

Complaints procedure

Introduction

- 6.1 It would be essential to the integrity of any code of conduct and to building confidence in a new system to support appropriate standards of members' conduct that a complaints procedure be established, and that it should be open and robust. As noted in the previous chapter, an independent Parliamentary Integrity Commissioner could be appointed as part of the support framework for the code, and could have responsibility for the receipt and investigation of complaints under the code of conduct.
- 6.2 A Parliamentary Integrity Commissioner could be seen as independent of government and the political parties and the discussion in chapter 5 explores this aim. The arrangements for the Commissioner could be established by resolution of the House, with the Commissioner to be appointed as an Officer of the House by resolution following a recommendation to be made by the relevant Committee of the House (see Chapter 7). The Commissioner could be appointed for a non-renewable term of seven years. The Commissioner could only be removed from office by resolution of the House following a report from the relevant Committee of the House that the Commissioner is unfit to hold the office or is unable to carry out the duties of the office.
- 6.3 In keeping with the aim to establish a complaints procedure that instils a high degree of community confidence, the Parliamentary Integrity Commissioner could have considerable licence to establish independent processes in how complaints would be dealt with. Nevertheless, it is also useful to consider the basic features of a complaints procedure including,

what limits there might be in relation to complaints about a member and how the complaints might be dealt with, investigated and reported on.

Limits in relation to complaints about a Member

- 6.4 In Canada complaints may only be made by a member of the parliament, the House itself or the Commissioner. This approach would leave the way open for other potential complainants to raise their concerns with a member of the House or with the Commissioner who might then raise a complaint on their behalf. The complaint mechanism in the UK is more liberal, and the Parliamentary Commissioner for Standards can receive complaints from members of parliament or from members of the public who can be clearly identified, meaning no anonymous complaints will be accepted.
- 6.5 Consistent with an open process for making complaints, the Committee notes that for most state parliaments any person can make a complaint, and considers that a suitable procedure should enable complaints to be lodged by a wide range of persons in the community. However, it would be reasonable to put some limits on complaints and the Committee closely reviewed the approach at the UK House of Commons.
- 6.6 In the United Kingdom, a number of areas of complaint are outside the remit of the Parliamentary Commissioner for Standards. These areas are: policy matters or a Member's individual views or opinions, a Member's handling of or a decision about an individual case (whether a constituent or another person), the funding of political parties, the conduct of members in a ministerial capacity (where the application of the Ministerial Code may be relevant), or the purely private or personal lives of members.
- 6.7 In addition, as referred above, the Commissioner will not accept anonymous complaints, or those relating to matters in the Chamber, which are considered to be within the domain of the Speaker. If the complaint is in the nature of a criminal misconduct, and more appropriately dealt with by a different office, the Commissioner will advise the complainant to approach the appropriate office.
- 6.8 The 2009-10 annual report of the UK Parliamentary Standards Commissioner indicates that the overwhelming majority of complaints, approximately 90 per cent, do not merit a final report to the Committee on Standards and Privileges. Some 317 formal complaints and allegations were received, of these, 72 (14 of which were referred by members) were

investigated further by the Commissioner. Only 21 of the 317 formal complaints were reported to the committee; of the rest, the Commissioner concluded 14 less serious matters but did not report these to the committee, did not uphold 16 others, which were not reported, and the remaining matters are not yet finalised.

- 6.9 The Committee notes that there is a considerable difference in the number of original complaints made and the number of formally registered complaints. It is vital that the complaints process be sufficient to address complaints about whether members are acting in the public interest. Matters of a personal nature or those dealt with elsewhere should rightly be excluded from the process. The Committee considers that it is reasonable to exclude the areas referred to above in relation to members' conduct and would support their exclusion from any complaints procedure adopted. The Committee considers that anonymous complaints should not be accepted because they would raise difficulties if further information was required during an investigation.
- 6.10 With the exception of these exclusions, an appropriate complaints process should be open to any member of the public, under detailed arrangements to be established by a Commissioner.

Observations

- 6.11 The Committee considers that a Commissioner could receive complaints from any person, as long as the individual can be clearly identified, and that no anonymous complaints should be pursued. Also, in relation to the Chamber, the Speaker is the appropriate authority in relation to members' conduct within the Chamber.
- 6.12 The Committee considers further, that a Commissioner could receive any complaint, saving only the following exclusions: policy matters or a Member's views or opinions, a Member's handling of or a decision about an individual case (whether a constituent or another person), the funding of political parties, the conduct of members in a ministerial capacity (recognising that the application of the ministerial code may be relevant), or the purely private or personal lives of members.

Consideration and investigation of complaints

- 6.13 The Committee considers that a Parliamentary Integrity Commissioner should have the responsibility to establish a robust complaints process

that ensures there is natural justice both to the complainant and to the Member about whom the complaint is lodged. It is clear that the Commissioner would need guidelines in relation to the exercise of his or her responsibilities. The whole process needs to be fair to all parties and conducted in accordance with proper procedures.

- 6.14 The process adopted would need to instil confidence that no complaint would be decided on the basis of the subjective or personal view of the Commissioner rather, the evidence should be tested against the terms of the code in accordance with the rules that underpin the code. As Mr John Lyon, Parliamentary Commissioner for Standards, UK House of Commons has told the Committee, those rules must be fair and transparent.¹
- 6.15 It would be necessary for all members to cooperate with any investigation undertaken by a Commissioner, although it is not considered that the Commissioner would have the power to call for persons and records.
- 6.16 In addition, the Committee considers that a Commissioner should have several options available in order to respond appropriately in relation to complaints. There would be no good purpose served, and potentially harm caused, were all complaints to be published in circumstances where a Commissioner could not find evidence to support them. The Committee believes that a Commissioner should have the option of dismissing a complaint in circumstances where the complaint is outside jurisdiction or there is no evidence to support the complaint. Further, if a breach is not found on preliminary inquiry, the Commissioner could have the option to dismiss a complaint, or if an issue might have arisen, the Commissioner could have the option to resolve a complaint to the satisfaction of the parties.
- 6.17 The Committee considers that even though a Commissioner could have carriage of receiving and investigating complaints, it would be appropriate for the Commissioner to make reports about complaints to a parliamentary committee, in keeping with the established processes of the House. That committee, in turn, would consider the report and present any recommendation to the House. This process would be similar to established processes of the House in relation to the consideration of complaints of breach of privilege. The Committee considers this matter in more detail below in chapter 7.

1 Transcript of video conference, 21 June 2011, p. 1.

Observations

- 6.18 The Committee considers that a complaints process would need to be as transparent as possible and at the same time be characterised as fair and proper to all parties. A Parliamentary Integrity Commissioner could have the following options available in addressing complaints:
- dismissing a complaint immediately if it is outside jurisdiction (for any of the reasons outlined above as exclusions) or if there is insufficient evidence to support the complaint;
 - dismissing a complaint after having conducted preliminary inquiries, including seeking comment from the Member involved, on the basis that the Commissioner finds there is not a breach of the code;
 - having investigated a complaint and found that there might be an issue, attempting to rectify or resolve the matter to the satisfaction of the parties; or
 - having investigated a complaint and found that there is an issue, reporting on the matter to the relevant House committee.

Reports in relation to complaints

- 6.19 The Committee considers the Parliamentary Integrity Commissioner should report on complaints to a relevant committee of the House (see Chapter 7). That committee in turn would have the responsibility for reporting to the House, including whether there are findings of a breach of the code and making recommendations for the imposition of any sanctions.
- 6.20 As the information in relation to the United Kingdom complaints procedure and independent commissioner illustrates, the large majority of complaints about the conduct of members are dismissed at some point of the process of investigation. Nevertheless, the Committee considers that in the interests of transparency of process the oversight committee could receive information from the Commissioner in relation to how each complaint is dealt with. This level of reporting would provide valuable information about the overall operation of the complaints procedure and the role of the Commissioner.

- 6.21 The Committee considers that it would be appropriate for a Commissioner to report to the oversight committee in varying detail depending on the option followed. The Commissioner could report, identifying the number of cases where complaints are dismissed before any investigation, briefly where a complaint is dismissed after preliminary investigation, including a summary where a complaint is investigated and action is taken to resolve a matter, and with a full report where a matter has been investigated and a finding of a breach of the code is made.

Observations

- 6.22 The Committee considers that a Parliamentary Integrity Commissioner could have several options in relation to reporting on complaints which reflect a high level of transparency, but also fair and proper process to the complainant and any member involved.
- 6.23 In particular, the Committee considers it would be appropriate for a Commissioner to report to the oversight committee as follows:
- where complaints are dismissed before any investigation – report general statistics periodically;
 - where complaints are dismissed after preliminary investigation – report periodically with a brief summary of each matter;
 - where complaints are investigated and some action is taken to rectify or resolve the matter – report periodically with a brief summary of the matter and the action taken to rectify or resolve it; and
 - where matters have been investigated and a finding of a breach of the code is made – report with the details of the investigation and any conclusions or findings that are made.