



The new Code of Conduct for Members

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The Standards and Privileges Committee have issued a new version of the *Code of Conduct for Members and Guide to the Rules*, following a review undertaken by the Parliamentary Commissioner for Standards, Sir Philip Mawer. The original Code was established following a motion on 24 July 1996. This implemented recommendations from the (Nolan) Committee on Standards in Public Life in 1995. Substantial changes were made to the Guide following the Ninth Report from the Committee on 14 May 2002, but the only change to the Code was to clarify its application to the public lives of Members, not private lives. The new Code is the first complete redraft since its establishment. There are three motions tabled for debate on 13 July 2005 by the Leader of the House to implement most changes recommended by the Committee.

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A. Background

Research Paper 01/102 *Parliamentary Standards* sets out the history of the establishment of the post of Parliamentary Commissioner for Standards (PCS) in 1995 and the Code of Conduct in 1996. It also traces the history of various investigations by the PCS. The creation of the Code was prompted by the first report of the (Nolan) Committee on Standards in Public Life in 1995, which believed that such codes were more effective if the institutions to which they applied were responsible for drafting and implementation:

We recommend that the House should draw up a Code of Conduct setting out the broad principles which should guide the conduct of Members, and that this should be restated in every new Parliament.¹

The Nolan recommendations were refined by a specially constituted select committee in June 1995 - the Select Committee on Standards in Public Life - to consider the detailed implementation of the Nolan proposals.² The House debated and approved these recommendations on 19 July 1995 and 6 November 1995. The Code of Conduct for Members was approved on 24 July 1996 by the House and was published as HC 688 1995-96.³ The accompanying Guide to the Rules give detailed advice on the parliamentary resolutions governing registration and declaration of interests, and of the rule prohibiting paid advocacy.

It should be noted that the Code and the accompanying enforcement machinery of the Parliamentary Commissioner for Standards and the Standards and Privileges Committee have been created using standing orders. In contrast the Scottish Parliament has a Commissioner and Committee established by statute and failures to register an interest constitute a criminal offence.⁴ Parliamentary privilege continues to form the basis of standards regulation in the Commons.

In the 1997-2001 Parliament there were a number of investigations into breaches of the Code, involving some discussion as to its proper interpretation. In particular, concerns were raised about the operation of the rule against Members acting as a paid advocate, against Members acting in their private capacity, and its use in relation to the misuse of allowances. The Committee on Standards in Public Life expressed its own concerns in relation to the prohibition of advocacy in its report *Reinforcing Standards* in 2000.⁵

¹ Cm 2850 1995

² See HC Library Research Paper 95/109 *Aspects of Nolan :the proposals for Parliament*

³ The text of the resolutions are reproduced in *The Code of Conduct together with the Guide to the Rules relating to the Conduct of Members* 2002 HC 841 2001-02

⁴ Scottish Parliamentary Standards Commissioner Act 2002. See the website of the Standards and Public Appointments Committee at <http://www.scottish.parliament.uk/business/committees/standards/index.htm>

⁵ Cm 4557 January 2000

Following the prolonged period of discussion and consultation, on 30 April 2002 a draft New Code of Conduct for Members and its accompanying Guide to the Rules, were published by the Standards and Privileges Committee, its Ninth Report⁶ It states in its introduction:

Our intentions are to simplify and to clarify the rules, and where practicable to align them more closely with the requirements of the Electoral Commission.

We recognise that there will always be room for argument about precisely where the line should be drawn between those interests which have to be registered and those which do not, and that any decision must to some extent be arbitrary. We believe the changes we are recommending after careful consideration are changes for the better and strike an appropriate balance between the competing considerations of privacy and openness about interests which might be thought to influence a Member's actions. We propose to keep them under review.

We also describe the procedure we have instituted which enables Members to rectify minor or inadvertent failures to register or declare interests.⁷

The new Code makes a clear distinction under the heading *Purpose of the Code*:

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

These are the first set of major changes to the Code since it was adopted in July 1996. The report's recommendations were approved by resolution of the House on 14 May 2002. The following is a summary of changes agreed in 2002:

- ❖ A new threshold of 1% of the current parliamentary salary below which interests would not be registrable
- ❖ The same level would apply to a directorship, remunerated office or employment
- ❖ Sponsorship ('Category 4' donations) by unions, companies, trade associations etc, offered to a member or the constituency association should be declarable over £1000 Government, local authority, or devolved assembly hospitality is not to be registrable. This change was designed to align the Code with requirements in the *Political Parties, Elections and Referendum Act 2000 (PPERA)* for Members to register political donations with the Electoral Commission⁸
- ❖ Shareholdings to be registrable only if over 15% of the issued share capital or greater in value than the current parliamentary salary
- ❖ Employment agreements (e.g. for offering advice on parliamentary matters) need not be deposited if fees amount to less than 1% of parliamentary salary

Standards and Privileges Select Committee *A New Code of Conduct and Guide to the Rules Report* HC 763 30 April 2002

⁷ Ninth Report, HC 763, April 2002, 2001-02

⁸ However, the registration of benefits available to all Members are not registrable under the Code

- ❖ Media work related to parliamentary affairs should be declared as remunerated employment in bands of £5000, rather than as employment agreements,
- ❖ New guidelines on the advocacy (renamed lobbying for reward or consideration) rule, which restricted its operation to cases where a Member might benefit exclusively
- ❖ Minor infractions to be allowed to be corrected (“Rectification”); instances to be reported briefly to the Committee

Full details of the changes are in Standard Note 1816 *New Code of Conduct for Members and Guide to the Rules*.

The Committee on Standards in Public Life, chaired by Sir Nigel Wicks, began an investigation of the operation of the regulation of standards in the Commons in December 2001. This followed the decision of the House of Commons Commission not to automatically re-appoint the then Commissioner, Elizabeth Filkin, to the post. The Committee reported in November 2002.⁹ It made a series of recommendations including:

- a periodic review of the Code;
- strengthening of the position of the Commissioner;
- the strengthening of the position of the Committee on Standards and Privileges, with a new investigatory panel chaired by an independent legal chair from outside the House;
- new rules to balance party membership of the Committee, with an Opposition chairman and a ban on any PPS serving on the Committee
- clarification of the role and conditions of employment, and increase in the powers of, the Commissioner.
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The report alluded to the possibility of a system of statutory regulation, but concluded that the case for such a radical change had not yet been made:

Such fundamental change could include putting the system for regulating standards of conduct in the House on a statutory basis and introducing external members into the decision-making process. However we are of the view that alternative methods of strengthening the current system are preferable at this stage.’

The Standards and Privileges Committee published its observations on the Wicks Committee recommendations in February 2003.¹⁰ The House of Commons Commission also published a response.¹¹ Although the parliamentary committee accepted several recommendations, including on the composition of itself as a committee, it had strong reservations as to an investigatory panel. It also considered that the Wicks proposals to create a fully independent

⁹ Cm 5663

¹⁰ HC 403 2002-3

¹¹ HC 422 2002-3

Commissioner were unworkable without a statutory basis. These have been long standing areas of divergence with recommendations from the Committee on Standards in Public Life.¹² The full Wicks recommendations in these areas remain unimplemented, although changes were made to lengthen the term of the Commissioner's appointment to 5 years and to restrict the grounds for his dismissal. The Standards and Privileges Committee recommended the creation of ad hoc tribunals for appeals, but this procedure has not yet been used. The changes to SO 150 recommended by the Standards and Privileges Committee were debated and agreed by the Commons on 26 June 2003.

The PCS's first annual report for 2002-3 noted a decline in the number of complaints received by his office. The number of letters of complaints to the Commissioner fell from 137 in 2000-01, to 118 in 2001-02 and 67 in 2002-03.¹³ However, the second annual report noted a rise in 2003-4, with 152 letters of complaint received. The first report also noted new initiatives, such as the production of series of procedural notes, available on the internet at http://www.parliament.uk/about_commons/pcfsguidancenotes.cfm

B. The review of the Code

The Wicks Committee recommended that the Code be reviewed by the Commissioner in each Parliament (R1) and the new Commissioner, Sir Philip Mawer, announced a review in 2003, but this was delayed due to a complex investigation.¹⁴ He issued a consultation paper in July 2004 identifying key issues to which 27 responses were received. Sir Philip produced a series of recommendations to the Standards and Privileges Committee. The principal recommendations were:

- Addition of provisions to make clearer the purpose and scope of the Code
- New statements of Members duties in respect of the PCS and the Committee, requiring cooperation with investigations and prohibiting lobbying of members of the Committee. These changes were recommended by the Wicks Committee in its 2003 report.
- Extension of existing provisions relating to misuse of parliamentary allowances to misuse of facilities and services provided by the House

This last recommendation is likely to have most impact on the operation of the regulation of parliamentary standards. When the Code was first established in 1996, the misuse of allowances was not seen as a major area for investigation. However, the importance of allegations in this area have grown, as illustrated by the investigation into allegations against the former Conservative leader, Sir Iain Duncan Smith, conducted by the PCS in 2003.

¹² For a full history see O Gay *Conduct Unbecoming: The Regulation of Parliamentary Behaviour*, Chapter 4, 2004

¹³ PCS Annual Report 2002-3, section 4 at <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmstand/905/90506.htm>

¹⁴ See PCS Annual Report 2003-4 at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmstand/716/716.pdf>

The Committee issued a new draft Code and recommended that a new House consider the Code within three months of its first meeting. It attached the proposed new Code to its report, which also included the memorandum from the PCS..¹⁵

C. Recommendations on facilities and allowances of the House

The consultation paper issued by Sir Philip noted that while the Code prohibited improper use of allowances, there was no such prohibition on the misuse of Commons facilities, such as stationery or computer equipments. Such breaches were dealt with under rules laid down by the Speaker and administered by the Serjeant at Arms. The Commissioner proposed the following solution in his memorandum to the Committee:

63. Bearing in mind all the preceding points, I suggest that it would be sensible to address this issue in the following way. First, abuse of publicly provided facilities should be clearly brought within the scope of the Code by an appropriate amendment to the penultimate general principle of conduct. Secondly, in respect of complaints falling under this amended principle (which would embrace both financial and facilities or services issues) the Commissioner should be given discretion to remit minor complaints of misuse to the Serjeant at Arms (in respect of facilities) or the Director of Finance (in respect of financial allowances) for them to investigate and resolve. There is a precedent for giving the Commissioner discretion of this sort in relation to a particular category of complaint in the provision embodied in Standing Order No. 150 (3) which reads:

"No report shall be made by the Commissioner if, in any case where the Member concerned has agreed that he has failed to register or declare an interest, it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose."

The Commissioner would similarly exercise any discretion he was given in respect of financial or facilities misuse cases within a published framework laid down by the Committee, which would include a financial threshold below which such complaints would be formally referred to the Serjeant or Director of Finance, as appropriate, for disposal.

The Committee supported this recommendation in paras 15-17 of its report. It went on to consider the possibility of creating a 'level playing field' in this area between the treatment of complaints directly to the Commissioner and action taken when House authorities uncover cases of misuse, noting as follows:

19. At present, complaints accepted for investigation by the Commissioner, whatever their nature and the sums or issues involved, attract the full panoply of the Code, an investigation by the Commissioner and (unless they fall within the limited category of

¹⁵ Fourth Report *Review of the Code of Conduct* HC 472 2004-5
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmstnprv/472/47205.htm>

complaints for which the rectification procedure is appropriate) the prospect of a public adjudication by the Committee and action against the Member by the House. On the other hand, any case of misuse of facilities or allowances coming to the attention of the House authorities direct is resolved privately by negotiation between the relevant House officials and the Member concerned, the only sanction in practice being repayment of sums inappropriately claimed or reimbursement of the cost of resources improperly used.

Sir Philip also recommended that the House consider whether there should be a reverse obligation on the Director of Finance and the Serjeant to refer significant cases of deliberate misuse to the Commissioner to investigate. The Committee agreed with this recommendation, noting that ‘the introduction of a mechanism whereby departments of the House took the initiative in referring matters to the Commissioner might have implications for Members’ relationships with these departments’. (para 21). It recommended the introduction of guidelines, which it would draft should the House agree to implementation. The Committee recognised that this recommendation might well be considered independently of a general resolution to amend the Code. Motions to implement this part of the Committee’s recommendations have not been tabled for 13 July 2005.

D. Other recommendations for changes to the Code

The Committee on Standards in Public Life and the Standards Board for England argued in favour of a new Code principle of accessibility to constituents, modelled on the provisions of the Code of Conduct for Members of the Scottish Parliament. The Commissioner considered that importing into the Code provisions on the accessibility of Members to their constituents would be unhelpful, arguing that the House and unelected Commissioner should be wary of intruding into the relationship between individual Members and their constituents.¹⁶

The Commissioner also concluded that his jurisdiction should not be extended to include investigations of allegations that a Member had lied to or seriously misled the House. Such an extension would lead to problems of overlapping jurisdiction between the Speaker and the Commissioner. He recommended that Members’ conduct in the chamber and in committees should continue to be regulated by the Chair and that the Code should not be amended to bring within its scope alleged serious failures by Members to observe security requirements of the House.

The Committee made one amendment to the recommendations of the PCS. The Commissioner had recommended against a specific requirement on Members to observe equal opportunities principles:

56. The question whether the House would wish to include an equal opportunities provision in the Code on the lines proposed by the Standards Board for England is, I suggest, a matter for the judgement of Members, largely as to whether such a

¹⁶ para 25-27

provision would have a symbolic significance which would justify its inclusion. Should discrimination be picked out for particular treatment in this way? I doubt whether it would make any difference in practice in terms either of the expectations on Members or of their behaviour, since they are already required to avoid discrimination under the general law. Like the Clerk of the House, I am wary of blurring the line of responsibility for enforcing these matters, which at present rests clearly on the courts. On balance, I would therefore make no change on this point.¹⁷

The Committee decided that an additional principle would have merit:

11. We recognise, as did the Commissioner, that the arguments for and against the inclusion of such a provision are finely balanced. We consider, though, that inclusion of a provision committing Members to upholding their legal obligations in relation to equality would, at the least, be of considerable symbolic significance in reaffirming to all citizens the commitment of this House to ensuring that they are treated equally under the law. It would also reflect current best practice.

12. We have therefore amended the Commissioner's draft by adding to the principle about the public duty of Members to uphold the law (a duty which has always been in the Code) the words, "including the general law against discrimination". We are satisfied that, in the terms in which we have expressed this commitment to equality, it should neither impose additional burdens on Members, nor draw the Commissioner into areas where it will be difficult to demonstrate objectively the truth or otherwise of complaints.

Finally, Sir Philip recommended that the Speaker have discretion to refer alleged serious breaches of the House's rules on matters other than the Code for investigation and adjudication by the Commissioner who would report to the Committee on Standards in Public Life. Commentators have noted that in cases of investigations of breach of privilege or contempt of the House, (such as leaks of select committee reports) the Committee's methods of investigation and adjudication may not be considered to meet principles of natural justice.¹⁸ The PCS recommended:

79. I make this suggestion not out of any desire to widen the reach of the Committee and the Commissioner but because it is possible to conceive of circumstances in which serious breaches of the House's rules which quite properly would not fall within the ambit of the Code could nonetheless best be addressed by deploying the investigatory and adjudicatory expertise accumulated by, respectively, the office of the Commissioner and the Committee, with all the safeguards the procedures agreed by the House for investigations under the Code provide for an accused Member. A development of this sort would not require amendment of the Code. If agreed to, it might be considered sensible to amend Standing Orders Nos 149 and 150 so as to

¹⁷ *Review of the Code of Conduct for Members: Results of the Consultation Exercise and Proposals for Change* in HC 472 2004-5

¹⁸ See Gavin Drewry and Dawn Oliver in Chapter 5 of *Conduct Unbecoming: The Regulation of Parliamentary Behaviour* 2004

include such references by the Speaker formally in the duties of the Committee and the Commissioner.

Recommendation 16

Mr Speaker should have discretion to refer any serious breach of the House's rules falling outside the Code to the Commissioner and the Committee on Standards and Privileges for investigation and adjudication, if he thinks this would be in the best interests of the House.

E. The motions for debate on 13 July 2005-

Various relevant motions are due for debate on 13 July. These are:

- Motion to take note of Standards and Privileges Committee report and approve the new Code
- Motion to amend SO no 150 to provide a simplified procedure for dealing with allegations of misuse of House services, allowances or facilities
- Motion to amend SO no 149, to reduce the size of the Committee to 10 and to drop requirements for a sub-committee

An Explanatory Memorandum from the Leader in the House is available in the Vote Office.¹⁹

The first motion has been discussed in full above. The second motion reflects the recommendations in the Standards and Privileges Committee report, as explained in the *Explanatory Memorandum*:

Sub-paragraph (b) introduces a new simplified procedure for dealing with some cases of misuse of parliamentary allowances, or of facilities or services (to which the new Code extends the Commissioner's jurisdiction). It reflects the recommendations in paragraphs 15 and 17 of the Fourth Report of the Committee on Standards and Privileges. With the agreement of the Member concerned, the Commissioner will be able to exercise discretion to refer such cases to the relevant Officer of the House to secure appropriate reimbursement and, provided this process is completed on a timescale the Commissioner considers reasonable, that would dispose of the matter.

This separate motion gives the House an opportunity to debate the new arrangements for the Commissioner to refer alleged misuse of parliamentary allowances, facilities or services to the relevant department of the House.

The third motion reduces the size of the Committee to 10, in line with recommendations from the Committee on Standards in Public Life in 2002 that that no one party should hold an overall majority on the Committee. The composition of the Committee underwent

¹⁹ *Explanatory Memorandum on the Motions standing on the Order Paper in the name of the Leader of the House: Standards and Privileges, Parliamentary Commissioner for Standards, Committee on Standards and Privileges July 2005*

modification in the last Parliament, so that by May 2004 in practice only 10 Members formed the Committee.

The third motion also abolishes the initial requirement in SO no 149 for the Committee to have a sub-committee in order to receive reports of investigations from the Parliamentary Commissioner for Standards. This sub-committee reflected a recommendation from the Committee on Standards in Public Life in its first report for a means of hearing appeals, but in fact has never been appointed.²⁰ As noted above, the Standards and Privileges Committee has recommended the use of ad hoc tribunals for appeals.

A motion to take note of the recommendation in the Standards and Privileges Committee in paras 19-21 of its report for the Director of Finance and Serjeant at Arms and other relevant House authorities to have an obligation to refer alleged misuses of allowances and services to the Commissioner for Parliamentary Standards has not been tabled for debate on 13 July 2005.

F. Text of the motions

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STANDARDS AND PRIVILEGES

Mr Geoffrey Hoon

That this House takes note of the Fourth Report of the Committee on Standards and Privileges, Session 2004-05 (House of Commons Paper No. 472), and approves the revised Code of Conduct set out in the Annex to the Report.

An Explanatory Memorandum is available in the Vote Office.

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PARLIAMENTARY COMMISSIONER FOR STANDARDS

Mr Geoffrey Hoon

That Standing Order No. 150 (Parliamentary Commissioner for Standards) be amended by leaving out paragraph (3) and inserting the following—

'(3) No report shall be made by the Commissioner:

(a) in any case where the Member concerned has agreed that he has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken

²⁰ First Report Cm 2850 1995

such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose; and

(b) in any case involving parliamentary allowances, or the use of facilities or services, if the Commissioner has with the agreement of the Member concerned referred the matter to the relevant Officer of the House for the purpose of securing appropriate financial reimbursement, and the Member has made such reimbursement within such period of time as the Commissioner considers reasonable.'

An Explanatory Memorandum is available in the Vote Office.

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COMMITTEE ON STANDARDS AND PRIVILEGES

Mr Geoffrey Hoon

That Standing Order No. 149 (Committee on Standards and Privileges) be amended as follows—

(a) by leaving out 'eleven' in line 24 and inserting 'ten'; and

(b) by leaving out from 'committee;' in line 33 to the end of line 35.

An Explanatory Memorandum is available in the Vote Office.