



HOUSE OF COMMONS

Submission No. 1

Committee of Privileges and
Members' Interests

25-01-2011

18 January 2011

Ms Anna Burke MP
Chair, Standing Committee of Privileges and Members' Interests
PO Box 6021
Parliament House
Canberra
ACT 2600
Australia

Dear Ms Burke,

INQUIRY INTO DRAFT CODE OF CONDUCT FOR MEMBERS OF THE AUSTRALIAN PARLIAMENT

Thank you for your letter inviting me to make a submission to your Committee to assist it with its inquiry into a draft Code of Conduct.

I am grateful for this opportunity and enclose a copy of my evidence, which I hope will be of some assistance to the Committee.

*Yours sincerely,
John Lyon*

John Lyon CB
Parliamentary Commissioner for Standards

Enc: response to consultation

A draft Code of Conduct: Response to the Standing Committee of Privileges and Members' Interests of the House of Representatives of the Parliament of Australia

Note by the Parliamentary Commissioner for Standards: House of Commons: Parliament of the United Kingdom.

Introduction

1. I am grateful to the Chair of the Committee for her invitation to submit evidence to assist it in its inquiry into a draft Code of Conduct.
2. This evidence sets out the role of the Parliamentary Commissioner for Standards in relation to the Code of Conduct for Members of the House of Commons. I have set out my evidence under the five headings used in the Chair's letter.

Background

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.
4. My functions are set out in Standing Order no 150 and they are overseen by the Committee on Standards and Privileges, whose remit is set out in Standing Order No 149.¹ These functions have recently been extended to allow me to publish information about the resolution of complaints which are not formally reported to the Committee, and (following a recommendation by the Committee on Standards In Public Life in its Twelfth Report²) to allow me to open an inquiry in the absence of a specific complaint.³

The Code of Conduct

5. The Code is published in hard copy and on the parliamentary webpages alongside the rules of conduct and the Guide to the Rules on registration.⁴ At seven paragraphs, it is comparatively succinct.
6. In accordance with the recommendations of the Eighth Report of the Committee on Standards in Public Life,⁵ 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 hope to embark on the next in 2011.

The Complaints Process

¹ Standing Orders Nos 149 and 150 as amended on 2 December 2010, are reproduced at Appendix 1.

² *MPs' expenses and allowances — Supporting Parliament, safeguarding the taxpayer*, Twelfth Report of the Committee on Standards in Public Life, Cm 7724, November 2009

³ The House agreed these changes on 2 December 2010. I have not yet exercised the power to open an inquiry without receiving a specific complaint.

⁴ The Code of Conduct together with the Guide to the Rules relating to the conduct of Members 2009. Session 2008-09, HC 735 (<http://www.publications.parliament.uk/pa/cm/cm pocrules.htm>)

⁵ *Standards of conduct in the House of Commons*, Eighth Report of the Committee on Standards in Public Life, Cm 5663. November 2002

7. My complaints procedures are set out in paragraphs 103 to 114 of the Guide to the Rules.⁶ Under these procedures I am able to consider complaints where the complainant has provided sufficient evidence to justify an inquiry into whether a particular Member has breached the Code of Conduct for Members of Parliament and its associated rules.⁷ In practice evidence of a breach of the Code alone is unlikely to be sufficient to found an inquiry.

8. Anyone—including another Member—may submit a complaint against a Member, but I require a hard copy of the complaint, bearing the complainant's signature and their postal address, before I can open an inquiry.

9. I, or my office, respond to all complaints I receive. Where I decide not to inquire into the complaint, I give brief reasons. 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.

10. In my Annual Report for the financial year 2009-10 I reported on the complaints I had considered in that year.⁸⁹ I received some 317 formal complaints and allegations during the year. I inquired into 72 of these, including 14 allegations referred to me by the Members themselves. Of those I resolved that year, I reported 21 to the Committee and I concluded work on 14 less serious complaints without a formal report to the Committee. I did not report formally to the Committee on 16 complaints which I did not uphold.

11. In considering the complaints I receive, I 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 were, until the last Parliament dissolved in March 2010, within my remit, but a Compliance Officer working with the new Independent Parliamentary Standards Authority (IPSA), which now administers the pay and expenses system for Members, deals with all such complaints in relation to claims made in the new Parliament.
- ii. I then consider whether the evidence provided is sufficient to justify at least a preliminary inquiry. This is a requirement set out in the rules of the House. 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 provides sufficient evidence of a breach, then I

⁶ The Code of Conduct together with the Guide to the Rules relating to the conduct of Members 2009, Session 2008-09, HC 735 (<http://www.publications.parliament.uk/pa/cm/cm pocrules.htm>). The published procedures will need to be amended to reflect my new powers to open an inquiry in the absence of a specific complaint.

⁷ Since 2 December 2020 I have been able to open an inquiry in the absence of formal complaint, although evidence of a breach of the Code and the Rules will still be required. See paragraph 10A of SO No 150, reproduced at Appendix 1.

⁸ See <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/publications/annual-reports/>.

⁹ Following the Resolution of the House of 2 December 2010 I now place statistical information on my webpages on a monthly basis.

accept the complaint. But the Commissioner is not able to conduct inquiries, even of a preliminary nature, unless provided with sufficient evidence of a breach.¹⁰ I am able to initiate an inquiry without having received a complaint where a matter has come to my attention, but again I must give sufficient regard to whether there is sufficient evidence that the Code of Conduct for Members or the related rules may have been breached.

Whether to accept a complaint for inquiry on the basis of the evidence I have been sent or which has come to my attention is a matter for me alone. Neither the Committee nor the House has any role in that decision. Exceptionally, I can undertake an inquiry into a Member's conduct at the request of that Member, but I will only do so with the agreement of the Committee. It is for me to decide whether to seek the Committee's agreement to such an inquiry.

- iii. Once I have opened an inquiry, it is for me 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, then I may seek the Committee's agreement to establish an investigatory panel to assist me in establishing the facts relevant to the investigation. It is open to the Committee to request that the Commissioner appoint such a panel.¹¹ So far, neither the Commissioner nor the Committee has felt it necessary to establish such an investigatory panel.

12. In resolving a complaint I can:

- i. *Not uphold the complaint.*

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

Where, after inquiry, I decide not to uphold a complaint, I write to the complainant explaining the factual reasons for this. I also report the outcome briefly to the Committee. It is now my practice to publish my letter

¹⁰ See footnote 6.

¹¹ This provision was added to the Standing Orders of the House following the publication of *Standards of Conduct in the House of Commons*, Eighth Report of the Committee on Standards in Public Life, Cm 5663, November 2002

to the complainant, together with the relevant evidence, on my webpages.¹²

ii. *Rectify the complaint.*

Under the Standing Orders of the House,¹³ 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. The Committee is not able to reopen the inquiry or change the conclusion.

In such cases, I write to the complainant explaining my findings and close the complaint. I report the outcome briefly to the Committee. It is now my practice to publish my letter to the complainant, together with the relevant evidence, on my webpages.

iii. *Submit a memorandum to the Committee.*

In more serious cases, or cases which raise wider issues, I submit a memorandum to the Committee. In 2009-10 I submitted 13 such memoranda concerning a total of 20 allegations about 19 Members. I upheld all but one of these allegations. I set out in each 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 upheld the complaint in full or in part, together with any other observations, including any recommendations for the future. I seek to agree with the Member complained of, all the factual 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 memoranda, together with my conclusions and any recommendations, are invariably published, as I have drafted them, as appendices to the Committee's reports.

The role of the Commissioner in relation to the Code

13. Under the Standing Orders of the House, it is my role to advise the Committee on Standards and Privileges and individual Members on the interpretation of the Code of Conduct and on questions of propriety, and to monitor the operation of the Code and the registers and to make recommendations for change. This involves undertaking a

¹² Since the Resolution of the House of 2 December 2010

¹³ See Appendix 1

review of the Code, and of the Guide to the Rules, broadly once in every Parliament. In addition I am required to consider and to investigate if I think fit, specific matters which have come to my attention relating to the conduct of Members.

14. I advise the Committee on the interpretation of the Code and on related matters when I report on individual complaints to the Committee on Standards and Privileges. For example I have reported with wider recommendations on the interpretation of the rule on advocacy, on appointments for former Members, on the rules on Members' use of House stationery and postage, and on Members' expenses for their second homes.

15. 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 do so in advance of any actions which Members may be contemplating.

16. I make it clear to Members that my advice is given on the basis of the information they 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.

The role of the Committee on Standards and Privileges in relation to the Code, and the enforcement of the code

17. As set out in the Standing Orders of the House,¹⁴ the Committee is responsible for oversight of my work, including of the arrangements for the four Registers which I maintain. The Committee also considers any matters relating to the conduct of Members, including any alleged breaches of the Code of Conduct to which I may draw its attention. The Committee may also recommend modifications to the Code of Conduct.

18. I have no part in deciding on sanctions. The Committee alone is responsible for deciding on what, if any, sanctions to recommend to the House of Commons in respect of a complaint or allegation which, on the basis of my memorandum, they decide to uphold. My memoranda do not include recommendations for sanctions, although I do give my view on the seriousness of any breaches which I find of the Code of Conduct or the rules.

19. Sanctions have included repayment of expenses wrongly claimed, suspension without pay or (in one case) the forfeiture of a Member's resettlement grant (ie his redundancy payment on leaving the House). Members may also be asked to apologise in writing to the Committee or personally on the floor of the House. In three cases involving Members who had left the House, the House recently agreed that each should forfeit their parliamentary pass for a specified period.

¹⁴ See Appendix 1

John Lyon CB
Parliamentary Commissioner for Standards

18 January 2011