

## **Evidence to the Committee on Standards in Public Life**

### **Review of MPs Expenses**

#### **Note by the Parliamentary Commissioner for Standards**

##### **Introduction**

1. I am grateful to the Committee for an opportunity to submit evidence to it to assist it in its review of MPs' expenses.
2. This evidence sets out the role of the Parliamentary Commissioner for Standards. It is intended to assist the Committee in considering the interpretation and enforcement for rules for Members' expenses. These matters are considered in Section 4 of the Committee's consultation paper.

##### **The Commissioner's functions**

3. The Commissioner is an independent office holder appointed by the House of Commons on the recommendation of the House of Commons Commission following open competition, for a single period of five years. I started work at the beginning of January 2008.
4. The Commissioner's functions are set out in the Standing Orders of the House.<sup>1</sup> They are, briefly:
  - a. to maintain the Register of Members' Financial Interests and any other registers of interest established by the House;
  - b. to provide confidential advice to Members and others on registration matters;
  - c. to advise the Committee on Standards and Privileges and individual Members on the interpretation of the Code of Conduct for Members of Parliament and on questions of propriety;
  - d. to monitor the operation of the Code and Registers and to make recommendations to the Committee;
  - e. to receive and, if the Commissioner thinks fit, to investigate specific complaints in respect of the registration or declaration of interests or other aspects of the propriety of a Member's conduct and to report to the Committee.

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<sup>1</sup> Standing Order 150

## **The Commissioner's remit in respect of Members' expenses**

5. The Committee may find it helpful to have the following comments on the application of the Commissioner's remit in respect of Members' expenses.

### **a. Monitoring the operation of the Code**

6. The Code of Conduct for Members of Parliament sets out high level principles intended to assist Members in the discharge of their obligations to the House, their constituents and the public at large.<sup>2</sup>

7. One paragraph of the Rules of Conduct provides the overarching rule which Members must follow in their use of expenses, allowances, facilities and services provided from the public purse. The full rule reads as follows:

*"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>3</sup>

8. This rule of conduct paves the way for the more detailed rules on expenditure provided in the "*Green Book*".<sup>4</sup>
9. In accordance with the recommendations of the eighth report of the Committee on Standards in Public Life,<sup>5</sup> the Commissioner conducts a review of the Code of Conduct once in each Parliament. The last review was undertaken by my predecessor in 2004/05. I would normally expect to conduct a review of the Code in the coming months. I am considering whether to conduct such a review in advance of any establishment of a new statutory Parliamentary Standards Authority as announced by the Government in the House on 20 May 2009.<sup>6</sup> A main function of that Authority, if agreed would be to revise and update the Code of Conduct, at least in as much as it relates to financial matters.

### **b. Advice**

10. The Commissioner advises the Committee and individuals on the interpretation of the Code and on questions of propriety.
11. I am always available to Members to give them confidential advice on these matters in as much as they relate to their own conduct. I particularly welcome the opportunity to give confidential advice to Members in advance of any actions they may be contemplating. I make it clear to Members that my advice is given on the basis of the information they

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<sup>2</sup> Code of Conduct together with The Guide to the Rules relating to the Conduct of Members, HC 351

<sup>3</sup> Paragraph 14 of the Code of Conduct for Members of Parliament

<sup>4</sup> The latest edition is "*The Green Book: A Guide to Members Allowances*" published March 2009

<sup>5</sup> *Standards of Conduct in the House of Commons*, Eighth Report of the Committee on Standards in Public Life, Cm 5663, November 2002

<sup>6</sup> HC Deb 20 May 2009, Col 1505

give me, and cannot be taken as preventing me subsequently from inquiring into a complaint about that conduct if the complainant provides me with evidence of a breach of the rules. That proviso is particularly relevant if Members seek advice on the applicability of the rules to past conduct. I will normally decline to give a determination on whether past behaviour was within the rules of the House if it seems likely that behaviour will form the basis of a complaint.

12. In practice, Members do not consult me about the interpretation or application of the Green Book. My understanding is that Members will consult the Department of Resources about such matters, as will I when I am considering a complaint about an alleged breach of the Green Book rules.
13. I also make public my views on the interpretation of the Code and on matters affecting expenses when I report on individual complaints to the Committee on Standards and Privileges. In respect of expenses, in the last year, I have reported with wider recommendations on the interpretation of the Additional Costs Allowance for second homes and its application to Members sharing the same accommodation for which they claim allowances.<sup>7</sup> I have also advised on the interpretation of the restrictions on party political or campaigning material in communications funded by the Communications Allowance, and in letters sent in response to a constituent's letter.<sup>8</sup>
14. As a result, the Committee published a report on the *Additional Costs Allowance: Main Homes* in October 2008<sup>9</sup> and on the use of pre-paid envelopes and official stationery in November 2008.<sup>10</sup>
15. Last October I also commented to the Committee on the memorandum from the leader of the House on the *Audit and Assurances of MPs expenses*.<sup>11</sup> I identified what I believed to be the key elements of the Commissioner's office which I considered should not be substantially changed unless the House so agreed. The Committee published my observations with its own report on this matter at the end of October 2008.<sup>12</sup> I was pleased to note that the Leader of the House, and spokespersons from each of the main opposition parties reinforced in debate in the House of Commons the importance of the continued independence of the Commissioner in deciding whether to accept complaints for inquiry and in his interpretation of the rules of the House.<sup>13</sup>

### c. Complaints

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<sup>7</sup> Committee on Standards and Privileges, Fourteenth Report of Session 2007-08, *Conduct of Ed Balls and Yvette Cooper*, HC 1044;

<sup>8</sup> Committee on Standards and Privileges, Eighteenth Report of Session 2007-08, *Dari Taylor* HC 1188

<sup>9</sup> Committee on Standards and Privileges, Fifteenth Report of Session 2007-08, *Additional Costs Allowance, Main Homes*, HC 1127

<sup>10</sup> Committee on Standards and Privileges, Nineteenth Report of Session 2007-08, *Use of pre-paid envelopes and official stationery*, HC 1211

<sup>11</sup> Office of the Leader of the House of Commons, *Audit and Assurance of MPs' expenses*, Cm 7460 August 2008

<sup>12</sup> Committee on Standards and Privileges, Seventeenth Report of Session 2007-08, *Audit and Assurance of MPs' Allowances (Cm 7460)* HC 1138

<sup>13</sup> HC Deb 9 February 2009, Col 664

16. The remit which attracts most attention is the Commissioner's remit in respect of the receipt and, if he thinks fit, the investigation of complaints. It forms part of the enforcement procedure for the House.
17. I report on the complaints I consider each year in the Commissioner's *Annual Report*. I expect to publish my *Annual Report* for 2008-09 before the Summer recess. The Commissioner's report for 2007-08 reported the receipt of some 226 formal complaints. I inquired into 71 of these. Of those I resolved that year, I dismissed 29 without a report to the Committee, I reported 15 to the Committee and I concluded work on 7 less serious complaints without resort to the Committee.
18. Consideration of the complaints I receive require me to carry out the following steps:
- i. I consider first whether the complaint falls within my remit. Many complaints, for example, are about the way a Member has handled a constituent's case. That falls outside my remit. Complaints about Members' alleged misuse of expenses and allowances are clearly within my remit.
  - ii. I then consider whether the evidence provided by the complainant is sufficient to justify at least a preliminary inquiry. This is a requirement set out in the rules of the House.<sup>14</sup> It reinforces the fact that this is a complaints based system with the onus on the complainant to initiate the process. The Commissioner is specifically prevented from following up a complaint which is based on no more than an unsubstantiated newspaper story. In practice, if a press report submitted by a complainant provides sufficient evidence of a breach, then I accept the complaint. But the Commissioner is not able to conduct inquiries, even of a preliminary nature, unless the complainant has provided him with sufficient evidence of a breach. The decision whether to accept a complaint for inquiry on the basis of the evidence he has been sent is a matter for the Commissioner alone. Neither the Committee nor the House has any role in that decision. Exceptionally, the Commissioner can undertake an inquiry into a Members' conduct at the request of that Member, but will only do so with the agreement of the Committee. It is for the Commissioner to decide whether to seek the Committee's agreement to such an inquiry.
  - iii. Once the Commissioner has accepted an inquiry, it is for him alone to decide on its conduct. Under the procedures approved by the House, the Commissioner must initially seek the response of the Member of Parliament concerned. After that, it is solely a matter for the Commissioner to decide what other material or evidence to seek, whether to take oral evidence, how full the inquiry needs be, and to decide on its resolution. Exceptionally, if there is a conflict of evidence, the Commissioner may seek the Committee's agreement to establish an investigative panel to assist him in establishing the facts relevant to the investigation.<sup>15</sup> It is open to the Committee to request that the Commissioner appoint such a panel. This provision was added to the

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<sup>14</sup> *Code of Conduct together with The Guide to the Rules relating to the Conduct of Members*, HC 351, paragraph 84

<sup>15</sup> Standing Order 150(4)

Standing Orders of the House following the eighth report of the Committee on Standards in Public Life.<sup>16</sup> So far, neither the Commissioner, nor the Committee has felt it necessary to establish such an investigatory panel.

#### **d. Resolution of the Complaint**

19. The Commissioner has the following options open to him in resolving a complaint:

i. Dismiss the complaint.

The Commissioner can dismiss a complaint at any time if he concludes from the evidence he has received that there is no evidence of a breach of the rules of the House. The Commissioner reaches that conclusion on his own authority; he does not need to seek the approval of the Committee. There have been occasions where the Commissioner has submitted a memorandum to the Committee on a complaint which he had decided to dismiss either because of the public interest in the complaint or because it raises wider issues. It would be open to the Committee in such circumstances to come to a different view from the Commissioner and uphold the complaint. Or it could itself undertake further inquiries or ask the Commissioner to do so before reaching its own conclusion. This has not happened during my tenure.

ii. Rectify the complaint.

Under the Standing Orders of the House,<sup>17</sup> I am able to rectify a complaint without recourse to the Committee, including cases involving parliamentary allowances, or the use of facilities or services. I will normally consider rectification where the Member has accepted that there has been a breach; the breach was comparatively minor and not clearly intentional; the Member has made any necessary financial reimbursement and the Member has taken suitable action to avoid a repetition. The Committee expects a Member in these circumstances to have apologised for the breach. In such cases, I write to the complainant explaining my findings and close the complaint. I report the outcome briefly to the Committee. The Committee is not able to reopen the inquiry or change the conclusion.

iii. Memorandum to the Committee.

In more serious cases, or cases which raise wider issues, I submit a memorandum to the Committee. In 2008-09 I submitted 12 such memoranda upholding 14 complaints against 11 Members and dismissing 3 complaints against 3 Members. I set out in my memorandum: the nature of the complaint against the Member; the relevant rules; the conduct of my investigation together with all the relevant evidence; a summary of the facts, and my own conclusions on whether I uphold the complaint in full or in part,

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<sup>16</sup> *Standards of conduct in the House of Commons*, Eighth Report of the Committee on Standards in Public Life, Cm 5663, November 2002

<sup>17</sup> Standing Order 150(3)

together with any other observations, including any recommendations for the future. I seek to agree with the Member complained of, all the sections of my memorandum, with the exception of my conclusions, in advance of it being submitted to the Committee. The Committee then gives the Member an opportunity to comment on my memorandum, including my conclusions, before considering the matter itself. It is open to the Committee to make its own further inquiries, or to ask me to do so and then accept, reject or modify my conclusions in reaching its own decision on whether the Member has breached the rules of the House. The Committee produces its own report which is published. My memorandum, together with my conclusions and any recommendations are invariably published, as I have drafted them, as an appendix to the Committee's report.

20. The Committee alone is responsible for deciding on what, if any, sanctions to recommend to the House of Commons in respect of a complaint, which, on the basis of my memorandum, they decide to uphold. The Commissioner has no part in deciding on the appropriate sanction for Members. My memorandum does not include a recommended sanction.
21. I, or my office, respond to all complaints I receive. Where I decide not to inquire into the complaint, I give brief reasons. Where, after inquiry, I dismiss the complaint, I write to the complainant with the factual reasons for that dismissal. Where I decide to rectify a complaint, I write to the complainant giving reasons for my conclusions, and identifying the action taken. It is open to the Member of Parliament, or the complainant to publish any of this correspondence. Once I have embarked on an inquiry, however, the correspondence and the evidence I receive is confidential and is subject to parliamentary privilege, until such time as my inquiry is concluded.

### **Annual Report**

22. I report each year to the House on the exercise of my functions in my Annual Report.<sup>18</sup> I believe that is an important part of my accountability to the House and to the public. I aim to give key statistical information about the nature and handling of complaints over the past year. I provide summaries of the complaints which I have submitted to the Committee, and, for the first time, I am this year giving information about the nature of complaints which I have rectified. The Annual Report also provides me with the opportunity to put my work in the wider context and to report on the other important work I undertake away from the investigation of individual complaints.

### **Conclusion**

23. The effectiveness of any complaints system depends on transparency. People need to know what is being done if they are to be able to judge whether to complain about those actions. It is particularly important in a system such as Parliament's where complainants need to provide evidence before an inquiry can be initiated. It is no coincidence, therefore, that the complaints I have received in relation to expenses have up to now been about

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<sup>18</sup> Standing Order 150(10)

such things as the use of a Member's communications allowance and house stationery, (since the complainant receives the communication) and the identification of main and second homes (since they are visible and leave a mark in other publicly available records). Until recently, I have not myself received complaints about particular expenses claims (I suggest because these receipts have not before been publicly accessible). Transparency, is therefore, the lifeblood of a good complaints system.

24. The independence of those operating a complaints system is also fundamental. But independence should not be an absolute. The key questions are: "*independent of whom?*" and "*who guards the guards?*" These questions are relevant to the current system. They will remain relevant in considering the government's proposals for a statutory Parliamentary Standards Authority.<sup>19</sup>
25. Under the current system, I have set out in this evidence the high degree of independence I believe I have in complaints handling. And, as for the guards, I am overseen by the Committee on Standards and Privileges who in the more serious cases, receive any representations from the Member having seen my full report, who can overturn my findings and who are solely responsible for recommending any sanctions to the House. I am aware of and agree with the view which the Chairman of the Committee has set out in his evidence that there is a strong argument for some non-parliamentary element to be introduced into the membership of that Committee if these functions are to remain with it.
26. One important aspect of the current system is that both I and the Committee are independent of those who draw up and administer the rules on which we adjudicate. One of the questions in considering the proposal for a statutory Parliamentary Standards Authority, is whether an authority responsible for establishing and administering the rules, should also be responsible through the Commissioner for investigating and adjudicating on complaints relating to those rules and their administration. I have some concerns about that which I will be expressing during the course of the Government's consultation on its proposals.

**John Lyon CB**  
**Parliamentary Commissioner for Standards**

**4 June 2009**

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<sup>19</sup> Ministry of Justice Proposals for Fundamental reform of MPs' parliamentary allowances system, 22 May 2009