



## The Code of Conduct for Members - recent changes

Standard Note: SN/PC/05127

Last updated: 16 March 2015

Author: Oonagh Gay and Richard Kelly

Section Parliament and Constitution Centre

---

This Note sets out recent changes to the [Code of Conduct for Members and Guide to the Rules relating to the conduct of Members](#). More detailed registration requirements in respect of remuneration of Members from outside activities came into force on 1 July 2009, following a resolution of the House on 30 April 2009. These have been modified in a resolution passed on 7 February 2011, which created a de minimis rule for these earnings. The Committee on Standards in Public Life recommended that the Code of Conduct be examined each Parliament, and the Parliamentary Commissioner for Standards consulted on both the Code and the Guide to the Rules relating to the Conduct of Members. A revised Code was approved by the Commons on 12 March 2012. The Committee on Standards and Privileges has considered the Commissioner's work on the Guide to the Rules and proposed a series of changes to the Guide in December 2012. These have yet to be debated by the House.

On 13 December 2012 the House agreed to appoint Lay Members to the Committee on Standards; and since January 2013 there has been a Committee on Standards and a separate Committee of Privileges, although currently they have the same Chair and the same MPs serve on each. A new Parliamentary Commissioner for Standards, Kathryn Hudson, took up her post in January 2013 for a fixed, non renewable, term of five years.

The lay members of the Committee on Standards reflected on their first year in office and led a review of the Standards System in the House – a report was published in February 2015.

The Committee also revisited proposals for changes to the Code of Conduct and Guide to the Rules, in a report published in November 2014.

A debate to consider and implement recommendations from both these reports is scheduled for 18 March 2015.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

## Contents

<b>1</b>	<b>Background</b>	<b>3</b>
1.1	Recent changes	3
1.2	Reviews of the Code	4
1.3	Sanctions	5
<b>2</b>	<b>The requirement to list details of external financial interests.</b>	<b>6</b>
2.1	Implementation	7
2.2	Parliamentary debates on Parliamentary Standards Bill 2008-09	7
2.3	10 <sup>th</sup> report from Standards and Privileges Select Committee	8
<b>3</b>	<b>2011-12 Review of the Code of Conduct and Guide to the Rules</b>	<b>11</b>
3.1	The debate on the Code of Conduct changes 12 March 2012	11
3.2	Review of the Guide to the Rules	12
<b>4</b>	<b>Creation of separate Standards and Privileges Select Committees</b>	<b>13</b>
<b>5</b>	<b>New Commissioner for Standards</b>	<b>15</b>
<b>6</b>	<b>Revisions to the Guide to the Rules – Standards Committee Report, November 2014</b>	<b>15</b>
<b>7</b>	<b>The Standards System in the House of Commons</b>	<b>17</b>
<b>8</b>	<b>Debate on reports from the Committee on Standards (18 March 2015)</b>	<b>17</b>
8.1	The Code of Conduct and Guide to the Rules	18
8.2	The Standards System in the House of Commons	18

# 1 Background

The House of Commons Code of Conduct was first adopted by the House in 1996, following a process of review by the House following the first report from the Committee on Standards in Public Life.<sup>1</sup> A specially constituted Select Committee on Standards in Public Life produced two reports which refined the Nolan proposals. It created a Code which incorporated the Seven Principles of Public Life, and the Guide to the Rules relating to the Conduct of Members, together with associated House resolutions. The current Code was published in March 2012.

The Code supplemented the existing rules on the registration and declaration of interests. The Register of Members' Interests was first established by the House in February 1974. Further details are available in Library Research Paper 01/102 *Parliamentary Standards*. The Register is currently enforced by resolution of the House.

The Code is quite short. It encompasses sections encompassing the purpose of the Code (section I); the scope (section II); a statement of the public duties of Members (section III); general principles of conduct as recommended by the Nolan Committee on Standards in Public Life (section IV); rules of conduct (section V); and on upholding the Code which includes duties in respect of the Parliamentary Commissioner and the House of Commons Committee on Standards and Privileges (section VI).

The Guide to the Rules relating to the Conduct of Members is printed together with the Code and provides more detailed guidance on matters such as registration, declaration of interests and the prohibition on paid advocacy.

## Registers of interest

There are four House registers:

- Members' Financial Interests;
- Members' secretaries and research assistants;
- Register of Journalists Interests; and
- Register of All Party Groups and the approved list of all party groups and associate parliamentary groups.

All are made available on the internet and are maintained by small team of House staff under the supervision of the Parliamentary Commissioner for Standards. The Registrar of Members Interests is a senior Commons official, who provides confidential advice to Members.

### 1.1 Recent changes to the registration of Members' interests

The system of registration has evolved over the past years:

- Following provisions in the *Electoral Administration Act 2006*, the House ended on 1 July the system of dual reporting of donations to Members to both the House and to the Electoral Commission. The lead responsibility for reporting donations is now the

---

<sup>1</sup> Cm 2850 May 1995

Commons Registrar, a House official. This implements section 59 of the *Electoral Administration Act 2006*.<sup>2</sup>

- On 27 March 2008 the House agreed by resolution to require Members to register family members who worked as their staff. This now forms Part 2 of the Register, which was first published on 30 April 2008.
- On 30 April 2009 the House agreed by resolution to require Members to register full details of earned outside income, including amounts received and hours worked. This requirement took effect from 1 July 2009.
- From 1 July 2009 Members needed to return their registration form within one month; (Members had previously had three months to return the form, whether at a general election or by election.)
- On 7 February 2011 the House agreed by resolution a de minimis rule for the registration of earnings for outside employment. This is set at 0.1% of a Member's salary for individual payments, and 1% of a Member's salary for the cumulative total of payments from the same source in the same year.<sup>3</sup> (From 1 April 2014, a Member's salary is £67,060 per annum.)

## 1.2 Reviews of the Code

The Code was subject to a major review in 2004 by the Standards and Privileges Committee, following a recommendation from the eighth report of the Committee on Standards in Public Life (CSPL) in 2002, that the Code be reviewed by the House once in every Parliament.<sup>4</sup> It was at this point that the conduct rule on allowances was added, following a series of Standards and Privileges reports on alleged misuse of allowances. This stated:

14. Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.<sup>5</sup>

For further details see Library Standard Note 3720 *The new code of conduct for Members*. Please note that the current Code no longer includes this paragraph in this form.

A new version of the Code was approved by the House on 9 February 2009.<sup>6</sup> However the resolution of 30 April 2009 required more detailed registration for Categories 1, 2 and 3, and the Code was reissued on 22 June 2009, incorporating new guidance (see below). The Guide to the Rules underwent revision, following the changes on de minimis rules on 7 February 2011.<sup>7</sup> A further review of the Code was launched in 2011, and the House agreed to a revised Code in March 2012.<sup>8</sup>

---

<sup>2</sup> HC Deb 9 February 2009 cc1114-1136; *Electoral Administration Act 2006 (Commencement No 8 and Transitional Provision) Order 2009*, SI 2009/1509

<sup>3</sup> HC Deb 7 February 2011 c99

<sup>4</sup> No such review was undertaken in the 2005 Parliament (see section 3), although changes were made to the Guide to the Rules

<sup>5</sup> [The Code of Conduct for Members of Parliament](#), HC 735 2008-09, 22 June 2009

<sup>6</sup> HC 735 2008-09

<sup>7</sup> [Parliamentary Commissioner for Standards: Review of the Code of Conduct for Members of Parliament 7 March 2011](#) para 10

<sup>8</sup> [HC Deb 12 March 2012 cc85-102](#)

### 1.3 Sanctions

When a Member is found to have breached the Code of Conduct, the Standards Committee makes a recommendation to the House for a suitable sanction. These are repayment of monies, a written apology, an apology by personal statement on the Floor of the House or a period of suspension, with loss of pay. While the power to expel has not been used since the case Gary Allighan in 1947, where the House voted 187-75 to expel him for a breach of privilege<sup>9</sup>, the recommendation that Denis Macshane be suspended for six months was followed by his resignation. In 1999 the Joint Committee on Parliamentary Privilege a power for both Houses to institute fines for Members, but this was not implemented.

There has been some discussion as to whether the current procedures of the House are compatible with Article 6 (right to fair trial) of the European Convention on Human Rights. The CSPL considered this issue as part of its 2002 report, *Standards of Conduct in the House of Commons*, recommending an Investigatory Panel to handle serious, contested cases of alleged misconduct;<sup>10</sup> there has as yet been no occasion to use it. The House is not a public authority under the *Human Rights Act 1998*, but the European Court of Human Rights has jurisdiction and has heard cases relating to the procedures of the House, although not as yet in respect of disciplinary procedures.<sup>11</sup> In *Demicoli v Malta*, the Court held that disciplinary sanctions against a media editor by the Maltese Parliament had violated Article 6 (right to a fair trial), but distinguished between this and internal disciplinary procedures.<sup>12</sup>

Following the passage of the *Parliamentary Standards Act 2009* as amended, a new statutory independent Compliance Officer has been created, based at the Independent Parliamentary Standards Authority (IPSA). The duty of the Officer is to investigate complaints about misuse of parliamentary allowances and expenses. The Compliance Officer has issued rules of procedure. Further information is available on the IPSA website and in a separate [Standard Note 5987 The Compliance Officer](#).

A Member found to have breached the rules on expenses under this process would be subject to the disciplinary sanctions of the Compliance Officer. The Parliamentary Standards Commissioner will continue to deal with matters referred to him by the Compliance Officer where the Compliance Officer considers that the Code of Conduct or the registration and declaration rules may have been breached.<sup>13</sup> In serious cases the courts could be involved. The *Parliamentary Standards Act 2009* makes it an offence to provide false or misleading statements in respect of claims for expenses.

---

<sup>9</sup> The expulsion of Peter Baker in 1954 followed from his sentence in a criminal court, not from any disciplinary procedure of the House. Gary Allighan was investigated by the Privileges Committee for suggesting that Members gave information to newspapers about private parliamentary meetings, often for money. See Committee of Privileges HC 138 1946-47

<sup>10</sup> Committee on Standards in Public Life, *Standards of Conduct in the House of Commons*, Eighth Report, November 2002, Cm 5663

<sup>11</sup> *McGuinness v United Kingdom* (1999) ECHR No 39511/98; *A v United Kingdom* 2002 (Application No 35373/97)

<sup>12</sup> *Demicoli v Malta* (1992) 14 EHRR 47; "Mr Demicoli was not a Member of the House. In the Court's view, the proceedings taken against him in the present case for an act of this sort done outside the House are to be distinguished from other types of breach of privilege proceedings which may be said to be disciplinary in nature in that they relate to the internal regulation and orderly functioning of the House."; HL 124/HC 844 2008-09 <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/124/124.pdf> paras 1.14-1.15

<sup>13</sup> [Review of the Code of Conduct for Members of Parliament Consultation Paper](#) 7 March 2011, para 44

## 2 The requirement to list details of external financial interests.

The then Leader of the House, Harriet Harman, brought forward a series of motions on 30 April 2009 on Members' allowances. One of the resolutions amended the rules on registration. The resolution passed was as follows:

- (1) That, for the purpose of complying with the Resolution of the House of 22 May 1974 relating to Registration of Members' Financial Interests, in respect of interests falling within Category 1 (Directorships), Category 2 (Remunerated employment, office, profession, etc) or Category 3 (Clients), hon. Members shall furnish the Registrar with the following particulars—
  - (a) the precise amount of each individual payment made in relation to any interest,
  - (b) the nature of the work carried out in return for that payment,
  - (c) the number of hours worked during the period to which the payment relates, and
  - (d) except where disclosure of the information would be contrary to any legal or established professional duty of privacy or confidentiality, the name and address of the person, organisation or company making the payment;
- (2) That such interests shall be registered whether or not their value in any given year exceeds one per cent of the current Parliamentary salary;
- (3) That the provisions of this Resolution shall apply whether or not the interest in question depends essentially upon, or arises out of, the hon. Members' position as a Member of Parliament; and
- (4) That the provisions of this Resolution shall come into effect on 1 July 2009.

The proposals from the Leader of the House therefore represented a major change in registration requirements, currently the responsibility of the Standards Committee, whose responsibility under Standing Order No 149 is to "review from time to time the form and content of [the] registers".

Harriet Harman argued that the changes would allow the CSPL, in its review on Members allowances (published in November 2009<sup>14</sup>), "to make decisions about outside interests in the full knowledge of their extent".<sup>15</sup>

The Liberal Democrat David Heath argued that "Whether people are being paid far too much for too little in their outside employment or are spending too long at their outside employment are legitimate questions to ask Members of the House".<sup>16</sup> However, Sir Patrick Cormack expressed some concern about the terms of the motion:

Already we have a register and those of us who have any outside earnings register them without any qualms or worries. The register covers what we do, the bands of money that we earn, and for whom we do these things. We are moving down a very slippery slope here because we are moving towards a situation in which, over a

---

<sup>14</sup> Committee on Standards in Public Life, *MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer*, November 2009, Cm 7724

<sup>15</sup> HC Deb 30 April 2009 c1070

<sup>16</sup> HC Deb 30 April 2009 c1085

generation, this House will become an assembly of full-time, permanent politicians who have no connection with or relationship with the outside world.

[...]

I do not see why there has to be this intrusiveness in respect of everyone who has outside earnings. I should like to encourage people to do things outside the House.<sup>17</sup>

Sir George Young, Chair of the then Standards and Privileges Committee, identified some practical problems:

I also have doubts about the practicability of some of the proposals. As an example of what will now be caught by the rules on financial interests, any hon. Member who receives a £30 fee for completing an opinion poll, even though the sum is donated to a local charity, will need to register that sum. Not only that, but they will be obliged each time to register the name of the organisation, its address and the amount of time that they spent on the phone. Also, if a colleague is presented with a bottle of wine after a speaking engagement, that becomes potentially registrable as earnings, as does the time spent at the function. That is because the Government, without any consultation, have abolished the de minimis threshold for categories 1, 2 and 3 in the register, which the House confirmed without a Division only two months ago.<sup>18</sup>

The House agreed to the motion on a division by 305 votes to 31.<sup>19</sup>

## 2.1 Implementation

The Registrar provided detailed guidance to Members on the interpretation of the new rule, which is available on the intranet. Sir George Young wrote to Members on 23 June 2009 to alert Members to the new requirements.<sup>20</sup> The categories affected are:

- Category 1 (Directorships)
- Category 2 (Employment)
- Category 3 (Clients)

The version of the register published on 8 July 2009 was the first to contain individual new registrations by Members.<sup>21</sup>

## 2.2 Parliamentary debates on Parliamentary Standards Bill 2008-09

The *Parliamentary Standards Bill 2008-09* was introduced following the Commons expenses crisis, and was designed to establish the Independent Parliamentary Standards Authority. Initially, the bill also made the Code of Conduct statutory and created a statutory Commissioner for Parliamentary Investigations. The bill was subject to considerable revision during its parliamentary passage and the Act was amended subsequently by the *Constitutional Reform and Governance Act 2010*. The final version of the *Parliamentary Standards Act 2009* no longer contains the statutory Code or Commissioner. Instead it

---

<sup>17</sup> HC Deb 30 April 2009 c1092

<sup>18</sup> HC Deb 30 April 2009 cc1102-1103

<sup>19</sup> HC Deb 30 April 2009 cc1130-1133

<sup>20</sup> *The Revised Guide to the Rules for the Conduct of Members*

<http://pdvnsco.parliament.uk/PCFS/PCFSAdviceNote7.pdf> A revised form has been made available at

<http://pdvnsco.parliament.uk/PCFS/PCFSMembersForm.pdf>

<sup>21</sup> <http://www.publications.parliament.uk/pa/cm/cmregmem/090708/090708.pdf>



established a new Compliance Officer to deal with complaints about misuse of expenses by Members.

Criticism of the new registration requirements continued during the parliamentary passage of the Bill. On 30 June Denis MacShane raised concerns about the registration requirements of a Member when writing and publishing a book.<sup>22</sup> This was a point made by David Blunkett in an article in the *Sunday Times*.<sup>23</sup>

Frank Field opposed the philosophical basis behind the change, which he considered to be to restrict outside employment. He also commented on the manner in which the resolution was adopted by the House on 30 April:

**Mr. Frank Field:** May I bring my right hon. Friend back to the matter of timing? He is correct to say that we approved the rules that are coming into force tomorrow, but when we did so we were given four resolutions that we had to accept or reject in their entirety. One of the four stated that we should declare our earnings, which I am totally in favour of, but it also stated that we should declare how much time we spent on them. Like a lot of people, I did not want to be in the position of seeming to be against declaring our earnings, so we voted it through knowing the time factor involved.

From tomorrow, I will not and cannot fulfil the conditions of the House, because of the principles and practicalities that I outlined yesterday. I shall be fined, but I shall not pay the fine, so we will then be in this ludicrous business of going to prison. Surely that cannot have been the aim.<sup>24</sup>

Dominic Grieve commented on the difficulties of interpreting the new rules when a benefit in kind was at issue:

The regulations show that there is a real problem with benefits in kind. Those who drew up the regulations experienced great difficulty in deciding what constituted a benefit in kind and what constituted a gift. If I deliver a speech—as I did recently—to, for example, a Conservative association or indeed a rotary club, and if at the end of the evening someone gives me a bottle of claret, is that a gift or is it a benefit in kind? It is clear to anyone who reads the regulations that those who drew them up were not at all sure into which category such things should fall.<sup>25</sup>

### **2.3 Standards and Privileges Committee review “Registration of income from employment”**

The Standards and Privileges Select Committee’s report, *Registration of income from employment*, was published in January 2011.<sup>26</sup> It reviewed the impact of the new rules on registration of earnings in the 18 month period since the rules were changed, concluding that the fears of the critics had been justified:

7. In operation, the new rule has been interpreted—in our view, rightly and inevitably—as our predecessors predicted and the advice given to Members has been that a bottle of wine, bunch of flowers or other item received by a Member in return for or in recognition of a service which he or she has provided should be registered as a payment. The key question which Members have been advised to ask themselves

---

<sup>22</sup> HC Deb 30 June 2009 c211

<sup>23</sup> “Chaining MPs to the benches” 28 June 2009 *Sunday Times*

<sup>24</sup> HC Deb 30 June 2009 c244

<sup>25</sup> HC Deb 30 June 2009 c251

<sup>26</sup> Standards and Privileges Committee, *Registration of income from employment*, 20 January 2011, HC 749 2010-12



when considering whether to register something as a payment is, "Would I have received this at the time if I had not performed the service in question?"

The Committee concluded that a de minimis rule was required for these categories:

9. The trivial nature of some of these payments and the disproportionate effort involved in recording and then registering them has called into question the utility of the rule. The February 2010 edition of the Register contained over 100 more pages than the June 2008 edition. Fascinating as some may find it to know which Members have received jars of honey or bunches of flowers, this has little if anything to do with the purpose of the Register, which is to enable anyone to form a view as to whether a Member has received a material benefit which might reasonably be thought to influence his or her actions, speeches or votes.

13. We therefore favour the reintroduction of a threshold for registration categories 1 to 3. We have considered carefully the level at which that threshold should be set. Possibilities would include the existing thresholds which apply to category 5 of the Register (ie, 1% of the Parliamentary salary) and to the registration of gifts by local authority members (currently £25).<sup>[6]</sup> The problem with the first is that £660 is quite a high threshold. The problem with setting a defined sum at whatever level is that it would need to be updated from time to time. For these reasons, we favour setting the threshold at 0.1% of the Parliamentary salary—currently £66—for individual payments and at 1% of the Parliamentary salary—currently £660—for multiple payments from a single source in any one calendar year.

Categories 1 to 3 cover remunerated directorships, remunerated employment and clients.

The recommendation was debated on [7 February 2011](#). The Chair of the Committee, Kevin Barron emphasised that the Committee was not attacking the principle of the registration requirements but merely wished to make it workable. He also signalled that further changes might be in prospect:

I want to emphasise that we do not take issue with the intention behind the resolution of April 2009, which was that the public should be able to know how much MPs are paid for other employment and who pays them. We simply want to make the rules more workable and to catch only the sorts of payments that are relevant to the central purpose of the register, which is to show whether a Member has received a material benefit that might reasonably be thought by others to influence his or her actions, speeches or votes.

There are, of course, other recommendations that we could have made, two of which are particularly worth mentioning. The first is the requirement to register the hours worked. I know that that requirement has not been universally popular in the House, but any proposal to amend it would require proper consideration. I will of course listen to any comments made in today's debate and discuss them with my colleagues in the Committee. The second requirement, which is mentioned in the report, relates to the threshold that applies for gifts. The threshold is currently 1% of the salary, or £660, and was set in 2001. I think that the Committee needs to consider whether that remains the right level and intend to invite it to do so later in the Session.<sup>27</sup>

The House debated the changes together with changes to the All Party Group rules. In general the recommendations for a de minimis rule were welcomed. The Deputy Leader of the House, David Heath, said:

---

<sup>27</sup> HC Deb 7 February 2011 c99

The Committee's proposal to reintroduce a sensible de minimis threshold for the registration of income from employment will remedy a problem that arose with the rule changes that the House agreed to on 30 April 2009. Under those new rules, Members are required to register every single payment they receive for remunerated employment of any kind, however small its value. The problem is that, for the House's purposes, "remunerated employment" means any benefit of any kind which a Member might receive in exchange for providing a service.<sup>28</sup>

The recommendations were also supported by Helen Jones, for the Opposition. The former Deputy Leader of the House, Chris Bryant, argued that the rules had been workable, but had been subject to a mistaken interpretation:

A distinction should be made to identify clearly those cases in which a reasonable person would think that somebody was being given remuneration for providing a service, and in none of those cases would it seem to a reasonable person that somebody was being remunerated. I would use this rule: if I had not been given that bottle of wine, pen or whatever, would I still have made the speech? Would I still have opened the Girlguiding centre or whatever? The honest truth is yes, I would. It would not have made the blindest difference to me. That is the rule that a reasonable person would follow. I know the registrar, I have always followed her advice and I respect her enormously, but she might have used a legalistic understanding of the rules that would not in all honesty be followed by any of our constituents.

Let us imagine for the moment that the registrar is right and that all those cases should have been registered. Has it done any great harm that they have been registered? I do not believe it has done any harm to anybody. There is a greater sense of transparency, and I do not think that that is a problem. However, let us say for argument's sake that we should not make a distinction between gifts and remuneration. There is an argument for that. It could be argued that any gift we receive for doing something-after speaking at a meal, for example-whether to the value of £400, £500 or whatever should be considered in exactly the same way. However, that is not the proposition before us this evening. The proposition is that a gift should be registered if it has a value in excess of 1% of salary, and that remuneration should be registered if it has a value in excess of one tenth of 1%.<sup>29</sup>

In response Kevin Barron accepted that the difference between remuneration and a gift remained a grey area. The House accepted the recommendation without a division as follows:

*Resolved,*

That-

(1) this House agrees with the recommendations in the Tenth Report of the Committee on Standards and Privileges, on Registration of income from employment (HC 749);

and

(2) accordingly the resolution of the House of 30 April 2009 relating to the Registration of Members' Financial Interests be amended, by leaving out paragraph (2) and inserting:-

"(2) That such a payment shall be registered

---

<sup>28</sup> HC Deb 7 February 2011 c102

<sup>29</sup> HC Deb 7 February 2011 c114

(a) where its value exceeds one tenth of 1 per cent. of the current Parliamentary salary; or

(b) where the total value of payments from the same person, organisation or company in a calendar year exceeds 1 per cent. of the current Parliamentary salary."<sup>30</sup>

### **3 2011-12 Review of the Code of Conduct and Guide to the Rules**

In November 2002 the Committee on Standards in Public Life recommended that the Parliamentary Commissioner for Standards should initiate a review of the Code (and of the Guide to the Rules) once in each Parliament. No such review was held in the last Parliament, although extensive changes were made (see above). On 7 March 2011, the Parliamentary Commissioner for Standards, John Lyon launched a consultation document inviting views on the scope and content of the Code of Conduct. He noted that this was the first full review since that undertaken by Sir Philip Mawer in 2004. Mr Lyon considered that the consultation offered an opportunity for a fundamental review of the Code in the light of experience over the past six years and in the new regulatory landscape following the establishment of IPSA.

The consultation asked whether the Code should be a principles-based document or a rules-based document. The question goes to the heart of the debate over the regulation of Members' conduct, as the paper notes:

15...A principle-based document can set a clear and simple framework, but allows scope for differences in interpretation and judgement which can create uncertainty and controversy. A rules-based approach can be complex and hard to follow, encouraging an overly legalistic approach to standards and running the risk of failing to cover every eventuality.

The consultation paper set out a series of questions to be considered. Responses were requested by 31 May 2011.

#### **3.1 The debate on the Code of Conduct changes 12 March 2012**

The Standards and Privileges Committee subsequently produced a report on the review of the Code of Conduct on 1 November 2011. Its overall conclusions were as follows:

5. The memorandum attached to this Report sets out both the responses to the consultation and the Commissioner's conclusions extremely clearly. In most cases, the Commissioner's proposals clarify existing interpretation and practice, or improve the structure of the Code. The first four sections of the Code set out, respectively, the Purpose of the Code, the Scope of the Code, Public Duties of Members and General Principles of Conduct. Part V sets out Rules of Conduct. The Commissioner's changes remove current confusion between areas where the Code is primarily aspirational, and the rules which the Commissioner and the Committee will adjudicate. The Commissioner also suggests changes to the final section of the Code to provide a high-level outline of the disciplinary process. Given the comprehensiveness and clarity of the accompanying memorandum, this Report does not cover every detail of the changes the Commissioner proposes, but draws attention to matters which we consider particularly significant.<sup>31</sup>

The Committee agreed with the proposal from the Commissioner that in extreme cases, the private behaviour of a Member might fall within the Code:

---

<sup>30</sup> HC Deb 7 February 2011 c123

<sup>31</sup> [Standards and Privileges Committee Review of the Code of Conduct](#) HC 1579 2010-12

On that basis, we accept the Commissioner's recommendation that cases in which a Member's conduct in private or wider public life is so extreme that it damages the reputation of the House should fall within the Code. We stress that, like the Commissioner, we do not think the Committee or the House should be drawn into judging a Member's purely private and personal relationships.

10. We also accept the Commissioner's recommendation that it could be appropriate to take action if a Member's relationship with constituents resulted in behaviour which significantly damaged the reputation of the House. Again, we draw the House's attention to the Commissioner's memorandum which makes clear that this would only be in extreme circumstances:

The only circumstances where the House may wish to adjudicate on a Member's conduct in their constituency is the wholly exceptional case where there is clear evidence that the Member's conduct has been so serious and blatant as to cause significant damage to the reputation of the House. A Member's alleged failure to respond to a constituent or meet their wishes would fall far short of such a threshold.

The other change to which the Committee drew attention was the new paragraph 15 of the Code makes clear that Members are personally responsible for the extent to which their use of expenses allowances etc is in accordance with the rules. The Committee report discusses the boundary between parliamentary and political activities.

The subsequent recommendation to approve the new Code was put before the House in a proposed resolution on 12 March 2012. There was concern about the application to private life, and Charles Walker and Lorely Burt moved an amendment to insert a new paragraph 16A to make clear that the Commissioner would not be able to investigate a specific matter under paragraph 16 which related only to the conduct of a Member in their private or public life. This amendment was accepted without a vote and the new Code was approved.<sup>32</sup>

### **3.2 Review of the Guide to the Rules**

The Guide to the Rules were reviewed as a whole in 2009 and approved by the House of Commons on 9 February 2009. John Lyon launched a consultation of the Guide to the Rules on 19 January 2012 and responses were requested by 12 April 2012.<sup>33</sup>

The Commissioner suggested that the Guide might benefit from simplification, and the consultation included an annex shortening the current text by 25 per cent and reducing the number of categories of registration from 12 to 9. The draft guide also includes text to bring the registration process more into line with the requirements of the Electoral Commission under the *Political Parties, Elections and Referendums Act 2000*.

The Standards and Privileges Committee published its report on proposed changes to the Guide in December 2012.<sup>34</sup> Some major changes were proposed, including:

- Reducing the number of registration categories from 12 to 10, with a single employment category;
- Changing the rules on lobbying by Members, including a new restriction on former Members for 6 months;

---

<sup>32</sup> HC Deb 12 March 2012 c85-102

<sup>33</sup> [Review of the Guide to the Rules relating to the Conduct of Members](#) January 2012

<sup>34</sup> [Third Report of 2012-13 HC 636](#)

- Lowering the threshold for registration of certain gifts and benefits;
- A new resolution to make clear that previous resolutions on conduct are given effect in a way compatible with the Code of Conduct and the Guide.

The Committee differed in some areas from the recommendations of the Commissioner, particularly with respect to lobbying. Its report noted that the original ban on initiation of lobbying had been relaxed in 2002, following concerns that the rule was making it difficult for knowledgeable Members to use their experience in debates. The Committee accepted in principle the Commissioner's recommendation for tightening the rule on initiation of proceedings, but clarified and modified his proposals. It recommended that Members be prohibited from initiating proceedings if they receive reward or consideration from an individual or organisation outside Parliament and the course advocated would provide a financial or material benefit to the body in question or to the client of such a body. The detail of the proposed rule change, and the reasoning behind it is in the Committee report.<sup>35</sup>

The Committee also reduced the period of regulation for former Members recommended by the Commissioner from 2 years to 6 months.<sup>36</sup>

The report on the Guide also revisited the extension of the Code to cover conduct which significantly damaged the reputation of the House. It considered that the proviso that the Commissioner could not investigate personal or private life (inserted by amendment) meant that either there was no person or body who could consider breaches of the Code in relation to actions in private life, or the Committee itself would have to investigate. The Committee considered that the House needed to be able to take action in "extreme circumstances" and recommended that, to meet colleagues' reservations, the Commissioner should only be able to investigate the conduct of a Member in respect of his or her private and personal life with the express consent of the Committee.

If approved, the Committee recommended that the changes come into effect in the new financial year in April 2013, to allow time to prepare. However, the Committee's report was never debated ( see section 6).

#### **4 Creation of separate Standards and Privileges Select Committees**

The Committee on Standards on Public Life recommended in its [report on MPs expenses and allowances](#) in November 2009 that at least two lay members should be added to the Committee on Standards and Privileges, as a reassurance to public confidence in the ability of the Commons to regulate its members. The recommendation was formally approved by the Commons on [2 December 2010](#), following a report from the Committee on Standards and Privileges.<sup>37</sup> However, the Procedure Committee was asked to consider the potential implications for parliamentary privilege of lay members sitting and voting on a Commons select committee. The Procedure Committee reported on the matter in November 2011, recommending that two separate committees be created. It also recommended that lay members not be given full voting rights on the committee, nor the right to move amendments.<sup>38</sup>

---

<sup>35</sup> [Third Report of 2012-13 HC 636](#)

<sup>36</sup> Ibid Chapter 2 Lobbying for Reward or Consideration

<sup>37</sup> [Second report from the Committee on Standards and Privileges](#): Implementing the 12<sup>th</sup> report from the Committee on Standards in Public Life November 2009

<sup>38</sup> Procedure Committee [Lay Membership of the Committee on Standards and Privileges](#) HC 1606 2010-12

The Government response accepted these points:

**3. We invite the House to study with care the arguments made for the inclusion of lay members with or without voting rights on the Committee on Standards and Privileges as set out in this report and to decide whether lay members should be appointed to the Committee on Standards with full voting rights or whether they should be appointed with more limited rights protected by rules on quorum and publication of their opinion or advice. It would of course be open to the House to reject both options. In the case that the advantages in terms of credibility and the increased contribution suitably qualified lay members could make are deemed sufficient to justify full membership of the committee, we recommend that the Government bring forward legislation to put beyond reasonable doubt any question of whether parliamentary privilege applies to the Committee on Standards where it has an element of lay membership. (Paragraph 53)**

The Government believe that proposals for lay members to be appointed to the Committee on Standards in the first instance on the basis proposed by the then Clerk of the House in his evidence to the Procedure Committee would be most likely to command the support of the House. Under these proposals, the lay members would take a full part in evidence-taking (including asking questions). Their position in the deliberative work of the Committee would be protected by a provision in Standing Orders requiring that the written opinion of each lay member present at the relevant meeting on a Report agreed by the Committee must be published as part of any Report by the Committee. There should be a further requirement in Standing Orders that the Committee could not meet unless at least one lay member was present.

A decision to proceed on this basis would provide a guarantee for the effective participation of lay members in the decision-making processes of the Committee. Such a decision could be taken without prejudice to subsequent consideration of full voting rights. The Government will consider the case for legislation that would place the position of a Committee on Standards with lay members with full voting rights beyond doubt as part of its work on preparing the forthcoming draft Parliamentary Privilege Bill and the accompanying Green Paper.<sup>39</sup>

The Government did not accept the need for another vote in the Commons on the principle of lay members, despite unease expressed by a number of Members to the Procedure Committee. These points were rehearsed during the debate on 12 March 2012, when motions to amend Standing Orders to create separate committees were brought forward, as well as a new Standing Order providing for lay members of the Standards and Privileges Committee-in particular:

- Between two and three lay members are to be appointed. Ex members from either House are not eligible;
- Lay members will not have voting rights or the right to move amendments, but will have the right to issue a paper commenting on any report from the committee which must be published with the Committee report;
- The term of office is to the end of the 2010 Parliament, with provision for re-appointment for a maximum of two years;
- A lay member may only be dismissed by resolution of the House following a recommendation from the House of Commons Commission;

---

<sup>39</sup> Third Special Report Committee on Standards and Privileges HC 709 2012-13

Separate motions provided for the Chair of the Committee of Standards to receive a Committee Chair's pay. In the debate, Sir George Young, then Leader of the House, reaffirmed the Government's commitment to ensure that the Chair of the Standards Committee would be drawn from Opposition benches.<sup>40</sup> He also assured the House that the committees could have a common membership and that they could choose to elect the same chair. This is in fact the case. Sir George indicated that lay members would be paid a per diem of £300 a day, the same as for the lay members on the Speaker's Committee for IPSA.<sup>41</sup>

The House of Commons Commission reported on the selection process for the three lay members on 31 October 2012.<sup>42</sup> The successful candidates were Sharon Darcy, Peter Jinman OBE and Walter Rader OBE. Short biographies are available in the Commission report. A motion to appoint them to the Committee on Standards was agreed to by the House on 13 December 2012.<sup>43</sup>

## 5 New Commissioner for Standards

The term of office of John Lyon ended on 31 December 2012. The new Commissioner is Kathryn Hudson, the former Deputy Parliamentary Ombudsman. She is appointed for a five year, non-renewable term,<sup>44</sup> following a vote in the Commons on 12 September 2102.<sup>45</sup> Ms Hudson took up the appointment initially on the basis of a two-and-a-half-day week at a salary of £50,000 pa, but may request more hours, according to the caseload.

The House of Commons Commission was responsible for the selection process, and published a report in July 2012. This set out the selection as follows:

6. The selection process followed that of 2007. Following a national advertisement and a search by recruitment consultants, a total of 23 candidates was reduced through sifts and interviews to a short list for interview. Five candidates were interviewed by a Board consisting of Rt Hon Sir Malcolm Rifkind MP, Rt Hon Kevin Barron MP, David Natzler (Clerk Assistant, Chair), Andrew Walker (Director General, Human Resources and Change) and Judith Alderton (external assessor).<sup>46</sup>

## 6 Revisions to the Guide to the Rules – Standards Committee Report, November 2014

In November 2014, the Standards Committee's report *The Code of Conduct and Guide to the Rules* was published.<sup>47</sup> It noted that the House had not yet considered proposals for changes to the Guide to the Rules made in the Committee on Standards and Privileges' report of December 2012 (*Proposed Revisions to the Guide to the Rules relating to the conduct of Members*, HC 636 2012-13).

The Standards Committee understood that the reason "the changes in the Guide have still not been debated is that there are concerns about a related proposal to amend the Code of

---

<sup>40</sup> HC Deb 12 March 2012 c73

<sup>41</sup> Ibid c75

<sup>42</sup> [Lay Members of the new Standards Committee: Nomination of Candidates](#) House of Commons Commission

<sup>43</sup> [HC Deb 13 December 2012 cc472-478](#)

<sup>44</sup> Standard Note 4507 [In Brief; Parliamentary Commissioner for Standards](#)

<sup>45</sup> [HC Deb 12 September 2012 c387](#)

<sup>46</sup> [Parliamentary Commissioner for Standards: Nomination of Candidate House of Commons Commission July 2012 HC 539 of 2012-13](#)

<sup>47</sup> Standards Committee, [The Code of Conduct and Guide to the Rules](#), 3 November 2014, HC 772 2014-15



Conduct”.<sup>48</sup> When it made recommendations to revise the Code of Conduct in December 2010, the Committee on Standards and Privileges proposed changing its scope. However, when the House agreed an amendment which prohibited “the Commissioner investigating matters which related only to the conduct of a Member in their private and personal lives”.<sup>49</sup>

The Committee on Standards and Privileges had expressed its concerns at this amendment when it reported on revisions to the Guide to the Rules, and the Committee on Standards noted this concern as it reported its proposals for a compromise:

9. When the Committee on Standards and Privileges reported on revisions to the Guide to the Rules, the Committee expressed its concern at this amendment. In its view, the result of the amendment was that in extreme circumstances it would be possible for a Member to breach the Code because of action in his or her personal and private life, but that either the House would be unable to act, or it would have to try to initiate some unprecedented procedure without the involvement of the independent Commissioner. The Committee itself might have to act as both investigator and adjudicator, which would clearly be unsatisfactory. In consequence, the Committee on Standards and Privileges recommended that the House revise the Code. As a safeguard, it proposed a requirement that the Commissioner would be able to investigate, but only with the express consent of the Committee on Standards and that that consent should be given only in exceptional circumstances.

10. We understand that this proposed safeguard has not commanded support. The debate in the House on 12 March 2012 and our subsequent discussions suggest that those who wish to restrict the Commissioner’s power to investigate have a narrow view of what would be purely private and personal behaviour. In practical terms, we expect that there would be agreement between them and the Committee as to whether particular actions should be caught by the Code. We understand that some Members are concerned that a future Commissioner may not share such an understanding, and may not consider him or herself as bound by the assurances given when the changes to the Code were recommended. Those who resist the change consider that, in practice, a Committee would not be able to deny consent to an investigation if the Commissioner requested it, whatever its views of the merits of the case. We do not share these fears, but we recognise there are real concerns.

11. We have been trying to find a compromise which will give colleagues the reassurance they need, while ensuring the principle that allegations about misconduct are investigated by an independent person. In our view, this independent investigation protects both the House and the Member under investigation. We now propose a new way forward. We recommend returning the scope of the Code to that which applied in 2009 as follows:

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.

Paragraph 17 of the existing Code would then be deleted, because there would be no question of the Code being breached by actions in purely personal and private life.<sup>50</sup>

---

<sup>48</sup> Standards Committee, *The Code of Conduct and Guide to the Rules*, 3 November 2014, HC 772 2014-15, para 6

<sup>49</sup> Standards Committee, *The Code of Conduct and Guide to the Rules*, 3 November 2014, HC 772 2014-15, para 8

<sup>50</sup> Standards Committee, *The Code of Conduct and Guide to the Rules*, 3 November 2014, HC 772 2014-15, paras 9-11

It also set out proposals for changes to the Guide to the Rules in this report.<sup>51</sup>

## 7 The Standards System in the House of Commons

The three lay members appointed to the Committee on Standards published their reflections on their first year in office in April 2014.<sup>52</sup>

Those reflections and other concerns about self-regulation “prompted the Committee to set up a Standards Review Sub-Committee, chaired by one of the lay members, to conduct an inquiry which would examine the standards system of the House, and to consider improvements as required”.<sup>53</sup>

The sub-committee issued a consultation paper, took oral evidence and considered material on other parliamentary and local government standards systems. It reviewed the House’s current standards system and the regulation of MPs, considering:

- the role of an MP;
- rules v principles in regulation;
- regulation v self-regulation; and
- models of regulation in other jurisdictions.

It considered that “self-regulation with a strong independent element is the appropriate model for the House of Commons, we believe there are ways in which the system could be strengthened”.<sup>54</sup>

It made recommendations on the role of the lay members and the composition of the Committee. It concluded that “giving [lay members] the right to vote would not have sufficient benefits to outweigh the risk”. Rather their views should appear in the body of any report, not the minutes.<sup>55</sup>

It recommended that the composition of the Committee should change from 10 MPs and three lay members to equal numbers of MPs and lay members on a 14 member committee.

It recommended that the Committee chair should be elected by the whole House.

It also considered that the role of the Parliamentary Commissioner for Standards; the detail of the system; media matters; and leadership on standards issues.

## 8 Debate on reports from the Committee on Standards (18 March 2015)

Two motions, one relating to the Standards Committee’s report on *The Code of Conduct and Guide to the Rules* (November 2014); and one relating to the report on *The Standards*

---

<sup>51</sup> Standards Committee, *The Code of Conduct and Guide to the Rules*, 3 November 2014, HC 772 2014-15, Annex 1

<sup>52</sup> Standards Committee, *Reflections of the Lay Members on their first year in post January 2013 – January 2014*, 22 March 2014

<sup>53</sup> Standards Committee, *The Standards System in the House of Commons*, 10 February 2015, HC 383 2014-15

<sup>54</sup> Standards Committee, *The Standards System in the House of Commons*, 10 February 2015, HC 383 2014-15, para 81

<sup>55</sup> Standards Committee, *The Standards System in the House of Commons*, 10 February 2015, HC 383 2014-15, para 87

*System in the House of Commons* (February 2015) are scheduled to be debated on 18 March 2015.<sup>56</sup>

### **8.1 The Code of Conduct and Guide to the Rules**

The motion on the Code of Conduct and Guide to the Rules gives effect to the Committee's recommendations to return the scope of the Code to that which applied in 2009 and to adopt the revised Guide to the Rules (appended to the Committee's report).

### **8.2 The Standards System in the House of Commons**

The motion on the Standards System in the House of Commons:

- provides for the Chair of the Committee on Standards to be elected by the whole House and ensures that the convention the Chair comes from the official Opposition is retained;
- changes the composition of the committee as recommended, to seven MPs and seven lay members; and
- alters the length of the term that lay members are appointed for, limiting it to a single six-year term; it also makes provision for the existing lay members to be re-appointed at the beginning of the next Parliament.

---

<sup>56</sup> House of Commons, *Future Business for Monday 16 March 2015*, Section A – Tuesday 17 March