

# *Case Study of the House of Commons: How Can Parliamentary Codes and Registers of Members' Interests Help?*

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## **Introduction**

In a democratic system, parliament plays a vital role in a nation's life. It is therefore important to ensure a parliament whose Members are held in high esteem by the public they serve. Sustaining high standards of conduct among Members is a key part of encouraging that confidence in parliament that is essential to the health of a democracy and the effectiveness of a system of government.

Over the years, the United Kingdom (U.K.) House of Commons has evolved and developed a system for encouraging the maintenance of high standards among its Members. The system is intended to ensure accountability through openness and transparency. It emphasizes prevention and the fair and impartial resolution of complaints.

This paper examines the system for ensuring accountability in the House of Commons. Although the House passed a resolution as long ago as 1695 declaring bribery of Members of Parliament (MPs) a "high crime and misdemeanor," the arrangements for encouraging high standards have been much strengthened since the mid-1990s. Following a series of allegations against Members, a new Parliamentary Code of Conduct and enhanced rules on registering Members' interests were approved. These represented a significant step forward in making explicit the standards expected of Members and making Members' interests transparent.

Recent independent review has found that the system for regulating standards in the House of Commons is generally effective and that the overwhelming majority of Members seek to, and in practice do, uphold high standards of propriety.

## **Context**

As mentioned above, the House of Commons recognized, more than three centuries ago, that bribery of its Members was wrong. Beyond that, though, the predominant assumption in the House until recently was that Members were gentlemen (they were predominantly men) and that they could be relied on to observe the normal standards of the day of decent behavior. To the extent that they were found wanting, the ultimate remedy for the most part lay in the ballot box—with the risk that a Member who erred would not gain reelection.

This approach is buttressed by the limited extent of individual legal privilege attached to being a member of either House of the U.K. Parliament. For the Commons, this essentially extends only to things said or done during proceedings in the House. So a member is protected from, for example, defamation proceedings for anything he or she says in the House. But unlike in some other parliaments, a Member does not enjoy a general immunity from civil or criminal proceedings.

However, complaints of breaches of privilege or of expected standards continue to be regulated by the respective House rather than the courts. Parliament has resisted—and continues strongly to resist—any intrusion by the courts into its own internal processes. This is essentially on the grounds that a sovereign parliament must retain jurisdiction over its own affairs.

Much of the recent debate in the United Kingdom around these issues has concerned the question of whether regulation of these matters by Parliament alone can continue and, if not, what should replace it.

### **Development of the Present Arrangements**

The impetus for the existing regulatory framework in the Commons for policing Members' conduct came from a succession of scandals that broke over the past 30 years. In 1975, for example, the first Register of Members' Interests was created following the Poulson case, in which several members were criticized, and one left the House, over nondeclaration of pecuniary and other benefits.

Rules regarding the registration of MPs' interests subsequently developed gradually through experience and were codified. They were first published in 1992.

The arrangements were further developed in the mid-1990s following a series of allegations against MPs of

- persistent failure to register benefits in cash or in kind and
- tabling questions to government ministers in return for payment.

The then Prime Minister, John Major, established a Committee on Standards in Public Life, which reported in May 1995. It recommended

- a new Code of Conduct for MPs;
- a more informative and detailed Register of Members' Interests; and
- the appointment of an independent Parliamentary Commissioner for Standards, who would maintain the Register and investigate allegations of misconduct by MPs.

These recommendations were refined by a specially constituted Select Committee of the House of Commons. The Select Committee also recommended new arrangements for institutional oversight, involving setting up a Committee on Standards and Privileges, the functions of which would include consideration of complaints against Members and advice to the House on conduct matters.

### **Key Elements in the Present Arrangements**

#### *(1) The Parliamentary Commissioner for Standards*

The Parliamentary Commissioner for Standards (the Commissioner) is the independent element in the system for regulation of standards in the House of Com-

mons. The role of the Commissioner is to advise the House and individual Members on matters of conduct; to oversee the maintenance of the Register of Members' Interests (and of other registers covering parliamentary journalists, Members' staff, and all-party parliamentary groups); and to receive, and if he or she thinks fit, investigate complaints against Members for breaches of the Code and Rules. The Commissioner reports on complaints and other aspects of his or her work to the Committee on Standards and Privileges (see below).

The Commissioner is expected to act independently and impartially. He or she is appointed by resolution of the House for a five-year, nonrenewable term.

Much of the emphasis of both the Commissioner and the Committee in recent years has been on trying to prevent problems before they arise. This is being done through providing written guidance and advice to Members, arranging talks and workshops, and providing confidential advice to individual Members. It is hoped that by doing so, standards of compliance will be enhanced, and the scope for complaints reduced in consequence.

### *(2) The Committee on Standards and Privileges*

The Committee oversees the work of the Commissioner. It advises the House on changes to the Code and the Rules on registering interests. It also adjudicates in cases where the Commissioner has reported to it on a complaint and advises the House if it thinks a penalty appropriate.

The Committee is made up of 10 back-bench Members of the House (not government ministers). Unusually, to emphasize the House's wish to approach these matters in a nonpartisan way, the membership of the Committee is drawn equally from the government and opposition parties. It is chaired by a senior opposition back-bench Member.

### *(3) The Code of Conduct*

The Code of Conduct for Members was first approved by the House on July 24, 1996. It was recently reviewed, and an amended version was adopted by the House on July 13, 2005.

The purpose of the Code of Conduct is described as follows:

To assist members in the discharge of their obligations to the House, their constituents and the public at large by:

- a) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing
- b) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties.

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.

In summary, the Code requires Members to

- uphold the law and the constitution;
- act always in the public (not their personal) interest and to resolve at once any conflict between the two in favor of the former;
- strengthen confidence in Parliament, not bring it into disrepute;

- observe the seven principles of public life, as set out in the first report of the Committee on Standards in Public Life;
- never accept a bribe, act as a paid advocate, or misuse allowances and other payments;
- observe the House's rules (for example, regarding the registration or declaration of interests).

The provisions of the Code are cast in wide terms. They state broad principles. It is the task of the Commissioner and of the Committee on Standards and Privileges to interpret and apply them in individual cases.

Although many complaints against Members were initially about paid advocacy, in recent years most have concerned either alleged failures to declare or register interests, or the alleged abuse of allowances paid to Members.

#### *(4) The Register of Members' Interests*

The Rules on registration and declaration of interest that underpin the Code have been developed over the years by resolutions of the House. The main purpose of the Register of Members' Interests is "to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament."

The registration form specifies 10 categories of registerable interests. These include directorships; other forms of remunerated employment; sponsorships; gifts, benefits, and hospitality; overseas visits; overseas benefits and gifts; land and property; and shareholdings. Apart from the specific rules, there is a more general obligation upon members to keep the overall definition of the Register's purpose in mind when registering their interests.

The purpose of registration is openness, to give other Members and the public an opportunity to know about interests that may reasonably be thought likely to influence a Member's actions in his or her parliamentary capacity, and to make their own assessment of their significance. Registration of an interest does not imply any wrongdoing.

The Register is compiled afresh at the start of every Parliament or, as in 2002, following a major revision of the Rules. One bound, printed edition is published every year, and the text is also available on the House of Commons Web site at [www.parliament.uk](http://www.parliament.uk). In addition, the Register is updated every six to eight weeks to include fresh information supplied by Members. The text of the updated editions is also published on the Web site, and is available, by appointment, for inspection in hard-copy form.

### **How Complaints Are Handled**

Complaints may be lodged by other MPs or members of the public, including members of the press. Any allegation that a Member's conduct is incompatible with the Code or Guide to the Rules on registration of interests must be submitted to the Parliamentary Commissioner in writing and signed.

A number of would-be complainants make initial contact through e-mail. A complaint must be sufficiently supported by evidence to warrant at least prelimi-

nary inquiry. If so, they are advised to write, forwarding their evidence so that their complaint can be considered.

On receiving a complaint, the Commissioner decides whether it does in fact fall within his or her terms of reference. Many fall outside the scope of the regulatory framework (for example, because they concern how an MP has handled a constituent's case or the complainant is simply taking issue with something the Member has said).

Complaints about the actions of a Member who is a minister, where those actions are taken purely in his or her ministerial capacity, also fall outside the Commissioner's remit. These are matters for the Prime Minister.

If a complaint involves an allegation of criminal activity, the Commissioner will encourage the complainant to refer the matter to the police or, if appropriate, make such a reference himself.

If the Commissioner is satisfied that the complaint is within his or her terms of reference and that there is enough evidence to merit at least a preliminary enquiry, he or she will refer the matter to the Member concerned for his or her response.

In the light of that response, it may be clear that there is no *prima facie* case, in which event the Commissioner will dismiss the complaint and inform the Member, the complainant, and the Committee on Standards and Privileges accordingly.

If, however, the complaint does seem to merit further investigation, the Commissioner conducts an enquiry. Although the Commissioner has no formal investigative powers, this is less of a problem than it would appear in practice because the Committee on Standards and Privileges has made clear that it expects Members to cooperate fully with the Commissioner and the Committee itself has power to send for persons, papers, and records and to order Members or others to appear before it. Indeed, failure by a Member to cooperate with an investigation is itself a breach of the Code.

In conducting an enquiry, the Commissioner seeks to be fair and impartial throughout. For example, the Commissioner shares the draft of his or her findings of fact with the Member concerned to take into account any comments the Member may make before finalizing his or her report to the Committee on Standards and Privileges.

At the conclusion of the investigation, the Commissioner reports the outcome to the Committee, including his or her view as to whether the complaint is substantiated.

The Committee considers the report and may agree or disagree with the Commissioner's conclusion. It also considers what penalty, if any, to recommend that the House impose. The Committee makes a published report to the House, to which is attached the Commissioner's report to the Committee of his or her investigation.

The Committee may indicate in its report that the Member concerned should apologize in public, on the Floor of the House, for his or her actions. Whether it does so or not, it may recommend further action to the House, if necessary. The House as a whole must approve that action, with or without modification, which may include

- a formal reprimand by the House,
- forfeiture of the Member's salary for a specified period,
- the suspension of the Member concerned from membership of the House for a specified period (which also involves loss of salary for that period), or
- expulsion of the Member.

## Independent Review

The whole system for regulating standards of conduct in Parliament has been scrutinized twice by the independent Committee on Standards in Public Life since it was first established.

On the last occasion in 2002, the Committee found the fundamental structure of the system to be sound, but made a number of recommendations for strengthening the arrangements further. The House of Commons accepted virtually all of these recommendations which have since been implemented.

## Lessons from the House of Commons Experience

How then does experience in the House of Commons suggest that parliamentary codes of conduct and registers of members' interests can help in the fight against corruption?

Essentially, they provide a framework within which Members and the public can know what behavior is expected of Members of Parliament. They can serve as a means of encouraging the observance of high standards and of helping to develop a culture of compliance.

They reflect an insistence on openness and accountability in the conduct of public affairs. In themselves, however, they are not enough. They should be accompanied by proactive systems for offering advice and guidance, and by effective means of enforcement that include an independent element. It is no good having codes and registers in place if these are merely fig leaves disguising unacceptable behavior.

Do codes of conduct and registers of members' interests—at least as we know them in the House of Commons' context—work?

Of course, in one sense we can never know whether they work because we cannot know how many instances of misconduct they have prevented or how many instances of misconduct have occurred but never come to light because they have not been the subject of complaints.

We do know in the U.K. context, however, that the climate in Parliament has altered radically since the present arrangements were introduced in 1995. The House of Commons is no longer seen as a "hiring fair," and there have been no recent generalized allegations that Members were engaging in paid advocacy or lobbying for reward on behalf of outside interests. The number of Members registering an arrangement as a paid parliamentary consultant has dropped dramatically. Codes of conduct have also been introduced by the three devolved U.K. assemblies: the Scottish Parliament, the Welsh Assembly, and the Northern Ireland Assembly.

While allegations of "sleaze" in public life occasionally resurface, recent research by the Committee on Standards in Public Life has indicated that public concern appears to have shifted from "sleaze" (that is, allegations of minor impropriety) to "spin" (that is, concerns about whether government is being entirely honest with citizens).

The general view would still be that expressed in 1995 in the first report of the Committee on Standards in Public Life: "We believe that the great majority of men and women in British public life are honest and hard working, and observe high ethical standards."

This view was reinforced in the Committee's Sixth Report, which noted the generally very high standards in the United Kingdom. And in its Eighth Report, in 2002, the Committee stated: "We endorse the view that standards in the House of Commons are generally high, and that the overwhelming majority of Members seek to, and in practice do, uphold high standards of propriety."

## **Conclusion**

Issues of standards and accountability are complex, and it would be unrealistic to expect parliamentary codes of conduct and so forth alone to resolve them effectively. They can only ever be part of a solution, which must depend at least as much on encouraging the right attitudes about ethical behavior in society as a whole.

However, the experience of the House of Commons shows that a clear statement of what we expect of MPs, effectively and independently policed and firmly enforced by the House itself, can play a useful part in helping establish and maintain that public confidence in parliamentary institutions that is vital to the well-being of parliamentary democracy itself and therefore of our society.