



Regulation of standards of conduct in the House of Lords

Standard Note: SN/PC/04950

Last updated: 7 April 2010

Author: Oonagh Gay

Section Parliament and Constitution Centre

This Note sets out the new procedures to be used in the House of Lords to investigate allegations of misconduct against peers, which replace the system in operation since 2002. The changes are based on the report of the (Eames) Leader's Group which recommended reforms to the Code of Conduct and the appointment of an independent House of Lords Commissioner for Standards. The report was debated in the Lords on 30 November 2009, and its recommendations accepted on all party basis. Detailed guidance was then drawn up and accepted on 16 March 2010. The new Code and Guide come into force when the new Parliament meets in May 2010.

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1 Background

The Committee on Standards in Public Life reported on standards in the House of Lords in 2000. The report can be accessed online.¹ The report recommended:

- The introduction of a Code of Conduct for peers
- Mandatory registration of peers' relevant interests
- A review of induction arrangements to provide more guidance for new peers
- An appointment, where appropriate, of an ad hoc independent investigator to assist the Sub-committee on Lords Interests, in cases involving an allegation of serious misconduct.

The Lords established a committee under Lord Williams of Mostyn, then Leader of the House. This committee recommended a Code of Conduct and mandatory registration of interests, although there was some dissension about the proposed lists of financial and non financial interests.² The House accepted the Williams proposals by a small margin on 2 July 2001³ and a Code of Conduct, incorporating the rules on registration came into effect in the Lords on 31 March 2002. The Code is available online.⁴ A full list of Members' interests can be found in the Register of Lords' Interests.⁵

The Code stated as follows in relation to advice and enforcement:

Advice

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

Enforcement of the Code of Conduct

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

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

(b) If the complainant chooses to pursue the matter, he or she should refer the allegation in private directly to the Sub-Committee on Lords' Interests, through its chairman.

(c) The Sub-Committee will then examine the allegation and may decide to investigate it further or to dismiss it.

¹ *Standards of Conduct in the House of Lords* Cm 4903
http://www.publicstandards.org.uk/OurWork/Seventh_report.html

² For background see Patricia Leopold "Standards of Conduct in the House of Lords" in *Conduct Unbecoming: The Regulation of Parliamentary Behaviour* eds Oonagh Gay and Patricia Leopold (2004)

³ For procedural reasons a motion consequential on the 2 July resolution was accepted by the House on 24 July 2001

⁴ <http://www.publications.parliament.uk/pa/ld/ldcond/ldcond.htm>

⁵ <http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

(d) In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies.

(e) If after investigation the Sub-Committee finds the allegation proved, the Member complained against has a right of appeal to the Committee for Privileges.

(f) The conclusions of the Sub-Committee and of the Committee for Privileges are reported to the House.

There continued to be a very low level of complaints about the conduct of Members of the Lords. The operation of the Register is maintained under the authority of the Clerk of the Parliaments who appoints a Registrar. Further information about the Register is contained in a House of Lords Briefing Note, published in 2005.⁶

Each House of Parliament regulates the conduct of its own Members, as an aspect of parliamentary privilege.⁷ Each House can therefore discipline its own Members. However, options in the Lords are limited since peers do not receive a salary. There has been some debate as to the powers of the Lords to suspend its Members.

The Joint Committee on Parliamentary Privilege had concluded in 1999:

279. Accordingly, the Joint Committee **recommends** that the House of Commons should have power to fine members and that the power of the House of Lords to fine should be confirmed. We expect the occasions calling for the exercise of the power to fine by either House will be few and far between. As regards imprisonment of members, we believe this extreme form of punishment is no longer needed or appropriate in either House. We also **recommend** that the power of the House of Lords to suspend its members should be clarified and confirmed. The House of Commons has power to suspend its members, and it would be anomalous and undesirable if this were not the position in the House of Lords...⁸

However, the recommendations from the Joint Committee for legislation to clarify parliamentary privilege were not enacted.

As detailed below, Baroness Royall of Blaisdon, then Leader of the House of Lords, asked the Committee for Privileges to consider two wider questions in January 2009; namely the interpretation of the rules in relation to consultancy arrangements and the power of the House to make sanctions against its Members. The Committee's report contrasted evidence from the Attorney General to the effect that the House did not have power to enforce temporary suspension, with evidence from one of its members, Lord Mackay of Clashfern, the former Lord Chancellor that it did. The Committee concluded:

8. We have carefully considered the advice of the Attorney General and Lord Mackay of Clashfern. We are unanimously in agreement with the advice of Lord Mackay, and accordingly invite the House to agree the following conclusions:

- The House possesses, and has possessed since before the 1705 resolution, an inherent power to discipline its Members; the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures.

⁶ *The Register of Lords Interests* <http://www.parliament.uk/documents/upload/HofLBpRegister.pdf>

⁷ See Library Standard Note 4905 *Parliamentary Privilege and Individual Members* for more detail

⁸ HL Paper 43-I HC 214 1998-99

- The duty imposed upon Members, by virtue of the writs of summons, to attend Parliament, is subject to various implied conditions, which are reflected in the many rules governing the conduct of Members which have been adopted over time by the House.
- The House has no power, by resolution, to require that the writ of summons be withheld from a Member otherwise entitled to receive it; as a result, it is not within the power of the House by resolution to expel a Member permanently.
- The House does possess the power to suspend its Members for a defined period not longer than the remainder of the current Parliament.

9. The procedure for imposing a suspension should in due course be set out in a new Standing Order; the wording of the Standing Order would be a matter for the Procedure Committee. However, we emphasise that the function of Standing Orders is not to confer new powers, but to describe the rules and procedures governing the use of existing powers; the lack of a Standing Order does not prevent the House from exercising its existing power to suspend its Members in the interim.⁹

An Act of Parliament is necessary to expel a peer and the last examples were in 1919, where two peers were deprived of their writs of summons as a result of supporting “the King’s enemies” during the First World War.¹⁰ Proposals were made in the *Constitutional Reform and Governance Bill* 2009-10 to allow Standing Orders in the Lords to expel or suspend its members.¹¹

2 Recommendations from the Lords Committee on Privileges

The regulation of standards was reviewed by the Committee on Privileges, which published a report in November 2008.¹² This noted:

3...Complaints against Members of the House of Lords have always been rare; indeed, the first formal complaint was only received in 2004. However, in recent years both the number of complaints and the level of media interest in them have risen. As a result, we decided in July 2008 that the time had come for the general principles set out in the Code to be supplemented by more detailed guidance. This would for the first time give Members of the House, potential complainants, and the general public, a clear and accessible source of information on the procedures that will be followed in dealing with complaints, the rights of those most closely affected, and the range of possible outcomes.

4. We therefore appointed a Working Group, chaired by the Chairman of Committees, and including the Leaders of the main parties and the Convenor of the Crossbench peers, to look into the issues in more detail, and report back with recommendations. We considered the Working Group’s report, which is annexed to this Report, on 25 November. **We endorse the Group’s report and its conclusions, and recommend them to the House.**¹³

5. In light of the Working Group’s report, we further recommend that the procedure described below be adopted for dealing with all complaints against Members of the House of breaches of the Code of Conduct. If our Report is agreed, the procedure will

⁹ HL Paper 87 2008-09

¹⁰ *Titles Deprivation Act 1917* See fn 5 in *Erskine May* (23rd ed) p49

¹¹ Clause 55 of HL Bill 40 2009-10

¹² Fourth Report *The Code of Conduct: Procedure for considering complaints against Members* HL 2005

¹³ *Ibid*

come into force on 1 January 2009. It should also be reprinted in future editions of the *Companion to the Standing Orders*, and summaries should be published on the Internet and hard copies made available on request.

6. Finally, we recommend that the new procedure should be kept under review by the Sub-Committee on Lords' Interests, and in particular that the Sub-Committee should conduct a formal review not more than two years after its coming into force, and report its conclusions, and any proposals for change, to the Committee for Privileges.

The 4th report was debated on 18 December 2008, together with the 2nd and 3rd report which involved the declaration of future interests. The former chairman of the Sub-committee, Lord Woolf, commented:

Lord Woolf: My Lords, as a former chairman of the sub-committee involved in these matters, I can confirm that there were real difficulties in deciding how to conduct an investigation into a complaint under the old provisions, which it is proposed to replace. There is great difficulty in finding a suitable way of combining the traditions of this House with the conventional and contemporary approach to dealing with complaints of this sort. In the circumstances, the working party has done a good job in trying to deal with the need to find a compromise and avoiding possible conflicts between the traditions of the House and having an open and transparent system for investigating complaints. I acknowledge the work that the Officers of the House have put in to this task and express my gratitude to them for consulting me about any suggestions I could make and trying, in so far as it was appropriate, to accommodate my views.¹⁴

The new procedures to be used were set out in the 4th report. The Members of the Sub-committee on Members' Interests were appointed on 19 January 2009 and are available from the Lords website. The Sub-committee was chaired by Baroness Prashar.¹⁵

3 Lobbying allegations

On 25 January 2009 the *Sunday Times* published allegations against four peers and called for tighter regulation in the House of Lords.¹⁶ The Leader of the Lords, Baroness Royall of Blaisdon, issued a statement noting that she had spoken to the peers and the allegations were being pursued with utmost vigour. She referred the matter to the Sub-committee.¹⁷

She had also asked the Chairman of the Committee for Privileges, Lord Brabazon of Tara, to consider any issues relating to the rules of the House that arise, especially in connection with consultancy arrangements, and in connection with sanctions in the event that a complaint is upheld".¹⁸

In a series of supplementary questions, Baroness Royall of Blaisdon was asked to consider extending the remit of Lord Brabazon of Tara's review:

Baroness Amos: My Lords, has the committee been asked to review the code of conduct in its entirety? It is very important that our rules are absolutely crystal clear. I also commend my noble friend for acting so swiftly, and agree with those who have said that it is important that we await the outcome of any review.

¹⁴ HL Deb 18 December 2008 c915

¹⁵ http://www.parliament.uk/parliamentary_committees/lords_privileges_comm/lords_privileges_comm_members.cfm

¹⁶ "Revealed: Labour lords change rules for cash" 25 January 2009 *Sunday Times*
<http://www.timesonline.co.uk/tol/news/politics/article5581547.ece>

¹⁷ "Pressure mounts over peer claims" 26 January 2009 *BBC News*

¹⁸ HL Deb 26 January 2009 c10

Baroness Royall of Blaisdon: My Lords, I am grateful for the comments from my noble friend. I have not asked the chairman of the Committee for Privileges to review the code of conduct in its entirety, but I will take up the issue. The views expressed in the House today have shown that that is what the House as a whole would wish to happen..¹⁹

The exchanges were widely reported in the press on 27 January 2009. Some press coverage suggested that the House of Lords would amend its internal procedures.²⁰ Baroness Royall of Blaisdon provided a further update on the inquiries she had initiated on 11 February 2009:

House of Lords: Conduct of Members

The Lord President of the Council (Baroness Royall of Blaisdon): My Lords, on 29 January, I made an announcement to the House informing Members of a number of issues in relation to allegations originally made earlier that week by the media about certain Members of this House. I undertook then to keep the House informed of any developments in relation to the allegations. I am now in a position to do so.

It may be helpful to update the House on developments on the referrals which have been made to the police in relation to these and other allegations. I informed the House in my earlier Statement that the Metropolitan Police Service had received a request to consider investigating whether an offence had been committed by certain Members of this House. I told the House that police had considered this request and had decided to review the relevant material to assist them in deciding whether it would be appropriate to carry out an investigation. The police subsequently received a second and similar request from the same source, a Member of the other place, in respect of certain other Members of this House. I have met the Metropolitan Police further on this matter and they have now informed me of their decision not to take their inquiries further. The police will therefore not mount an investigation into these issues or into any Members of this House in relation to the allegations originally made by the *Sunday Times* newspaper. The police have also considered the issues in relation to other Members of this House which were referred to them by the original complainant. They have decided not to take further any inquiries in relation to the second referral. In both cases, however, the police are making clear that should any further evidence or information become known, they will of course have a duty to review their decision.²¹

The police's decision not to take inquiries further was reported in the press, for example:

- "Police shy away from peers inquiry for fear of 'a wild goose chase'"²²
- "'Lobbygate' lords escape police charges",²³
- "Police rule out Lords probe";²⁴ and
- "Police rule out prosecutions over 'peers-for-hire' claims: Lib Dems challenge Met's decision to drop case Scotland Yard acted after receiving official advice".²⁵

¹⁹ HL Deb 26 January 2009 cc13-14

²⁰ Rosa Prince, "Disgraced peers may be expelled in tougher House rules", *Daily Telegraph*, 27 January 2009

²¹ HC Deb 11 February 2009 cc1120-1121

²² Sean O'Neill, "Police shy away from peers inquiry for fear of 'a wild goose chase'", *Times*, 12 February 2009

²³ Andrew Grice, "'Lobbygate' lords escape police charges", *Independent*, 12 February 2009

²⁴ Jimmy Burns, "Police rule out Lords probe", *Financial Times*, 12 February 2009

²⁵ David Hencke, "Police rule out prosecutions over 'peers-for-hire' claims: Lib Dems challenge Met's decision to drop case Scotland Yard acted after receiving official advice", *Guardian*, 12 February 2009

4 The findings of the Committee for Privileges on the four peers

Two reports were issued by the Committee for Privileges on 14 May 2009, one dealing with the conduct of the individual peers and one on the powers of the House of Lords in respect of its Members.²⁶

The report on the four peers explained that the Committee had followed the procedures set out in the 4th report of 2007-08 and in particular it had been guided by para 35 which stated that the Committee would not normally re-open the sub-committee's investigation, but rather decide on the balance of probabilities whether they endorsed the conclusions of the sub-committee. Lord Snape, Lord Truscott and Lord Taylor of Blackburn submitted written appeals to the Committee and Lord Snape also gave oral evidence.

The sub-committee of the Committee for Privileges had found that in relation to **Lord Moonie**, "Therefore, on the standards of proof which we have set, we do not find that Lord Moonie expressed a clear willingness to breach the Code by promoting amendments on behalf of lobbyists in return for payment." The Committee endorsed these findings, but in view of "unwise" comments to journalist invited Lord Moonie to make a personal apology to the House.

The sub-committee found in relation to **Lord Snape** that "he expressed a clear willingness to breach the Code of Conduct" and that he expressed "clear willingness to exercise parliamentary influence". The former finding was upheld by the Committee, but on the latter, it disagreed with the findings of the sub-committee and upheld Lord Snape's appeal. However as a result of the "inappropriate attitudes to the rules governing the conduct of Members" the Committee invited him to make a personal apology to the House.

The sub-committee said in relation to **Lord Truscott**

197. The evidence against Lord Truscott is so clear and so plentiful that we have little doubt that Lord Truscott was advertising his power and willingness to influence Parliament in return for a substantial financial inducement. We conclude that Lord Truscott expressed willingness to breach the Code of Conduct's prohibition on paid advocacy, and failed to act on his personal honour, as required by paragraphs 4(c) and 4(b) of the Code.

The Committee agreed with the sub-committee on their findings.

The sub-committee found in relation to **Lord Taylor of Blackburn**:

281. We conclude that Lord Taylor's conversations with the journalists display his clear willingness to breach the Code of Conduct by engaging in paid advocacy, and by failing to act on his personal honour, as required by paragraphs 4(c) and 4(b) of the Code.

The Committee upheld this finding:

87. Lord Taylor's defence is full of internal contradictions. It acknowledges his tendency to "ramble" and describes him as "easily confused", but explains his more outrageous or incriminating comments by asserting that they were an attempt to "flush out" the fraudulent lobbyists. His appeal seeks to divert attention from the shortcomings of his defence, and his own reluctance to co-operate fully with the

²⁶ HL Papers 87 and 88-I 2008-09

investigation, by casting the blame on the alleged bias or unfairness of the Sub-Committee's Members and staff.

88. We acknowledge that significant influence should normally be accorded to sworn evidence in a Statutory Declaration. But the content of Lord Taylor's Declaration is inherently so implausible that we do not find ourselves able to attach much weight to it, particularly when it is set alongside the strength of the evidence to be found so abundantly in the transcripts of his meetings with the undercover journalists.

89. We therefore uphold the finding of the Sub-Committee that Lord Taylor of Blackburn, in his conversations with the undercover journalists, failed to act on his personal honour, in breach of paragraph 4(b) of the Code of Conduct.²⁷

The Committee concluded that the House be invited to agree that Lord Truscott and Lord Taylor of Blackburn should be suspended until the end of the current session of Parliament.

5 Allegations in relation to peers' allowances

Members of the House of Lords receive allowances, but the scheme is not so comprehensive as for the Commons. There are subsistence allowances at a daily and overnight rate, as well as an accommodation maintenance allowance for a second home. A guide to the allowances is published on the intranet by the House authorities.²⁸

On 11 June 2009, the Chairman of Committees, Lord Brabazon of Tara, announced that there would be an external review of Lords allowances: by the Senior Salaries Review Body.²⁹ The SSRB report was published on 25 November 2009 and is discussed in an accompanying Standard Note.³⁰ The changes were agreed and are due to come into effect in the new 2010 Parliament, but the House Committee did not manage to agree a detailed scheme before the end of the 2009-10 session. Instead, it issued its [third report](#) in March 2010 which proposed tightening of the rules on the principal residence from the start of the new Parliament, including a signed declaration from each peer.³¹

Following an investigation by the *Sunday Times*, a number of investigations of allegations against peers were undertaken by the Clerk of the Parliaments.³² On 5 May 2009, Baroness Royall, the Leader of the House of Commons, issued a written statement:

The Lord President of the Council (Baroness Royall of Blaisdon): On Sunday 3 May allegations were made in the media regarding the expenses claims of a Member of the House. The Clerk of the Parliaments, as Accounting Officer, will carry out an initial investigation of the allegations and will report his findings to committees of the House as appropriate.

General issues relating to Members' expenses have been under consideration for some time by the House authorities, and are already on the agenda for the next meeting of the House Committee on 19 May.³³

²⁷ HL Paper 88-I 2008-09

²⁸ *Members Reimbursement Scheme General Guide Eighth Edition April 2009*
<http://www.publications.parliament.uk/pa/ld200809/ldpeers/ldpeers.pdf>

²⁹ HL Deb 11 Jun 2009 : cWS49

³⁰ *Review of financial support for Members of the House of Lords* Cm 7746 November 2009. Standard Note 5246 *Financial Support for Members of the House of Lords*

³¹ *Financial Support for Members of the House* HL 89 2009-10

³² "Baroness claims expenses for mother's home" 7 June 2009 *Sunday Times*

³³ HL Deb 5 May 2009 c49WS

Subsequently Lord Clarke of Hampstead made a personal statement to the House:

Lord Clarke of Hampstead: My Lords, with the leave of the House, I would like to make a personal statement. Your Lordships may have read in the press reports of an interview between me and a journalist relating to expenses claimed. Those reports are not accurate in every respect. However, I accept that my conduct may have fallen short of the high standard that this House demands of its Members. I tender my humble apologies to the House. I have asked the Clerk of the Parliaments, as accounting officer, to investigate these issues, and I will of course co-operate fully with that and any other inquiries. Again, I humbly apologise.³⁴

On 22 October, the *Times* reported that the Clerk of the Parliaments, Michael Pownall, had written to say that allegations of misuse of allowances against Lord Rennard had been dismissed, partly because no definition of a main address existed for the purposes of the allowances scheme. The *Times* also reported that allegations against three peers had been passed to the police.³⁵ A letter from Mr Pownall was made available on the parliamentary website:

In view of the assurances by Lord Rennard about the change in his circumstances and the time he spends in Eastbourne, and in the absence of any definition of 'main address' in the current guidance to the House of Lords' Members Expenses Scheme, I have come to the conclusion that I should not uphold the complaint."

It may be helpful to point out that the Senior Salaries Review Body is currently undertaking a review of the whole system of financial support for Members, and in June of this year they were asked by the House of Lords' House Committee to consider the need for possible definitions of main residence.³⁶

On 5 February 2010 the Director Public Prosecutions announced that there was insufficient evidence to prosecute Lord Clarke of Hampstead.³⁷ On 31 March 2010 the Committee for Privileges issued its report on Lord Clarke of Hampstead.³⁸ This noted:

5. We emphasise that the current Code of Conduct does not extend to Members' use of the Scheme. This is clear from the 4th report of 2007-08, already cited, which established that such matters do not, save in exceptional circumstances, fall within the remit of the Sub-Committee on Lords' Interests, and that they are the responsibility of the Clerk of the Parliaments, as Accounting Officer. This will change when the House's new Code of Conduct comes into force at the start of the new Parliament. Paragraph 10 of the new Code states that Members should "act in accordance with any rules agreed by the House in respect of financial support for Members".

The Committee however concluded that the House did possess the relevant disciplinary powers:

6. Even though alleged misuse of the Scheme does not fall within the present Code of Conduct, there can be no doubt that the rules governing the Scheme, having been agreed by resolution of the House, are binding upon Members. In the present case, the Sub-Committee has found that Lord Clarke breached the rule set out in the resolution

³⁴ HL Deb 3 June 2009 c98

³⁵ "Peers facing expenses inquiries to be cleared after House ruling" 22 October 2009 *Times*

³⁶ Complaint against Lord Rennard 19 October 2009

<http://www.parliament.uk/documents/upload/ComplaintAgainstLordRennard091019.pdf>

³⁷ "Lord Clarke of Hampstead not charged over expenses" 5 February 2010 *Guardian*

³⁸ *The Conduct of Lord Clarke of Hampstead* HL 112 2009-10

of the House which entitles Members only to claim in respect of "expenses incurred in staying overnight away from their only or main residence".

7. The House resolved on 20 May 2009 that it "possesses ... an inherent power to discipline its Members; the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures." The House further resolved that "The duty imposed upon Members, by virtue of the writs of summons, to attend Parliament, is subject to various implied conditions, which are reflected in the many rules governing the conduct of Members which have been adopted over time by the House."^[2]

8. Thus the House's resolution of 20 May 2009 was not limited to breaches of the Code of Conduct. The House affirmed its inherent power to discipline any Member guilty of clear and flagrant breaches of the rules adopted over time by the House. The rules governing the Scheme have been adopted by resolution of the House, and are binding upon all Members of the House who make use of the Scheme. **We therefore conclude that the House possesses the same disciplinary powers in respect of breaches of the Members' Reimbursement Scheme as in respect of breaches of the Code of Conduct or of other rules of conduct adopted by the House.**

The report upheld the Sub-Committee's conclusions, and found that Lord Clarke of Hampstead breached the rules governing the Members' Reimbursement Scheme, in claiming night subsistence for nights that he did not spend in London. He had already repaid £9,190 and made another personal statement, as required, to the House on 6 April 2010.³⁹

6 The Eames (Leader's Group) report October 2009

Baroness Royall announced the formation of a Leader's Group to consider the Code of Conduct and related matters on 21 May 2009:

The Lord President of the Council (Baroness Royall of Blaisdon): My Lords, following yesterday's agreement to the reports of the Committee for Privileges, I have undertaken to inform the House of the next steps in relation to the code of conduct. Today, I have set up a Leader's Group with the terms of reference as follows: to consider the code of conduct and the rules relating to Members' interests and to make recommendations. I am delighted to say that the noble and right reverend Lord, Lord Eames, has agreed to chair the group. The other members will be my noble friend Lady Jay of Paddington, the noble Baroness, Lady Hamwee, the noble Lords, Lord Kingsland and Lord MacGregor of Pulham Market, and my noble friend Lord Hart of Chilton.

The group expects to meet during the first week of June, immediately after the Whitsun Recess, with a view to reporting back to me before the end of the current Session. I will take any findings to the Committee for Privileges and it will ultimately be for the House to approve any recommendations. Once the House has implemented such recommendations, in due course I would look for them to be administered by the proposed independent parliamentary regulator, to which I alerted the House yesterday.⁴⁰

Lord Eames was appointed the Chairman of the Group, which had the following membership:

Baroness Hamwee

³⁹ HL Deb 6 April 2010 c1366

⁴⁰ HC Deb 21 May 2009 c1435

Lord Hart of Chilton

Baroness Jay of Paddington

Lord Kingsland (deceased 12 July 2009)

Lord MacGregor of Pulham Market

The Group wrote to all peers to ask for submissions from peers on the Code of Conduct by 26 June 2009.⁴¹

The Group published its report on 29 October 2009 as [Leaders Group on the Code of Conduct- Report](#). The report noted its unanimous conclusions as follows:

7. Throughout our work we have been in agreement on the main issues facing the House. As early as 30 June we were able to agree the following conclusions, which remain the basis of our report:

There should be a Commissioner for Standards, who would be functionally independent but appointed by the House.

Subject to the findings of the Senior Salaries Review Body (SSRB) on financial support for Members, the investigation of complaints relating to financial support arrangements should be part of the Commissioner's remit, along with complaints relating to the Code itself.

There should be a ban on "parliamentary consultancies".

There should be a shorter, more general Code, accompanied by more detailed guidance, which would be reviewed in light of experience and "case law".

The Code should include a positive statement of the role of the House, and the contribution that Members were expected to make to the work of the House.

There should be stronger emphasis on induction and on explicit acceptance by Members of the standards contained in the Code.⁴²

The Committee noted that at the outset it had decided that the evidence it took would be confidential, apart from a submission from the Committee on Standards in Public Life which was published along with the report. The report noted that there had been a rising trend of complaints against individual Lords since 2006, justifying an evolution of the Code produced in 2001. As well as tightening the Code, the Committee believed that a House of Lords now required a Commissioner for Standards appointed by the House with full operational independence, but within the scope of parliamentary privilege, as an agent of the House.

The report considered that it would not be appropriate to extend the *Parliamentary Standards Act 2009* to the House of Lords:

23. Time will tell whether the new statutory system for paying MPs' salaries and allowances works effectively, and restores public confidence in the use to which public money is put. Only in light of the conclusions of the Senior Salaries Review Body on the financial support for Members of the House of Lords will it be possible to judge

⁴¹ *Leaders Group on the Code of Conduct: Request for Submissions* <http://intranet.parliament.uk/intranet/offices-departments/assets/hol-notice-review-code-conduct-110609.pdf>

⁴² HL Paper 171 2008-09

whether the remit of the new authority with regard to such financial support should be extended to this House.

24. However, the Group does not see a case for a statutory Code of Conduct for the House of Lords, or a statutory Register of Financial Interests. There are three reasons for this.

25. First, a system of statutory regulation of peers' financial interests would, in current circumstances, be disproportionate. Membership of the House does not constitute full-time employment, and is not salaried; the work undertaken in Parliament by Members is, in many cases, additional to their day-to-day work, to the outside jobs on which they rely for their livelihood. As the House is presently constituted, we believe that subjecting Members to a statutory Code of Conduct and statutory registration of financial interests would be unwarranted.

26. Secondly, we found general agreement that an independent but non-statutory Commissioner, appointed by the House itself, reporting to the Committee for Privileges, would lead to greater transparency, while preserving the fundamental principles of self-regulation and parliamentary privilege.

27. Finally, a statutory Code of Conduct would open up the prospect of judicial review of the House's decisions on matters of internal discipline. It is essential for any free and independent legislature to be able to regulate the conduct of its members without external interference. A statutory Code would contravene this fundamental principle.⁴³

The report proposed that the new Commissioner report to a sub-committee of Lords' Interests, which would, where appropriate, recommend a disciplinary sanction to the Committee for Privileges:

71. We have also concluded that the existing committee structure should continue notwithstanding the appointment of a Commissioner. The task of the Commissioner will be limited to making findings of fact, and offering conclusions on whether or not the Code has been breached. He will present his report to the Sub-Committee on Lords' Interests, which will resolve any remaining contested issues of fact. If an allegation had been upheld, the Sub-Committee will also recommend the appropriate sanction to the Committee for Privileges. The Member concerned will have a formal right of appeal, as at present, to the Committee for Privileges, against either the conclusions of the Commissioner and Sub-Committee on whether or not the Code has been breached, or against the recommended sanction [17]. The final decision, as now, would be made by the House, on consideration of the Committee for Privileges report.

72. Paragraph 19 states that each stage of the process should be conducted "in accordance with the principles of natural justice and fairness". We heard considerable evidence in the course of our inquiry, not least from the Sub-Committee on Lords' Interests itself, that the procedural safeguards required under the present Code place an almost impossible burden upon the Sub-Committee, and should be reviewed. We endorse the comment of the Hansard Society, in its recent briefing paper, that the safeguard found in the present Code "in practice amounts to a lawyers' charter".[18] This is a self-regulating House, and a better guarantee of natural justice lies in the impartiality and wisdom of the Members of the House, reinforced by successive rights of appeal to the Committee for Privileges and to the House as a whole.

73. Moreover, we are persuaded by the arguments put in the debate on the Committee for Privileges reports on 20 May, that the decisions of the Committee for

⁴³ Ibid

Privileges do not represent the determination of either criminal charges or civil rights, and that therefore there is no prospect of any possible breach of the European Convention on Human Rights that might need to be remedied by more elaborate procedural safeguards. [19]

74. We are therefore confident that a clear requirement that all stages of an investigation are conducted in accordance with the principles of natural justice strikes the right balance.⁴⁴

The report noted that the changes it proposed were in the context of the House as presently constituted and proceeded on the basis of the House's existing powers in relation to sanctions such as suspension within the lifetime of a Parliament.

Baroness Royall of Blaisdon announced the publication of the report in the chamber on 29 October, noting that it would be debated on 30 November.⁴⁵

In the debate which took place on 30 November, the report's recommendations received support from Government and Opposition spokespeople. Two motions were considered: one to refer to the Sub-Committee on Lords' Interests the detailed guidance put forward in the report; the other detailed the new code of conduct proposed by the Eames group and sought its approval by the House. Baroness Royall of Blaisdon emphasised in her speech that detailed points on the proposed new Guidance would be considered by the Sub Committee:

I know from the meetings with Members of the House that the noble and right reverend Lord, Lord Eames, and his team have held that a number of Members have raised issues in connection with the report. Some Members may wish to raise their concerns in today's debate. Members will be keen to know that the points that they have raised, which in the main are about the guidance rather than the report or the code of conduct, will be fully taken into account as the guidance is considered. As I mentioned last week in a letter to all noble Lords setting out the procedure for today's debate, we now have in place a clear process to do precisely that. We will hear later from the noble and right reverend Lord, Lord Eames. He has informed me that the Leader's Group met today in advance of the debate and that, in line with the process that I set out in the letter, his group will draw together all the points that noble Lords have raised since his group's report was published and detail them for the sub-committee now chaired by the noble Baroness, Lady Manningham-Buller.

I have had discussions with the noble Baroness and as a result am able to inform the House that the sub-committee will consider the issues raised by Members of the House with urgency and will report early enough to allow the code of conduct, if approved by the House today, to come into force on 1 April.⁴⁶

In response, Lord Strathclyde, for the Opposition said that he now accepted the need for an independent commissioner:

The House will also know that in the past I have rather opposed the idea of an independent commission. However, I now accept the proposition that there should be a commissioner to assist the House in the investigation and enforcement of allegations of misconduct by Members. The noble Lord, Lord Stoddart, has tabled an amendment that would remove the commissioner from the code, and I speak to the amendment now only because I shall not be speaking later and do not want to prejudice anything that the noble Lord will say.

⁴⁴ Ibid

⁴⁵ HL Deb 29 October 2009 c1276

I have changed my mind on the case for an independent commissioner because, over the past 12 months, the world which we now inhabit has changed dramatically, not just because of what has happened in another place but also because of how that has impinged on Lordships' House and on individual Peers. Therefore, I believe that we need someone to come forward to act as commissioner. However, I hope that that appointment will be structured in such a way that it is a resource which can and will be used when, and only when, it is necessary to use it. It should not be the beginnings of a permanent office, which has a growing staff paid for by taxpayers and which looks around for something to do.⁴⁷

He went on to welcome some of the “reining back of some of the more intrusive and unenforceable elements in the previous code, such as the need to register the interests of friends”.⁴⁸ The report also received support from Lord McNally from the Liberal Democrats and Baroness D’Souza, Convenor of the Cross Bencher, who argued for a system of retirement for life peers.⁴⁹ Lord Stoddart of Swindon proposed amendments which would have removed the paragraph of the new Code, which requires Members to sign at the start of each session that they accept the Code. He also proposed removing the new office of Commissioner for Standards. Lord Stoddart argued that the self regulation procedures of the House had tackled well the allegations put forward earlier in the year:

We must ask ourselves why a retired judge or top civil servant would be better able to deal with alleged breaches of the code of conduct than senior noble Lords who possess integrity, have long experience inside and outside this House and understand the way the House works. We already have a well established system to deal with any misdemeanours that may occur. After all, this House has handled its internal affairs for centuries, and has done it pretty well. Indeed, in the previous Session, the House proved that it could deal swiftly and decisively with noble Lords who breached the code, for which it received praise and thanks from a number of quarters. The noble Baroness the Leader of the House received well deserved praise for her zeal, determination and effectiveness in dealing with allegations against Peers. She did so quickly, efficiently and fairly. Having shown that we can deal with the problems that we had during the previous Session, why on earth do we now have to invite somebody from outside to do that job for us? That fundamental recommendation should be rejected.⁵⁰

However, at the end of the debate Lord Stoddart did not move his amendments, accepting that at this stage his proposals would attract only minimal support.⁵¹ The next stage was for the Committee for Privileges to develop a Guide to the Rules.

7 Guide to the Code of Conduct

On 16 March 2010 Lord Brabazon of Tara, the Chairman of Committees, spoke to two motions, firstly to agree the report from the [Select Committee for Privileges on the Guide to the Code of Conduct](#)⁵² and secondly to the [Second report from the House Committee](#)⁵³, on the use of House facilities. The [Code](#) remains draft until the new Parliament meets. Lord

⁴⁶ HC Deb 30 November 2009 c594

⁴⁷ HC Deb 30 November 2009 c596

⁴⁸ HC Deb 30 November 2009 c597

⁴⁹ HC Deb 30 November 2009 c600

⁵⁰ HC Deb 30 November 2009 c610

⁵¹ HC Deb 30 November 2009 c648

⁵² *Guide to the Code of Conduct* HL 81 2009-10

⁵³ *Rules governing the use of facilities* HL 47 2009-10

Brabazon noted that there were some minor changes only from those agreed on 30 November:

- The new Code and Guide would come into effect at the start of the new Parliament
- Although recruitment of the new Commissioner was progressing, he would not be in post at the start of the Parliament, so the sub-committee would continue its work.
- The Committee for Privileges and the Sub Committee on Lords' Interests should be renamed the Committee for Privileges and Conduct and the Sub Committee on Lords' Conduct.
- Any Lord not on leave of absence who fails to sign the undertaking to abide by the Code of Conduct will be considered to have breached the Code and referred to the Sub Committee.⁵⁴

It is worth noting that the Lord Speaker, the Chairman of Committees and the Deputy Chairman of Committees are subject to stricter rules on holding outside interests.⁵⁵

Lord Brabazon received support from Baroness Royall, Lord Strathclyde and Lord McNally. Lord Eames raised some concerns about the inquisitorial nature of any proposed investigation, as needing to preserve natural justice. Lord Neill of Bladen noted how arguments for reform which he had put forward in 1999 had now been accepted in a different atmosphere within the House, following media attention on alleged wrongdoings. In his response to the debate, Lord Brabazon noted that the Sub-Committee would continue to keep the guide under review and take into account comments by peers.⁵⁶

Some minor changes to the Code adopted on 30 November 2009 were brought forward by Baroness Royall on 30 March 2010. These amended paragraphs relating to appeals against the findings of the Lords Commissioner for Standards, and were agreed without debate.⁵⁷

The new Code explicitly includes payment of allowances and use of facilities within its remit. Complaints will be taken to the House of Lords Commissioner for Standards, who will follow procedures broadly similar to those used by the relevant official in the Commons, the Parliamentary Commissioner for Standards. There are no plans to extend the remit of the Independent Parliamentary Standards Authority (IPSA) and its Compliance Officer to the House of Lords.⁵⁸

7.1 Lobbying

Standard Note 4633 [Lobbying](#) provides background on the allegations in March 2010 that former ministers were prepared to engage in lobbying activity. In relation to the Lords, the new Guide notes that

18. At the same time, in their parliamentary work, and whenever they act in their capacity as parliamentarians, Members are required to base their actions solely upon consideration of the public interest. Members thus have a responsibility to maintain a clear distinction between their outside interests and their parliamentary work. It is

⁵⁴ HL Deb 16 March 2010 c568-9

⁵⁵ [Select Committee for Privileges on the Guide to the Code of Conduct](#)

⁵⁶ HL Deb 16 March c586-7

⁵⁷ HL Deb 30 March 2010 1290

⁵⁸ See Research Paper 10/18 [Constitutional Reform and Governance Bill: Committee Stage report](#), part 5 for details

incompatible with the maintenance of this distinction for a Member, by offering parliamentary advice or services to paying clients, to seek to profit from membership of the House. The Code therefore prohibits Members from accepting payment in return for parliamentary advice or services.

19. The prohibition from accepting payment in return for *parliamentary advice* means that Members may not act as paid parliamentary consultants, advising outside organisations or persons on process, for example how they may lobby or otherwise influence the work of Parliament. The following is not parliamentary advice:

- advice on public policy and current affairs;
- advice in general terms about how Parliament works; and
- media appearances, journalism, books, public lectures and speeches.

20. Although a Member may never provide parliamentary advice in return for payment, a Member may exceptionally give parliamentary advice to an organisation or person with whom the Member has a financial interest, provided that the Member can demonstrate that:

- he or she does not receive payment or benefit in return for the provision of parliamentary advice or services. The Member should, if challenged, be able clearly to show that the payment or benefit is provided in return for some non-parliamentary advice or service which the Member provides; the Member should, where possible, ensure that contractual agreements specifically exclude the provision of parliamentary advice or services; and
- the payment or benefit which the Member does receive is not substantially due to membership of the House, but is by reason of personal expertise or experience gained substantially outside Parliament; and that the Member was, or would have been, appointed to the position without being a Member of the House.

21. The prohibition from accepting payment in return for *parliamentary services* means that Members may not, in return for payment or other incentive or reward, assist outside organisations or persons in influencing Parliament. This includes seeking by means of participation in proceedings of the House to confer exclusive benefit upon the organisation (the "no paid advocacy rule"); or making use of their position to arrange meetings with a view to any person lobbying Members of either House, ministers or officials. A Member may never provide parliamentary services in return for payment or other incentive or reward.

22. Members may work for or hold financial interests in organisations such as representative bodies, trade associations or organisations involved in parliamentary lobbying on behalf of clients (such as public relations and law firms). However, in accordance with paragraph 8(d) of the Code of Conduct, Members themselves are prohibited from personally offering parliamentary advice or services to clients, both directly and indirectly.⁵⁹

The Guide also maintains the existing prohibition on paid advocacy.

⁵⁹ [Select Committee for Privileges on the Guide to the Code of Conduct](#)