should declare any pecuniary interest.

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118 paras 44, 45

119 HC 326 para 84

When the Report's recommendations were debated the Committee's recommendation was modified so that only the initial sponsor is required to declare an interest to the Table Office (verbally or in writing). The EDM is then marked with an `R' indicating that a declaration has been recorded. Amendments to EDMs are also covered by this new requirement, which began with the 1993/94 session.

2. Chairmen and Members of Select Committees

Following a report from the Defence Select Committee the Select Committee on Members' Interests investigated issues relating to the financial interests of chairmen and members of select committees[120]. The Committee recommended a series of resolutions by the House to place an obligation on chairmen of departmentally related select committees to ensure that he holds no financial interest in conflict with his duty to the committee and the House, and that Members with a pecuniary interest with a Department should not be appointed to the relevant departmental select committee. The report noted that hitherto the reconciliation of potential conflicts of interest with public duty had been left largely to the personal judgement of the individual Member (para 18) but believed the recommendations as a whole should be seen as a basis for a code of conduct "which will assist Members to reconcile their personal pecuniary interest with their responsibilities to the select committees to which they are appointed, to the House as a whole, and to the public interest."[121]

This report was debated on 23 June 1992[122] where the Leader of the House, Tony Newton, expressed some doubts as to the practicality of the Select Committee's recommendations[123]. On 13 July 1992, without further debate, parts only of the report[124] were approved by the House[125] and the main recommendations regarding conflicts of interest have not been accepted.

The main effects of the resolution are summarised in an extract from *Rules on the Registration and Declaration of Financial Interests*[126]:

(i) Before a select committee proceeds to the election of a Chairman, its members are required to give details of their pecuniary interests for circulation to the committee. (This requirement does not apply to committees of a wholly procedural nature.)

(ii) Declarations of relevant pecuniary interest should be made, and minuted in the committee's minutes of proceedings, both when the committee is deciding on a subject of inquiry and in the presence of witnesses when evidence is taken during an inquiry.

(iii) When a member of a committee, particularly the Chairman, has a pecuniary interest

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120 First Report of the Select Committee on Members' Interests 1990/91 HC 108

121 para 45

122 HC Deb cc213-234

123 HC Deb c218

124 paras 8-16, paras 24, 25

125 HC Deb c945

126 Registry of Members' Interests October 1993

> which is directly affected by a particular inquiry or when he or she considers that a personal interest may reflect upon the work of the committee or its subsequent report, the Member should stand aside from the committee proceedings relating to it.

The complaints procedure (outlined above for queries relating to entries on the register also applies where there is a complaint of failure to declare pecuniary interests.

As to voting, the ruling of the Speaker Abbot on 17 July 1811 that an interest must "be a direct pecuniary interest and separately belonging to the persons whose votes were questioned and not in common with the rest of His Majesty's subjects or on a matter of state policy" tightly circumscribes the rule that Members must not vote on matters where they have a financial interest. This ruling remains in force.

III The Select Committee on Members' Interests

A permanent select committee was established on 2 February 1976 and is currently constituted under SO no 128:

Select Committee

128.(1) There shall be a select committee to examine the arrangements on Members' made for the compilation, maintenance and accessibility of Interests the Register of Members' Interests; to consider any proposals made by Members or others as to the form and contents of the Register; to consider any specific complaints made in relation to the registering or declaring of interests; to consider what classes of person (if any) other than Members ought to be required to register; and to make recommendations upon these and other matters which are relevant.

(2) The committee shall consist of thirteen Members.

(3) The committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to report from time to time.

(4) The quorum of the committee shall be five.

(5) 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.

The Select Committee issued a number of reports in the 1970s in connection with the refusal of Enoch Powell to declare his interests. Mr Powell explained his refusal as follows in his letter to the Select Committee on Members' Interests as follows:- "I consider the resolution (of 22 May 1974) to be not binding upon Members, inasmuch as it purports to impose obligations which can only lawfully and constitutionally be imposed by legislation. For this reason ... I do not intend to comply"[127]. Mr Powell referred to his speech of 12 June 1975[128] where he declared his intentions clearly. The Select Committee declined to publish the Register until such time as Mr Powell should comply. Eventually it was decided that it was preferable to have a published version of the Register even in an incomplete form[129]. A handful of Members had also joined Mr Powell in his refusal to disclose interests.

The Committee in a number of reports[130] sought to persuade the House to take action to enforce the requirement to register but no action was taken against Mr Powell. In December 1986 Mr Powell explained his position in detail to the Select Committee and he lost his seat at the next General Election of June 1987.

The Powell case 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. The Select Committee of 1974/75 had argued that the House might consider a refusal to register a contempt of the House[131].

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127 Report from the Select Committee on Members' Interests 1975/76 session HC 479 Appendix 1

128 cc741-45

129 HC 616 Session 1979/80

130 HC 479 session 1975/76, 84 1976/77, 337 1979/80, 110 1986/87

131 para 37 HC 102

It was a Select Committee on the Conduct of Members which reported in 1977 on the conduct of a number of Members who had been named in the inquiries and criminal proceedings relating to Poulson and T Dan Smith. The Committee concluded unanimously that the conduct of three Members (John Cordle, Reginald Maudling and Albert Roberts) was "inconsistent with the standards which the House is entitled to expect from its Members". In each case the Member had failed to declare an interest when speaking or acting on a matter related to the Poulson businesses in which he had a pecuniary interest; Cordle had also raised a matter in Parliament for reward and this amounted to a contempt of the House[132]. The House agreed without a division to a motion moved by the Leader of the House that expressed agreement with the Committee's finding on Cordle (who had resigned before the debate) but similar motions relating to Maudling and Roberts were amended on divisions so that the House took note of the Committee's report in respect of those Members and amendments for their expulsion or suspension for six months were defeated by substantial majorities[133].

The Select Committee has received relatively few complaints since 1976, the most important being the case of John Browne MP. In May 1989 David Leigh, a journalist, lodged a formal complaint that Mr Browne had failed on a number of occasions to register, and where appropriate to declare, his pecuniary interests as required by resolution of the House. The Select Committee upheld two of the more serious complaints noting as follows[134]:

III CONCLUSION

103. We have carried out our duty to the House to the best of our ability- The Committee has no power to take action: action can only be taken by the House. Nevertheless, your Committee recommends that action should be taken and that the House should decide at an early date what action it proposes to take in the light of the serious nature of those of our findings which uphold the complaints against Mr Browne.

The report was debated on 7 March 1990[135] and is usefully summarised in the following extract from *Public Law* 1990 "Disclosure of Financial Interests by MPs and the John Browne Affair" by Michael Ryle[136]:

The committee's report was debated on March 7, 1990. In a personal statement, Mr. Browne

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132 HC 490 session 1976/77 paras 22-23, 31-33, 38

133 HC Deb 26 July 1977 cc332-460

134 HC 135 session 1989/90 First Report

135 HC Deb cc889-976

136 p.317

recognised that he had failed to register properly all his interests, and for this he apologised to the House. As far as the Saudi Arabian contract was concerned, he reaffirmed that he had not declared it because the work did not involve Parliament in any way whatever; having declared an interest in his company, he had not appreciated that the rule also applied to moneys received from clients of that company. He accepted the committee's interpretation, but said that he was not alone in having misunderstood the rules. On the matter of the fifth complaint, he insisted that his agreement with the firm concerned did not involve any parliamentary lobbying, but he now understood why the committee had found the relationship so close and he accepted its judgment.

The debate revealed a wide range of opinion on what punishment, if any, should be imposed on Mr. Browne. In the end the House rejected, by 237 votes to 67, an amendment to impose no penalty at all. It negatived without division an amendment requiring the Speaker to reprimand Mr. Browne. It rejected, by 2-54 votes to 33, an amendment calling for his resignation. An amendment to Mr. Browne from the service of the House for three months was defeated by 189 votes to 111. Finally, the House agreed, without division, to endorse the findings of the committee and to suspend Mr. Browne for 20 sitting days and also his parliamentary salary for that period. It later became known that Mr. Browne would not be seeking re-selection as the Conservative candidate for Winchester at the next general election.

Michael Ryle addressed some of the difficulties faced by the Select Committee investigating complaints[137]:

(a) Procedure for consideration of complaints

Article 9 of the Bill of Rights protects the right of the House to regulate its own proceedings, including the conduct of its members. It would substantially erode this position if adjudication of the registration or declaration of interests were to be transferred to the courts . The judgment of members who may have broken the rules of the House is best undertaken by their fellow members,, as with professional bodies, including those of the law.

If the consideration of complaints is to remain with the committee, it would be a mistake for it to attempt to copy the procedures of the courts; its members are not necessarily lawyers and certainly not neutral judges. There is also an appeal from the decision of a court. If the committee were to seek to adjudicate like a court, there would be a demand for an appeal procedure that could not easily be met.

It is, however, important that the committee should ensure natural justice for the member whose conduct is under review. It is clear that Mr. Browne and other members were not happy with the investigation procedures in his case. Here are two suggestions. First, whenever the conduct of a member is under examination, both the complainant and the member should be represented by counsel if they so wish. Secondly, it might be desirable to separate more deliberately the prosecuting and adjudicating roles of the committee. One member could be asked, with the assistance of the registrar, to lay the facts before the committee, and to lead its examination of witnesses as does the Attorney-General in the Committee of Privileges.

At the end of the Browne debate the House agreed a resolution to request the Select Committee to report further on the definition of outside interest, and the select committee procedures for investigation. Mr Browne subsequently tabled EDMs in 1991 and 1992[138] criticising the conduct of Geoffrey Howe, then Leader of the House in the events leading up to the debate and subsequently initiated a debate on his case[139].

The Select Committee produced a report in session 1991/92 in response to the resolution of

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137 pp318-19

138 EDM 1211 of 1990/91 and EDMs 121 and 542 of 1991/92

139 HC Deb 28 February 1992 cc1221-1288

7 March 1990[140]. The report reassessed the scope and value of the register in its then current form and recommended changes designed primarily to consolidate previous ad hoc rulings and to clarify the rules rather than to amend them (see above). It also recommended against any change to the complaints procedure[141].

The report was published just before the 1992 General Election, and subsequently debated on a motion for the adjournment on 23 June 1992[142]. It was finally approved in a debate on 28 June 1993[143].

The Select Committee subsequently resolved to apply the rules for the first time when preparing the next edition of the register, and that the closing date for that edition would be 31 January.

The Select Committee reminded Members in a report issued when the new style register was published in February 1994 that there was a clear administrative break between old and new registers, and that entries would not be carried over to the new register. The report[144] noted that 11 Members had not yet registered their interests. For further details see section above on Registration.

In 1992/93 the Committee published two reports which examined the conduct of individual Ministers, John Selwyn Gummer and Norman Lamont. The complaint about Norman Lamont stemmed from the payment of Mr Lamont's legal bills through Conservative Central Office in connection with the eviction of a tenant from his private residence and by an anonymous donor. This payment had not been registered, as Mr Lamont noted that he had taken the view that the payment could not be thought to affect his conduct or as a Member or to influence any actions speeches or votes in anyway (para. 6). The Committee noted that there had been no ruling since register was set up on the treatment of anonymous donations, and in the absence of a ruling Mr Lamont's interpretation was tenable.[145]

However, the Committee took the opportunity to give guidance on the future registration of anonymous benefits:

ANONYMOUS PAYMENTS, GIFTS AND BENEFITS

9. As already stated, the overriding rule of registration, and the defining purpose of the Register, is that all financial interests should be registered which might be thought to affect the Member's conduct or influence his actions, speeches or votes in Parliament. It can be argued that where a Member is ignorant of the source of a payment he cannot, by definition, be influenced by it; but although this argument may be appealing in theory, we believe that in practice Members would be unwise to rely upon it as a general rule of conduct. The Committee is of the view that anonymous donations have the potential to be more compromising to Members and more disquieting to the general public than gifts from identified sources.

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140 Registration and Declaration of Members' Interests HC 326

141 para 22

142 HC Deb cc213-234

143 HC Deb cc757-780

144 HC 219 Session 1993/94

145 HC 383 Session 1992-93

10. Prudence suggests that a Member of Parliament should not normally accept a gift or benefit proffered anonymously. If, however, after making reasonable inquiries, a Member decides that such a benefit can properly be accepted, and if the benefit is one which is otherwise covered by the House's rules of registration, then the Committee considers that the benefit should be registered in the normal way, at the time that it is received. The fundamental maxim for any Member of Parliament when deciding whether or not to register a financial interest is: "if in doubt, register, or at least consult the Registrar". That maxim, which was not followed in the particular case before us, applies to anonymous benefits as much as to any other, and if heeded, can be a protection to individual Members and to the House as a whole.

It also warned that payments to MPs through political parties should normally be registered, except for overseas visits arranged and paid for wholly by an MPs political party (para. 11). Finally, the Committee noted that Ministers were also subject to the Resolutions on Members Interests:-

MINISTERS AND THE RULES OF REGISTRATION

13. The Prime Minister's welcome decision, shortly after the election, to publish the internal Government rules which regulate the financial interests of Ministers' has served to highlight a possible area of uncertainty about the House's rules of registration. It might be argued-although it was not argued in the case immediately before us-that Ministers are not subject to the House's rules in the same way as other Members: either because the ministerial rules go beyond the House's rules and so make registration superfluous for Ministers; or because a member's conduct and actions as a Minister are in some way separate and distinct from his conduct and actions as a Member of Parliament and therefore are not covered by the definition of purpose of the Register of Members' Interests.

14. We take this opportunity to make clear that we would not accept either of these arguments as Justification for failure to record a financial interest in the Register of Members' Interests. Although the publication of the ministerial rules has for the first time provided a sound basis for public discussion of these matters, the day-to-day interpretation and application of the rules remain internal to Government and not subject to public scrutiny nor to any form of parliamentary process. The fact that many Ministers have nil entries in the Register of Members' Interests is no doubt attributable to the operation of the ministerial rules; but this does not mean that where the ministerial rules are deemed to allow a Minister to hold or accept a financial interest or benefit which is covered by the House's rules of registration, the interest or benefit should not be registered in the normal way. Ministers in the House of Commons owe their position to their membership of the House and are answerable to the House for their performance of their ministerial responsibilities. They have the same rights to speak and vote in the House as other Members, and their actions, speeches or votes might reasonably be thought to be subject to influence in the same way as those of other Members. It is neither possible nor desirable to make a clear distinction between a Minister's conduct and activities as a Minister and his conduct as a Member of Parliament. We therefore believe that Ministers are and should be subject to the House's rules for the registration of financial interests in exactly the same way and to the same extent as all other Members of the House.

In a subsequent report on a failure to register landscape work to a pond at the home of John Gummer, carried out by a private company, the Committee reiterated that Ministers were subject to the rules of the House on Registration, and that the fact that the Member had suffered a net disbenefit was not relevant:[146]

7. In a recent report the Committee set out its views on the general issue of the application to

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146 HC 469 Session 1992/93

Ministers of the rules of the House for the registration of financial Interests. Because Ministers occupy positions of power and have direct executive and decision-making responsibilities, there are particular risks for them in any activity which overlaps the border between their public duties and private interests, however worthy the motives may be in any Individual case. Strict observance of the rules of the House for registration is one important way in which those risks can be minimised.

8. The Committee believes that in accepting sponsorship of the restoration work carried out on his pond, Mr Gummer received a benefit which he should have registered under category 5 (Financial sponsorships, gifts etc) of the Register, and calls upon him now to do so.

Mr Gummer subsequently complied with the requirement to register.

Committee of Privileges

On 10 July 1994 *The Sunday Times* newspaper claimed that two MPs, Graham Riddick and David Tredinnick, had agreed to table parliamentary questions in exchange for cash. The Speaker made a statement on privilege on 12 July granting precedence to a motion to refer to the Committee of Privileges both the allegations against the MPs, and the conduct of the newspaper:[147]

Privilege of (Madam Speaker's Statement)

3.30 pm

Madam Speaker: I have a statement to make arising from a number of privilege complaints that I have received from Members based on an article which appeared in *The Sunday Times* newspaper of 10 July. My inquiries went wider than simply accepting the account of matters as given by the newspaper itself.

It is relevant to the issue that I should remind the House of a paragraph in the first report of the Select Committee on Members' Interests of the Session 1991-92, which reads as follows:

"There is a danger that some Members may make the mistake of believing that correct registration and declaration adequately discharge their public responsibilities in respect of their private interests. Such a mistake could have serious consequences both for the Member concerned and ultimately for the House. As the Speaker reminded the Committee, 'a Member must be vigilant that his actions do not tend to bring the House into disrepute' and, in particular, 'Members who hold consultancy and similar positions must ensure that they do not use their position as Members improperly'. A financial inducement to take a particular course of action in Parliament may constitute a bribe and thus be an offence against the law of Parliament".

It is because I consider that there is an urgent need to clarify the law of Parliament in that area that I am prepared to grant precedence to a motion on that complaint, and I do so without having the need to pass judgment on the particular actions of any of the several Members referred to in the newspaper article.

I now turn to the conduct of the newspaper itself. "Erskine May", at page 128, states:

"the offering to a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee or reward in connection with the promotion of ... any ... matter or thing submitted or intended to be submitted to the House ... has been treated as a breach of privilege."

This, too, is an aspect of the affair which I believe merits further examination, as well as the subsidiary matter of the clandestine recording of Members' conversations within the precincts.

If, as a result of a motion based on those issues, the matter is referred by the House to the Committee of Privileges, I should like to make it clear that the Committee will have power to inquire not only into the matter of the particular complaint, but into the facts surrounding and reasonably connected with it, and into the principles of the law and custom of privilege which are concerned. I hope that it will use that power for the assistance of the House in a difficult area.

147 HC Deb 12.7.94 cc 829-30

The Committee of Privileges is appointed for each Parliament under a standing order but has no specified terms of reference. It deals with complaints that the privileges of the House have been breached, and acts once a matter has been referred to it by a motion of the House. The following extract from Griffiths and Ryles *Parliament: Functions, Practice and Procedure* (1989) sets out the general procedures of the Committee:[148]

> After a complaint has been referred to the committee it normally takes evidence from the complainant and from those whose words or actions are complained of. It receives evidence on the relevant aspects of privilege law and the precedents from the Clerk of the House. It does not seek to act like a court of law. The precise rules of evidence as applied in a court are not applied here; counsel are not normally heard; and those whose actions are being investigated are not usually legally represented. The committee approaches its work, however, in an objective and quasi-judicial manner. Its task is simply to see how, if at all, the law of privilege applies to the case before it, to decide whether a breach or contempt has been committed, and to recommend what action, if any, should be taken. It rarely finds itself inquiring in depth into the facts of a matter, which are seldom in dispute.[88]
>
> If the Committee of Privileges finds that there has been no breach or contempt, or if it recommends that no action be taken - perhaps after an apology has been received - it has not been the practice in more recent years for the House to debate the report,[89] and the matter rests there.
>
> If however the committee finds that there has been a serious breach or contempt and recommends further action of some kind, especially the punishment of an offender, then the Government provides an opportunity to debate the Committee's report, usually on a motion in the name of the Leader of the House to agree with the committee's findings. Only the House can actually order one of the penalties described above. On occasions the House has not agreed to the committee's recommendations.[90]

The Motion was debated on 13 July[149] and duly referred to the Committee. During the debate Mr Riddick regretted his lack of judgment.[150] The membership of the Committee of Privileges was then debated on 20 July 1994.[151] There was some opposition, stemming from concern that some of the Committee's members held directorships and consultancies.[152] The Procedure Committee did not meet before the House went into recess.

In October 1994 a delay occurred in the Committee's work when Labour campaigned for the hearings of the committees to be held in public. The Committee of Privileges takes evidence and

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148 pp 97-98
149 HC Deb 13.7.94 cc 1005-1043
150 HC Deb 13.7.94 c.1026
151 HC Deb 20.7.94 c.369
152 HC Deb cc 374-75

deliberates in private but the ensuing report will normally contain transcripts of the evidence taking sessions. A Motion to require the Committee of Privileges to hear selective evidence in public was defeated on 31 October 1994.[153] However, Tony Benn, a member of the Committee, subsequently published on 1 November his own account of the proceedings of the Committee (before it had begun to take formal evidence). The Speaker then ruled that it was for the Committee of Privileges to make a report on Mr Benn's actions before the House could take a view on the matter.[154]

At the same time, the alleged action of the *Guardian* newspaper in making use of Commons notepaper to represent that a letter sent to the paper by the Ritz Hotel Paris was sent in the name of Jonathan Aitken MP was referred to the Committee of Privileges. The *Guardian* alleged that Mr Aitken, a Cabinet Minister, had not fully registered benefits in the Register of Members Interests. Madam Speaker announced on 1 November that she would allow a motion for 2 November on whether to refer the matter to the Committee[155] and the motion was presented by a Conservative backbencher, David Wilshire. The Labour Party spokesperson Ann Taylor supported the reference to the Committee and the motion was carried by 313 votes to 38.[156]

After the House returned for the new session the Privileges Committee agreed a report recommending that Mr Benn be removed from the Committee.[157]

On 12 December the House agreed a motion proposed by the Leader of the House to discharge Mr Benn from the Committee of Privileges by 181 votes to 52.[158] Ann Taylor, the Opposition spokesperson, pointed out that this was a free vote on the part of the Opposition members.[159]

The Privileges Committee report was published on 3 April 1995.[160] It concluded that the conduct of both David Tredinnick and Graham Riddick "fell below the standards which the House is entitled to expect of its Members" and therefore formally reprimanded both Members, and imposed a suspension of 10 sitting days for Mr Riddick and 20 for Mr Tredinnick without pay. A third Member, Bill Walker, was considered to have acted unwisely but did not consider a penalty appropriate. The report did not comment on the wider implications of standards of conduct for Members in view of the appointment of the Nolan Committee (para 4). However the Committee did note "whether or not it may be acceptable for Members to hold short or even one-off consultancies, for example, to give advice on a matter in which the Member has specialist knowledge and expertise together with his knowledge and experience of the workings of Parliament (a matter to which we will return) the Committee do not consider that short term consultancies which predominantly relate to participation in parliamentary proceedings can possibly be proper ... we see no sustainable distinction between a payment of £1,000 for tabling a

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153 HC Deb cc 1217-1273

154 HC Deb 2.11.94 cc 1563-4

155 HC Deb 1.11.94 c.1350

156 HC Deb 2.11.94 cc 1568-1602

157 HC Paper 1994/95

158 HC Deb 12.12.94 cc 718-44

159 HC Deb 12.12.94 c.733

160 HC 351 Session 1994/95. Complaint concerning an article in the *Sunday Times* of 10 July 1994 relating to the conduct of Members

Parliamentary Question and a consultancy for which the fee is £1,000 and the only requirement the tabling of a Parliamentary Question". The recommendations of the Committee were accepted on 20 April 1995.[161] The Privileges Committee is now expected to begin an investigation of the Paper Preston case (see above) before considering guidelines for future conduct in the light of Nolan.

Meanwhile, in October 1994 new allegations were made in the press concerning the conduct of junior Ministers, Neil Hamilton and Tim Smith. It was alleged that they had failed to declare financial benefits from Mohammed Al-Fayed, owner of Harrods department store, in the Register of Members Interests. Mr Smith and Mr Hamilton both resigned as Ministers, but Mr Hamilton began a libel action. A formal complaint was made by Liberal Democrat, Alex Carlisle MP, to the Members Interests Committee about Mr Hamilton's links with Mr Al-Fayed and the Committee began an inquiry.

This inquiry also ran into difficulties as Dale Campbell-Savours not currently a member of the Committee refused to leave private proceedings of Committee in a protest against the appointment of a Conservative Whip, Andrew Mitchell, to the Committee in July 1994. The Members Interests Committee produced a First Special Report[162] recommending the removal of his right to attend, and following a debate on the report[163] an amendment to Standing Orders was adopted, giving select committees discretion to order the withdrawal of MPs not nominated to that committee.

The Committee have not yet produced a report, and press reports indicate divisions within the Committee about the conduct of the inquiry. In particular, the *Guardian* reported divisions over the question of taking oral evidence, and the possibility of proceeding with the inquiry given libel actions initiated by Neil Hamilton and Ian Greer and Ian Greer Associates against the *Guardian.*[164]

IV The Nolan Recommendations

Background

The Nolan Committee was announced by John Major on 27th October 1994 during his statement on the conduct of public life which was prompted by allegations of impropriety made by Mohammed el Fayed and subsequently investigated by the Cabinet Secretary Sir Robin Butler. [HC Deb 758-59] Lord Justice Nolan indicated that the Committee would hold oral evidence sessions and in its briefing document Issues and Questions (December 1994) the Committee made clear that it would address questions of Members interests and the role of lobbyists.

It took extensive written evidence and held a series of oral evidence meetings in January and

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161 HC Deb 20.4.95 cc 350-384

162 HC 288 Session 1994/95

163 HC Deb 20.4.95 cc 383-408

164 "Labour feels Hamilton inquiry 'whitewash'", *Guardian*, 21.4.95

February 1995, where a number of MPs, business people, journalists and academics appeared. It reported on 11th May 1995.

Full time MPs?

The role of an MP has gradually taken on more of a full time aspect during the twentieth century. The increasing business in the Commons, the development of the Select Committee system, the increasing specialisation of professions and the growing burden of constituency work have all contributed to the phenomenon. Peter Riddell[165] has also argued that most MPs now commit themselves to politics in their youth and the Commons has become central to the ambitions of a new generation of politicians. The increasing professionalisation of politics has not been accompanied by a reconsideration of the Role of a Member, or of the level of renumeration.

Many of the MPs and ex-Ministers who gave evidence to Nolan were concerned that MPs should not become professional politicians, citing the value of outside interests and experience gained before entering the House. However the trend towards career politicians documented by Riddell seems unlikely to be reversed and Nolan can be seen as the first major attempt to address the ethical consequences since the Register of Members interests was set up in 1975.

Philip Stephens[166] has argued that MPs need to act "as paid public servants not self employed businessmen or trade union delegates. That requires a complete ban on renumerated employment or sponsorship " Stephens argues that MPs salaries should be doubled as a result.

What is meant by a 'full-time' Member? The implication of the Nolan analysis appears to be that Members should be able to pursue some activity, paid or otherwise - perhaps the continuation of their previous occupation - so long as it is does not conflict with Members' primary duty to their country and their constituents[167] or the code of conduct, including the seven general principles of public life.[168] Some people will define 'full-time' as meaning that Members should devote themselves solely and wholly to their work as Members of Parliament. If they undertake any significant outside activity or employment, they cannot be, on this definition, full-time and are therefore described as part-time. On the other hand other people will regard MPs as truly 'part-time' if they are undertaking some activity not regarded as being related to their work as Members during time when they 'could' or 'should' be working as Members.

It may be that these two points of views are really saying the same thing, if from opposite ends of the argument. Assuming that few would seriously advocate that MPs should *actively* be doing the job of an MP 24 hours a day, 7 days a week, 365 days a year, (other than the idea in the minds of some constituents, perhaps, of Members being 'on call') there must be some time periods which are Members' own 'free time' in which they, like any other members of society, may undertake activities, unremunerated or not, which may or may not have any relation to their main occupation.

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165 in **Honest Opportunism** (1993)

166 in the *Financial Times* 5/5/95 "Too deep a wound"

167 See the 'general principles' section of the draft code of conduct for MPs on p39 of the Report.

168 P14.

Therefore the issues may really be the extent of that free time, and the appropriateness of the activities, especially paid activities, that are undertaken in that time and in 'working time'.

How full-time is full-time? This cannot be answered with any authoritative certainty, as Members of Parliament do not, of course, have any sort of uniform job description setting out the range of tasks that a Member are expected to do, or the working hours in which they should be done. Constituents' views of these matters may not only vary considerably but can also be contradictory, with the advent of the televising of Parliament. They will often ask, for example, why their Members are not seen to be present in the Chamber often enough, but when they see their Members in the Chamber they may well ask why their MPs are spending so much time sitting 'doing nothing' when they should be elsewhere (committees, constituency) 'doing something'. The trend since the War is certainly that the work of an MP is not done only at Westminster, but also in the constituency, especially in the growing 'constituency welfare officer' role and regular 'surgeries'/advice services. Constituents may regard MPs to be not truly 'full-time' if they are spending a significant amount of time and effort (especially if undertaken during 'working hours', eg hours when the House is sitting) on work or other activities, paid or otherwise, regarded as unrelated to their Parliamentary duties.

This leads on to the appropriateness of such activities. Two distinct categories can be identified. One is what concerns the Nolan Report; that is, the political lobbying/consultancy/advice function; work, generally paid, directly or otherwise, related to Members' Parliamentary duties or their status as Members of Parliament, with all the access and influence in the legislative/governmental/policy networks that that position may bring. The other category is work unrelated, or not obviously related, to a Member's position as a Member of Parliament. This category may be the continuation of an occupation held prior to election to the House of Commons, or one taken up while a Member of Parliament. The latter may become a issue if the paid activity arose *directly or indirectly out of* a Member's position or celebrity, although if it is regarded as acceptable and valuable for Members to bring outside experience to Parliament, then, in principle, the converse should, for example, apply subject to the ethical principles enunciated by Nolan. Such work may be media appearances; authorship of articles or books, lecture tours and so on (although these activities could also have been part of a Member's prior occupation).

The nature of unrelated occupations, especially those often regarded by commentators as appropriate and advantageous for Members, tend, not unnaturally, to be those which can be held in conjunction with the job of an MP. Therefore the professions or forms of self-employment are usually cited, rather than occupations which may require regular attendance during set working hours, as is common in office, shop or factory work, or indeed work at home or as a carer. The Nolan Report not only wished to see Members "*from a wide variety of backgrounds"* but thought it "*desirable for the House of Commons to contain Members with a wide variety of continuing outside interests".*[169]

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[169] Para 2.20 and 2.19, emphasis added.
See also Library Research Paper 95/61 Parliamentary Pay and Allowances : The Current Rates

The Recommendations in detail

1. Parliamentary consultancies

Nolan's recommendation on MPs' connections with lobbying firms and advocacy for outside interests are dealt with in detail in Library Research Note no. 95/60 Aspects of Nolan - MPs and Lobbying. Briefly, the report highlighted the conflict between the 1947 Resolution preventing a Member from agreeing to act for a client in Parliament, (see p 4 above), and the current rules governing the Register of Members interests which require Members under Category 3 to disclose names of clients "for whom they provide services which depend essentially upon, or arise out of, Membership of the House" (See p 12 above).

The Report recommended that the 1947 Resolution be restated by the House "at an early date" (Chapter 2, para 45). Advocacy for the principal motive of payment was strongly deprecated by the Committee:

> 50. We would consider it thoroughly unsatisfactory, possibly to the extent of being a contempt of Parliament, even if not strictly bound by an agreement with a client to pursue a particular interest in Parliament, if a Member of Parliament was to pursue that interest solely or principally because payment, in cash or kind, was being made. A member who believes in a cause should be prepared to promote it without payment; equally a Member ought not to pursue a cause more forcefully than might otherwise have been the case as a result of a financial interest. We believe that such action would breach the spirit if not the letter of the 1947 resolution, and we cannot be confident that all Members are as scrupulous in this respect as some have claimed to be."

It resolved against an immediate ban on all forms of advocacy in the House by Members pursuing the interests of those with whom they hold consultant or sponsorship agreements, citing the practical difficulties involved in asking three fifths of MPs to amend their arrangements with an immediate effect on MPs' personal incomes and party funding (Chapter 2 para 51-52). Instead the Report urged Parliament to debate the issue further:[170]

> "53. We have also concluded that further thought is needed before a firm decision can be taken on whether such a ban would be appropriate and on what the consequences would be of a decision to introduce such a ban. Parliament itself needs to debate further what it considers the Law of Parliament should be in this area. Parliament also needs to consider the implications for matters such as loss of income and party funding which are outside our terms of reference. Above all it needs to establish the facts. In this context, our recommendations below that agreements and remuneration in relation to Parliamentary consultancies should be disclosed in full are crucial. There is not sufficient information at present to enable a sound judgment 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.

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[170] Chapter 2 para 53

The Report promised to review the position in a years time. But it did recommend an immediate ban on agreements committing "Members to giving Parliamentary advice for payment to multi-client lobbying organisations or to the clients of such organisations" (para 55) and also on Member's maintaining connections with firms or parts of firms providing paid Parliamentary services to multiple clients.

2. Disclosure of Interests

The Report recommended against full disclosure of assets and income. However it proposed the depositing of the full terms of agreements relating to sponsorship and consultancy, which relate to the provision of services in their capacity of Members and disclosure in the Register of the renumeration derived from such agreements, possibly in banded form.[171] Although the register would continue to be published on an annual basis, electronic means should be used to make an updated Register more widely available and to facilitate its immediate updating. Better guidance for Members and reminder of the need to register and disclose interests were also recommended.

3. Conflicts of interest

The Report noted with approval the 13th July 1992 Resolution governing the financial interests of the Chairman and Members of Select Committees[172] requiring them to stand aside from Committee proceedings relating to a particular enquiry which directly affects their pecuniary interests, or where a Member considered that a personal interest might reflect upon the work of the Committee or its subsequent Report.[173] The Nolan Committee considered that damage to the public interest hardly arose when a Member with a financial interest spoke or voted in the House, or put down a PQ or signed an EDM as long as the interest was declared. But it was concerned that the 1992 Resolution be extended to cover Standing Committees where a small group of Members could help to shape legislation (paras 84-85) especially since the Committee of Selection tends to appoint Members who have demonstrated existing interest in the subject.

4. Code of Conduct

The Committee recommended induction sessions, a code of conduct and the preparation of guidance to ensure that new Members were aware of all the rules on disclosure and conflict of interest. A draft Code, (set out in Appendix 3) sets out general principles and requirements on financial interests. The report recommended that the Code be supplemented by detailed guidance from time to time (Chapter 2 paras. 86-89). It accepted that it was for the House itself to draw up the final version of the Code.

5. Enforcement

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171 Chapter 2, para 66-70

172 See p 22 above

173 Chapter 2 para 81

The recommendation for a new office - the Parliamentary Commissioner for Standards - is likely to be seen as the most radical of the Nolan recommendations. The report considered that "proceedings related to conduct of Members in general had been carried forward on an ad hoc basis"[174] and "the public needs to see that breaches of the rules by its elected legislators are investigated as fairly, and dealt with as firmly, by Parliament in such cases as would be the case with others through the legal process." (para. 90). It considered that it would be highly desirable for self-regulation in view of the nature of Parliamentary privilege:[175]

> 91. Parliamentary Privilege is designed to ensure the proper working of Parliament, and is an essential constitutional safeguard. In the recent report on the 'cash for questions' case, the Committee of Privileges helpfully defined both its role and the concept of privilege:
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> *"It may be helpful to the wider public to describe briefly the role of this Committee. Having been directed to examine a matter by the House, our essential function is to take evidence on its behalf in order to advise Members generally on whether and to what extent there appears to have been a breach of the privileges of the House or any action amounting to a contempt and to make recommendations to the House. It is for the House in all cases to take the final decision. Partly through precedent and partly by statute the House has over the years obtained certain rights known as 'Privileges". Their purpose is not to protect individual Members of Parliament but to provide the necessary framework in which the House in its corporate capacity and its Members as individuals can fulfil their responsibilities to the citizens whom they represent. Parliament defends its privileges by the law of contempt".*
>
> 92. One of the consequences of privilege is therefore that the House of Commons regulates the activities of its Members itself. Where Parliamentary business is concerned, they are answerable to the House and not to the Courts. Because Parliamentary privilege is important for reasons entirely unconnected with the standards of conduct of individual Members of Parliament, we believe that it would be highly desirable for self-regulation to continue.

But the Nolan report deprecated instances where Resolutions of the House had not been accepted by individual Members, and argued that the House of Commons needed to develop a culture in which Resolutions were automatically regarded as binding on Members (paras. 93-98). Its conclusions were as follows:[176]

> 99. We consider that this can best be taken forward by combining a significant independent element with a system which remains essentially self-regulating. We believe that this should be done by appointing an officer of the House, called the Parliamentary Commissioner for Standards, to take responsibility for advising Members on, and playing an independent role in the enforcement of, the House's rules in respect of Members' conduct. If the House accepts our recommendation that a Code of Conduct should be drawn up, the Commissioner would take on the task of advising on that and producing guidance. We believe this would be helpful to Members themselves. Ann Taylor MP told us:
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> *'It really is remarkable how, when Members of Parliament are first elected, they don't actually get a guide to the House of Commons which tells them the rules: just as there is no job description of a Member of Parliament, there is no set of rules which you are given once you arrive and by which you must abide.'*

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174 Chapter 2 para. 90

175 para 91-92

176 paras. 99-104

100. Mrs Taylor accepted the need for an element of independence in enforcement, as did a number of other witnesses, including Lord Howe and Roy Hattersley MP. Professor Sir William Wade, the leading constitutional lawyer, wrote to us as follows:

> *'The question is how breaches ... should be adjudicated. Traditionally the House bas been jealous of its privilege of self-regulation, but some Members have now proposed that there should be an independent element so as to eliminate political bias. In.my opinion that would be a very desirable step. It would add to the reputation of the House and be well worth the surrender of privilege. Comparison might be made with election petitions, which until 1868 were decided by the House itself, but after that date were transferred to election courts manned by High Court judges, much to the benefit of justice.'*

101. We do not believe it is necessary to rehearse in detail the weaknesses of the present arrangements, but Lord Callaghan, John MacGregor MP (a former Leader of the House) and Sir Geoffrey Johnson Smith MP (Chairman of the Committee on Members' Interests) all commented on this. John MacGregor said:

> *'I have become concerned about the extent to which the Select Committee on Members' Interests is asked to be judge and jury, working out the evidence and so on. The procedures of the Select Committee, may not be appropriate where there are serious issues affecting a Member's total career ... For example, a Member is not entitled to question witnesses who are putting the case against him. I therefore feel that there is a case for having outside involvement in a Select Committee when it is dealing with such matters.'*

102. We consider that our proposals to appoint an independent Commissioner and to overhaul the entire disciplinary procedure for Members should be sufficient to achieve the necessary detachment without recourse to the courts or indeed any surrender of privilege. The recommendations set out below should enable Members to secure a fair, thorough and expeditious hearing without removing the jurisdiction of the House of Commons. We should say, however, that among others John Biffen MP (a former Leader of the House), Lord Blake and Professor Dawn Oliver have told us in effect that such procedures should be put on to a statutory basis. If adopted, the test of whether our recommendations are sufficient, or further change is needed, will be their operation in practice.

103. There is one area of conduct where a need already exists to clarify, and perhaps alter, the boundary between the courts and Parliament. Bribery of a Member, or the acceptance of a bribe by a Member, is contempt of Parliament and can be punished by the House. The test which the House would apply for bribery would no doubt be similar to that which would apply under Common Law. However it is quite likely that Members of Parliament who accepted bribes in connection with their Parliamentary duties would be committing Common Law offences which could be tried by the courts. Doubt exists as to whether the courts or Parliament have jurisdiction in such cases.

104. The Salmon Commission in 1976 recommended that such doubt should be resolved by legislation, but this has not been acted upon. We believe that it would be unsatisfactory to leave this issue outstanding when other aspects of the law of Parliament relating to conduct are being clarified. **We recommend that the Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament**. This could usefully be combined with the consolidation of the statute law on bribery which Salmon also recommended, which the government accepted, but which has not been done. This might be a task which the Law Commission could take forward.

The report recommended the following procedure for the investigation of complaints:[177]

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[177] para 104

On procedure we recommend:

- **the House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards**. The Commissioner would take over responsibility for maintaining the Register of Members' Interests; advising on the code of conduct and questions of propriety; have responsibility for preparing guidance and providing induction sessions for new Members on matters of conduct, propriety and ethics, and have responsibility for receiving complaints about and investigating the conduct of Members in this area. **The Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the Comptroller and Auditor General and the Parliamentary Commissioner for Administration**.

- **the Commissioner should have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation**. An investigation by the Commissioner would be conducted in private. Following an investigation the Commissioner would again have discretion either to dismiss a complaint, to find it proved and agree a remedy with the Member concerned, or to find a case to answer and refer the complaint to a Committee of the House. The Commissioner would be expected to publish the reasons for dismissing a case after investigation, the finding and remedy agreed when it was being taken no further, and the report to the Committee when a case was being taken further;

- **the Commissioner should be able to send for persons, papers and records,and will therefore need to be supported by the authority of a Select Committee with the necessary powers**. To give the powers personally to the Commissioner would require primary legislation, and we do not believe that to be necessary at this stage; there has been hitherto considerable uncertainty about the respective roles of the Select Committee on Members' Interests and the Committee of Privileges in enforcing the rules in this area. We consider that a sub-committee of the Committee of Privileges, consisting of up to seven very senior Members, would be the best body to take forward individual cases recommended by the Commissioner for further consideration. We recommend that such a sub-committee should be established. The enlarged responsibilities envisaged for the Commissioner might make it possible for the Select Committee on Members' interests to be dispensed with altogether, with any residual functions being transferred to the Committee of Privileges with its sub-committee. But this is a matter for the House to determine;

- **in view of the fact that there would be a prima facie case to investigate, we recommend that hearings of the proposed sub-committee should normally be in public. We also recommend that the sub-committee should be able to call on the assistance of specialist advisers and that a Member who so wishes should be able to be accompanied by advisers before the sub-committee**. The arrangements should be such as to enable all concerned to see that the rules of natural justice are being applied. We recommend that the sub-committee should be given discretion to enable an adviser to act as the Members' representative at hearings. In exercising this discretion, it would be appropriate for the sub-committee to follow these principles set out in Halsbury:

  'Factors which ought to be taken into account in exercising the discretion include the seriousness of any allegations made or any potential penalty, whether any points of law are likely to arise, the capacity of the particular individual to present his or her own case, whether it will be necessary to cross-examine witnesses whose evidence bas not been disclosed in advance, any potential delay, and the need for fairness as between all persons who may appear'

- Where a formal penalty is thought to be appropriate, we commend the practice adopted in the recent Privileges Committee report on 'cash for questions' for a specific recommendation to that effect to be included in the sub-committee's report;

- an advantage of establishing a Commissioner and a sub-committee to deal with conduct cases would be that minor cases could be handled with maximum despatch and minimum fuss. **As the sub-committee would report to the full Privileges Committee this would have the practical effect of giving the Member a right of appeal to that Committee. Only the most**

serious cases should need to be considered by the whole House. We believe that it should not be necessary for the House formally to endorse every adverse finding by the Privileges Committee, although it might be appropriate in certain cases for a Member to make a personal statement of regret. More severe penalties, involving suspension and possible loss of salary (in practice the equivalent of a fine) would continue to require the authority of the whole House.

Reactions to the proposals

The recommendations on Parliamentary consultancies were discussed in Library Research Paper no. 95/60 Aspects of Nolan - MPs and Lobbying. Some commentators doubt whether it is possible to make a distinction between advocacy and advice in such consultancies and others doubt whether the distinction is worth making.

The proposals to improve disclosure are likely to raise some concerns about the financial privacy of Members, since the requirement to deposit the terms of sponsorship or consultancy agreements together with at least a banded indication of their value, will represent an considerable intrusion not hitherto contemplated by the House. There may be more support for depositing agreements than for disclosing the level of renumeration. Very little evidence is available on the value of fees to Members, although Andrew Gifford, a leading Parliamentary consultant, said on Radio 4's Today[178] that an examination of a Register would indicate that fees of £2-3 million were currently being paid to MPs. The fact that such contracts will be open to public inspection might be likely to have a deterrent effect on their use. The attempt made once more by Nolan to require Members to declare interests in PQs is likely to face the same practical difficulties as before.[179]

With regard to conflicts of interests, the Nolan Committee has commended the recent initiatives of the Members Interests Select Committee on developing conflict of interest rules for Members of Select Committees, and recommends some extension to standing committees.[180] It is not clear how the Committee of Selection can modify its practices on selecting Members for standing Committee to guard against the instance quoted by Nolan of the Cable Bill Standing Committee[181] where several of the Members had disclosed financial interests. New procedures for the Committee of Selection may have to await a consideration by the House of the parliamentary consultancy issue.

Codes of conduct are becoming a common method of addressing ethical issues in politics and

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178 11/5/95

179 see p.21 above

180 see Terence Higgins oral evidence on the effectiveness of the Select Committee Rules Q 921 oral evidence.

181 see evidence from Adam Raphael (p.935 Cn 2850 - II)

business. Under the Local Government and Housing Act 1989 and approved by Resolution of both Houses a code of conduct for local councillors to which they must subscribe as a condition of serving on a local authority. The Canadian Conflict of Interest and Post - Employment Code for Public Office Holders is described in Appendix Two. Elsewhere in the report the Nolan Committee recommended a code of conduct for Ministers drawn from the Cabinet Office document Questions of Procedure for Ministers, and a code of practice for Public Appointment procedures. The proposed code for Members (at Appendix Three) is unlikely to stir controversy, but there may be more interest in proposals to offer or require induction courses for new Members. At present MPs receive very little guidance in their role as MPs, although the introduction of the Registry guide on Rules on the Registration and Declaration of Financial Interests in October 1993 has begun the process. Maureen Mancuso[182] found that on many important issues there was stark dissensus among MPs about what constituted acceptable behaviour.

The enforcement proposals raised by Nolan may meet some opposition. The Prime Minister John Major said in a parliamentary answer that the Nolan recommendations addressed to the House were "of course a matter for the House itself to consider".[183] The Report did not favour statutory regulation of the House or the intervention of the judiciary as has occurred in a number of other countries (see Appendix 2) The Committee considered that the need to protect Parliamentary privilege, for reasons largely unconnected with the standards of conduct of individual members,[184] meant that self- regulation was highly desirable. Some influential constitutional specialists prefer statute[185] and the report is careful not to rule this option out forever. The proposed Parliamentary Commissioner for Standards is closely modelled on the position of the Comptroller and Auditor general, but it is not clear whether the Commissioner would have staff attached to his office as is the case with the C and AG. It is worth noting that it was the relatively recent 1983 National Audit Act which made the C and AG an Officer of the House and ensured that he was appointed by the Crown, following an address by the House of Commons moved by the Prime Minister with the consent of the Chairman of the PAC. At the time a constitutional innovation, the new status of the C and AG has won general acceptance.[186] Similarly, when the office of Parliamentary Commissioner for Administration was created in 1967 critics were concerned about this constitutional innovation, but most MPs now support the Ombudsman system.[187] Dawn Oliver however considered that the C and AG and the Ombudsman were monitoring the government whereas a Standards Commissioner would be monitoring the House and yet would be a servant of the House - an ambiguous role.[188]

Nevertheless, the introduction of an independent element of investigation and enforcement is likely to raise concerns that the authority of the House is being eroded. In his oral evidence to Nolan Tony Newton, Leader of the House, said that he was not quite sure what independent assessors could bring to the kind of judgement inherently to be made by MPs sitting in judgement on their

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182 in *Parliamentary Affairs* April 1993 "Ethical Attitudes of British MPs"

183 HC Deb 11/5/95 c 544W

184 see Michael Ryle's comments on Article 9 of the Bill of Rights 1688 p.27 above

185 see in particular oral evidence by Dawn Oliver in Cm 2850 - II

186 See the oral evidence given by Sir John Bourn. C and AG to Nolan Cm 2850-II)

187 see oral evidence given by Tony Wright MP p 485 Cm 8520-II

188 Q 2311 Cm 2850-II

peers.[189] The Nolan proposals do not fully spell out the detail of the relationship between the Commissioner and the proposed sub committee of the Privileges Committee. The inference is however that it would be for the sub-committee to take up an investigation and recommend penalties where appropriate. On the other hand the Report's recommendations are unlikely to satisfy critics who consider that self-regulation should be ended altogether.[190]

The new procedures offering public hearings for the Privileges sub-Committee, and advisors (presumably lawyers) to accompany MPs at hearings are likely to receive a general welcome. Current procedures came under critical scrutiny at the time of the John Browne case (see above p.27), and the concurrent hearings of the Privileges Committee into the cash for questions case and the Members Interest Select Committee into the Neil Hamilton case have highlighted areas of overlap.

Finally, there is one area where Nolan does recommend legislation On the bribery of Members, as the Attorney General's evidence to the Privileges Committee[191] sets out, doubt exists as to whether this is already an offence at common law, but at present it is not a statutory offence. The Salmon commission of 1976[192] recommended bringing corruption, bribery and attempted bribery of an MP acting in his Parliamentary capacity within the ambit of the criminal law (para 311) No Government has yet implemented this recommendation, nor accompanying recommendations on the improvements to the Prevention of Corruption Acts 1889-1916. Nolan has now taken up these Salmon recommendations.

John Biffen[193] has argued that decisions on the Nolan recommendations should be made in the current Parliament. Overall he welcomed the recommendations with some reservations about the practicality of the Parliamentary Commission for Standards. He feared that the enforcement aspects would be unlikely to command general respect from those working in Parliament.

Other press comment[194] suggests that the Nolan proposals were a typically British compromise. The Commissioner would publish his reports, but enforcement would be left to the House under existing constitutional arrangements.

Peter Riddell[195] noted that the challenge to self - regulation could not have occurred if the general standing of the MPs and the Commons had not declined, and that the proposals for an independent element "from a Committee including three former Cabinet ministers of impeccable mainstream

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189 oral evidence Q 872 Cm 2850

190 see Dawn Olivers' oral evidence the development of Parliamentary privilege p 497 Cm 2850

191 HC 51 session 1994/95 Appendix 5

192 Royal Commission of Standards of Conduct in Public life Cmnd 6524

193 in *Guardian* 12/5/95 "Look - nothing up my sleaze"

194 *Financial Times* 12/5/95 "Hard hitting proposals defy the cynics"

195 *The Times* 12/5/95 "Does the Commons still count?"

credentials, as well as a former Clerk of the Commons of conservative instincts, are a devastating verdict on past regulation. They are an implicit admission that the Commons Privileges and Members Interests committees have failed to maintain confidence. Hence the need for Nolan's new regulatory framework".

Patrick Dunleavy and Stuart Weir present findings from the Rowntree Reform Trust on the 'State of the Nation'[196] indicating that only 7% of voters believe that self-regulation by MPs worked well, and only 19% thought that enforcement should be left to MPs without involving the police, courts or any outside bodies. 38% favoured the statutory regulation of the conduct of MPs.

196 in *Observer* 14/5/95 "Public wants the law set on MPs"

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Appendix 1

Councillors' and Ministers' Interests

Comparisons are often made between the requirements for Members to register and declare interests and the requirements for members of local authorities. The procedure for dealing with Ministers' interests is also used for comparative purposes.

The 1991/92 Select Committee report[197] noted as follows:

(Please refer to hard copy)

[197] HC 326 paras 12-15

(Please refer to hard copy)

Nolan agreed with the Select Committees Comments that the position of Members was not entirely analogous with Ministers or local councillors (chapter 2 para. 82)

Local authority councillors are subject to the Local Authorities (Members' Interests) Regulations 1992 SI no 618 made under s.19 of the Local Government and Housing Act 1989. These require councillors of a county, district or London borough in England and Wales, and regional, island or district in Scotland to declare their direct and indirect pecuniary interests for the purposes of a register of councillors' interests. The information which the councillor must give is set out in the Schedule to the Regulations:

(Please refer to hard copy)

Rather more detail is required from councillors in a number of areas than applies to Members of Parliament - for example specification of addresses of land owned, name of individual sponsors. There is no standard form for all authorities, but each bases its form on the prescribed information in the Schedule, DOE Circular 9/92 "Pecuniary Interests of Members of Local Authorities" sets out standard guidance notes to enable councillors to complete the register. The register must be open to public inspection. Councillors must keep the information on the register up to date, and any councillor who fails without reasonable excuse to comply with the requirements of the regulations is guilty of an offence[198]. The Widdicombe Committee on the conduct of local authority business recommended a register of all interests, pecuniary or otherwise, but the Government decided that it would be unreasonable to require councillors to list non pecuniary interests. Under s.19(5) of the 1989 Act councillors cannot be obliged to disclose interests other than authorised by statute.

Ss.94-97 of the Local Government Act 1972 requires councillors who are present at the meeting of an authority where they have any pecuniary interest, direct or indirect, in any matter under consideration, to declare that interest. (A councillor may, however, submit a general notice of common pecuniary interest which absolves him of the requirement to make a declaration at each meeting). Originally the DoE planned to make registration of an interest count as an adequate declaration of the interest[199]. However, when the 1992 Regulations were published, the wording did not absolve councillors from making an oral declaration at each meeting, and the DoE Circular 16/92 noted that "the registering of a pecuniary interest does not affect the existing provisions on declarations of interests"[200]. The continuing dispensation under s.96 of the 1976 Act allows councillors to submit common pecuniary interest so that they do not have to declare, for example, local authority tenancy at each meeting.

Where such an interest exists councillors must not speak or vote on the matter without a dispensation from the Secretary of State. There is no statutory requirement to leave the meeting, although a council may require this under its standing orders. Failure to observe these requirements means the councillor is guilty of an offence and is liable on conviction to a fine not exceeding £2,500 in a magistrates' court[201]. Non pecuniary interests are not the object of these statutory requirements but they are nevertheless covered by the National Code of Local Government Conduct issued under s.31 of the Local Government and Housing Act 1989 and contained in DoE Circular 8/90. The Code notes:

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198 1989 Act s.19(2)

199 Appendix 6 of 1991/92 Select Committee Report Memo submitted by DoE para 3

200 para 38

201 1972 Act s.94

(Please refer to hard copy)

In paragraph 12(a) a public body means a nationalised industry, the National Trust or the governing body of a university, college or school[202]. The Code does allow for a councillor to decide that the work of the council requires their participation but the Code states[203] that the councillor should state his reason for so doing. The Code may also be supplemented by a council's own standing orders.

Councillors are required upon accepting office to declare that they will be guided by the Code[204]. The Code itself has been approved by resolutions of both Houses of Parliament. In carrying out an investigation the local ombudsman may find that a breach of the Code by any individual member of an authority constitutes maladministration.

Danger Zones 1992 for Councillors by Tim Harrison provides a guide to the issues, and discusses recent cases.

Ministers

The rules for Ministers are currently set out in *Questions of Procedure for Ministers*[205]. The section on Ministers' Interests is set out in full:

(Please refer to hard copy)

202 1972 Act s.98(2)
203 para 18
204 1989 Act s.31
205 Cabinet Office 1992

(Please refer to hard copy for the next 6 pages)

Rules governing the treatment of Ministers' interests are long-standing; they were first codified in a speech by Asquith on the Marconi affair in 1913[206]. They were reformulated and elaborated in guidance issued by Winston Churchill in February 1952[207]. Full background is given in 1991/92 Select Committee on Members' Interests Report[208].

Nolan has recommended that a free-standing Code of Conduct for Ministers be drawn out from the Questions of Procedure for Ministers and a system similar to the Civil Service business appointment rules be applied to Ministers who leave the Government on Business Appointments for civil servants. Further detail on these aspects of the Nolan recommendations will be given in a forthcoming Library Research Paper.

206 HC Deb 19 June 1913 cc55-68

207 HC Deb 25 February 1952 c702-3

208 HC 326 Minutes of Evidence pp40-41

Appendix 2

The Overseas Context

Most EC states have some form of registration of interests of MPs. Only a minority however have a register open for public inspection (Italy, the Netherlands and some aspects in Germany and Denmark). In some countries the rules are very detailed, and include a copy of the most recent tax return (for example in Greece and Italy). A European Parliament document prepared for the Committee on the rules of procedure, the verification of credentials and immunities summarises the rules for each EC state.[209]

Only Germany (like the UK) has an additional requirement on MPs to declare an interest during debate. A Code of Conduct applies to Members of the Bundestag, and Article 6 requires that "any Member who professionally or in exchange for a fee, is concerned with a matter under deliberation in a Bundestag Committee must, if he or she is a member of that committee, disclose his or her interests in advance of the deliberations" except where such interests are already clear from the written declarations previously made. The Swedish rules require Members to absent themselves from committees which are discussing matters relating to himself or a person with whom he has close personal links.

The sanctions often consist of public disclosure of an infringement (eg in the Bundestag the President publishes a special report) or specific legal penalties such as loss of seat, imprisonment or fines (Italy, Portugal, Greece, France).

In the Netherlands an MP's parliamentary allowance is reduced by pre-established steps, according to the amount by which his income from other interests exceeds a certain annual ceiling. In Sweden MPs may take part in other remunerated activities, but if these continue for more than 1 month the MP may lose entitlement to parliamentary allowances for the period in question. The Register for Members of the European Parliament is available for inspection but not for publication.

In the Commonwealth countries registers of Members' and Ministers' interests have become increasingly common. The various models are detailed in a Commonwealth Secretariat publication[210]. Australia's lower House has a register established by Resolution of the House, but most are creatures of legislation. Canada has the most developed system of registration which

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209 24.3.85 PE 212.403

applies to federal and provincial legislatures, and Ministers and public officials.

Some Commonwealth countries have adopted general rules of conduct for Ministers and Members, others restrict codes to Ministers , and few codes for Members go beyond general reminders of accepted and assumed standards. However the Leadership Code of Papua New Guinea which is administered by an Ombudsman Commission has attracted some attention. Virtually all senior figures in public life, their spouses and their children have to submit a full financial statement annually, and are prohibited from engaging in any paid employment other than their official employment.[211]

[210] *Conflict of Interest: A Commonwealth Study of Members of Parliament* by Gerard Carney, December 1992

[211] Further details are given in a submission to the Nolan Committee by Roy Gregory and Philip Giddings, Reading Centre for Ombudsman Studies, December 1994

Canada also has a Conflict of Interest and Post-Employment Code for Public Office Holders (including MPs). This Code was first tabled by the Prime Minister in September 1985, and is summarised below in an extract from *Conflict of Interest in Canada:*[212]

The Code provides for two sets of compliance measures: category A public office holders, who are subject to the more stringent requirements, and category B public office holders. Category A public office holders include Ministers of the Crown, Parliamentary Secretaries, full-time Governor-in-Council appointees and designated senior members of ministerial exempt staff. Category B public office holders include members of ministerial exempt staff who have not been designated as Category A, and any employee of a department for whom the Treasury Board represents the government as the employer.

The *Conflict of Interest and Post-Employment Code for Public Office Holders* requires every public office holder to conform to nine principles:

a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced

b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law

c) public office holders shall not have private interests, other than those permitted pursuant to the Code, that would be affected particularly or significantly by government actions in which they participate

d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest

e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder

f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person

g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public

h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities, and

i) public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Compliance with the *Conflict of Interest and Post-Employment Code for Public Office Holders* is mandatory for Cabinet Ministers, Parliamentary Secretaries, full-time Governor-in-Council appointees and ministerial exempt staff. The Office of the Assistant Deputy Registrar General of Canada (ADRG), charged by the Prime Minister in 1974 with overseeing earlier conflict of interest guidelines, currently administers the Code as it applies to these public office holders.

A requirement of the Code is that every public office holder provide the Office of the ADRG with a written Confidential Report of all assets, liabilities and outside activities.

All assets must be reported, with the exception of certain exempt items such as those intended for personal or recreational use, and fixed-income investments. Assets other than exempt items are considered to be of two kinds: declarable or controlled. Declarable assets are those that are not likely to give rise to a conflict of interest situation, and include, for example, ownership interests in family businesses and farms under commercial operation; a public declaration of them is made available in a Public Registry maintained by the ADRG. Controlled assets include publicly traded securities, futures, commodities and foreign currencies held for speculative purposes. All controlled assets must be divested, either by outright sale or by the establishment of a trust agreement.

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[212] *Conflict of Interest in Canada,* Office of the Assistant Deputy Registrar General 1990, pp 3-4

In addition the Criminal Code of Canada also subjects all Canadians to provisions on corruption and bribery. Article 119 of the Code provides for 14 years imprisonment for a Parliamentarian who accepts or who attempts to obtain any form of valuable consideration for doing or omitting to do anything in his or her official capacity. The Parliament of Canada Act contains several conflict of interest prohibitions concerning Senators and MPs. It prohibits Members from receiving outside compensation for services rendered on any matter before the House, the Senate or their committees. A revised Code was published in 1994, with some minor changes.

Canada is still considering further refinements of its legislation on conflicts of interest.[213] However a number of Bills introduced in 1993 and 1994 to regulate conflict of interests were not successful. These would have set up an independent Conflict of Interests Commission to advise Members and conduct inquiries in response to allegations. Imposition of a penalty on a MP would however have remained with Parliament.

Following the change of Government in 1993 the new Liberal Government appointed an ethics advisor and in June 1994 announced a new office of Ethics Counsellor to advise Minister and public servants on their ethical responsibilities and to examine the need for legislation. In the past few years, a number of countries have seen an increasing interest in the ethical dimension of politics, prompted mainly by a succession of scandals.

In France, for example, a new law[214] has set up a Committee on Financial Transparency in Politics composed of senior judges. This Committee now receives a list of interests to be declared, and acts as part of the enforcement mechanism together with the Constitutional Council.[215]

In Ireland an Ethics in Public Office Bill was introduced in May 1994 which would provide for the disclosure of interests of people holding public office or employment (including MPs). It also provides for an independent commission under select committees in each House to oversee its key provisions. The Comptroller and Auditor General, the Ombudsman, the Clerk of the Dail and the Seanad form part of the membership of the Commission which will also investigate complaints against Ministers and civil servants amongst other public office holders. It amends and updates the Prevention of Corruption Acts 1889-1916 (which apply in the Republic) to apply them fully to office holders. The Bill is currently awaiting its report stage in the Dail.

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213 Library of Parliament Research Branch,*Conflict of Interest Rules for Federal Legislatures*, 13.1.95

214 Law No 95-126 of 8 February 1995

215 Further detail is given in a *European Parliament document prepared for the Committee on the Rules of Procedure, the Verification of Credentials and Immunities*, 24.3.95 DOC EN/CM/268/268837

A number of countries have introduced Codes of Conduct for MPs and Ministers. The German Bundestag has a Code of Conduct which forms part of its rules of procedure. The code requires registration and disclosure of interests, separate accounts of donations made available for his political activities, and the procedure for investigations amongst other items.

Appendix 3

(Please refer to hard copy)

Related Research Papers include

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