



House of Commons  
Committee on  
Standards and Privileges

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**Complaints against  
Mr Henry McLeish**

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**Fourth Report of Session 2002–03**

*Report and Appendix,  
together with formal minutes*

*Ordered by The House of Commons  
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## Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

### Current membership

Rt Hon Sir George Young Bt MP (*Conservative, North West Hampshire*) (Chairman)  
Mr Russell Brown MP (*Labour, Dumfries*)  
Ross Cranston QC MP (*Labour, Dudley North*)  
Mr Andrew Dismore MP (*Labour, Hendon*)  
Rt Hon Derek Foster MP (*Labour, Bishop Auckland*)  
Mr Michael Jabez Foster MP (*Labour, Hastings and Rye*)  
Mr David Heath CBE MP (*Liberal Democrat, Somerton and Frome*)  
Mr Tom Levitt MP (*Labour, High Peak*)  
Rt Hon Andrew Mackay MP (*Conservative, Bracknell*)  
Mr Kevin McNamara MP (*Labour, Hull North*)  
Richard Ottaway MP (*Conservative, Croydon South*)

### Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: [www.parliament.uk/parliamentary\\_committees/standards\\_and\\_privileges.cfm](http://www.parliament.uk/parliamentary_committees/standards_and_privileges.cfm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Dr Christopher Ward (Clerk), Mike Clark (Second Clerk) and Lisa Hasell (Secretary).

### Contacts

All correspondence should be addressed to The Clerk of the Committee on Standards and Privileges, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615.

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## Complaints against Mr Henry McLeish

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1. We have considered a memorandum by the Parliamentary Commissioner for Standards relating to complaints by Mr Dominic Grieve, Member for Beaconsfield, and Mr Peter Duncan, Member for Galloway and Upper Nithsdale, against Mr Henry McLeish, Member for Central Fife until the 2001 General Election. The Commissioner's memorandum is appended to this Report.
2. When first elected to the House in 1987, Mr McLeish had sought a central and accessible location for his constituency office. The premises he leased met those criteria, but were larger than he needed for this purpose so, almost from the start, he had sub-let part of the accommodation. The two basic allegations against Mr McLeish are that he failed to register, prior to 4 April 2001, the income he received from the sub-lets of his constituency office, and that he failed to offset the rental income from the sub-lets when claiming against his Office Costs Allowance (OCA) the rent payable to the landlord.
3. The matter of whether the rental income from the sub-lets was a registrable interest was first raised with the Registrar of Members' Interests by Mr McLeish in April 2001, following press revelations of the sub-lets. The interest was duly registered, retrospective to 1987, shortly afterwards. A few days later, there were allegations in the press that Mr McLeish had been claiming the full rental cost against his OCA entitlement, while at the same time sub-letting part of the office.
4. Following contact between Mr McLeish and the then Parliamentary Commissioner for Standards, and discussions with the Department of Finance and Administration, he undertook to repay the £38,500 he had overclaimed against his OCA by not offsetting the income from sub-letting against the amount of rent claimed from his OCA. The full sum had been repaid by April 2002.
5. It is clear from his correspondence with the Commissioner that, from the outset, the office which Mr McLeish leased was significantly larger than he needed. So it is not surprising that, almost from the outset, he decided to offset some of the cost by sub-letting the surplus accommodation. However, it seems that Mr McLeish only sought advice as to whether the interest was registrable after it became public knowledge in April 2001. It would undoubtedly have been better if, having decided in 1987 to sub-let part of the office, he had sought advice from the Registrar of Members' Interests as to the implications for his Register entry.
6. As regards the OCA, it is clear that, by claiming the gross rental figure at times when he was sub-letting, Mr McLeish should have realised that he was claiming more rent from his OCA than was incurred "wholly, exclusively and necessarily in the performance of parliamentary duties". There is no evidence that, when he first decided to sub-let part of his office, or subsequently, he sought advice from the Fees Office as to the implications for the amount of the rent he could properly claim against his OCA. He should have sought advice from the Fees Office on this matter before doing so, as he now realises.
7. The result of claiming the full rental payments against his OCA, and paying the rental income from the sub-lets into his office account was that, over the period 1987 to 2001, Mr

McLeish was in effect able to use a substantial sum of public money that should have been subject to the rules applying to the OCA for the general purposes of meeting the costs of his constituency office and providing services to his constituents, not all of which would necessarily have qualified to be charged to his OCA.

8. It is the responsibility of Members to ensure that they meet their obligations to register interests, and to ensure that they strictly observe the rules relating to payments and allowances. To do so, they need to keep these matters under regular review. Mr McLeish was clearly negligent in failing to give sufficient consideration to his obligations to register the income from sub-letting part of his constituency office, and in relation to what could properly be claimed against the OCA, over a substantial period.

9. There is no suggestion that Mr McLeish acted with criminal intent. He has asserted that this was “a muddle, not a fiddle”, and none of the evidence appears to contradict this.

10. We recognise, as did the Commissioner, that Mr McLeish has expressed regret for what has happened; acted promptly to register the interest once it became public knowledge; co-operated fully with the various inquiries; and repaid in full the sums which should not have been claimed against the OCA. We note that, in some years, he overspent his OCA and consequently had to meet the deficit from his own pocket. It has also had a serious effect on him and on his family, and prejudiced his career in public life.

11. On the other hand, it has to be recognised that the failure to declare the interest, and the improper use of the OCA, went on for a long time, and only came to light as a result of press revelations. Also, the sum involved in this case is quite substantial.

12. We agree with the Commissioner that, on the evidence available, Mr McLeish broke the Code of Conduct and the Rules in two respects:

- a) by failing to register, prior to 4 April 2001, the fact that he was receiving a substantial income from sub-letting part of his constituency office; and
- b) by not off-setting the rental income he received from the sub-lets against his claims under the OCA.

13. As Mr McLeish is no longer a Member, no sanction is available to the House in this case. Had he still been a Member, we would have recommended a period of suspension of one week.

14. On 22 January 2002, the Department of Finance and Administration issued further guidance, approved by the Speaker, on the arrangements for Members’ offices and surgeries outside Westminster. This strongly advises, on practical grounds, against sub-letting leased accommodation paid for out of allowances, and imposes additional requirements if continuation is unavoidable. We are pleased to note that the rules in this area have been tightened up. This should help to prevent similar cases to this one arising in the future.

# Appendix: Memorandum from the Parliamentary Commissioner for Standards

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# Complaints against Mr Henry McLeish

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## The Complaint

1. On 9 November 2001, Mr Dominic Grieve (the Member for Beaconsfield) wrote to the Chairman of the Committee on Standards and Privileges asking that the Committee authorise an inquiry into the allowance claims made by Mr Henry McLeish, whilst a Member of the House, in relation to his constituency office. A copy of Mr Grieve's letter is at Appendix 1. The Committee declined to authorise an inquiry at that time because the issues of concern to Mr Grieve were already the subject of investigation by the Fife Police.

2. On 6 December 2002, Mr Peter Duncan (the Member for Galloway and Upper Nithsdale) wrote to the Chairman referring to the ongoing police investigation, and added:

*I believe it would be appropriate for your Committee to instigate an investigation into the appropriateness or otherwise of Mr McLeish's financial affairs, so far as they relate to his time as a Member of the House of Commons.*

A copy of Mr Duncan's letter is at Appendix 2

3. On 21 March 2003, the Scottish Crown Office and Procurator Fiscal Service announced that:

*no further action is to be taken into allegations relating to the sub-let of Mr Henry McLeish's constituency office in Glenrothes. Crown Counsel have instructed that no further action should be taken as they were satisfied there was no evidence of criminal intent.*

4. Meeting on 8 April this year, the Committee decided to authorise me to conduct an investigation into the disciplinary aspects of the complaints by Mr Grieve and Mr Duncan, that is the issues they raised in relation to the Code of Conduct for Members and the associated Rules relating to the registration and declaration of interests. I now submit my report.

5. Although a comprehensive account of what came to be known, in some sections of the press, as "Officegate" is unnecessary in order to be able to address the complaints against Mr McLeish, it is impossible to understand the requests for an investigation by Mr Grieve and Mr Duncan without also understanding, in brief, the history of events which led up to them, particularly as these concern the obligations of Members under the Code of Conduct and Rules of the House.

6. The Scottish 'Mail on Sunday' of 1 April 2001 carried a report that Mr Henry McLeish—then Member for Central Fife in both the Westminster and Scottish Parliaments and First Minister in the Scottish Executive—had been sub-letting part of his constituency office in Glenrothes to a local firm of solicitors, Digby Brown, since 1998 in return for a rent of £4,000 per annum. Mr McLeish had not, however, declared the fact that he was receiving this income in the Register of Members' Interests.

7. The following day, Mr McLeish faxed the then Registrar of Members' Interests confirming that "*over the past years I have sub-let the upstairs part of my office*". Mr McLeish added "*I would confirm that the income obtained has been put directly into my office account*". He concluded:

*I would be grateful if you could advise me whether or not an informal sub-lease should have been registered in my entry of members' interests. If this matter should have been registered I would be grateful if this could now be done and I would be very willing to provide any further details which you may require.*

8. After consulting my predecessor, the Registrar replied the same day advising that, under Category 8 of the Rules on the registration of interests then in force, Members were required to register:

*any land or property, other than any home used for the personal residential purposes of the Member or the Member's spouse, which has a substantial value or from which a substantial income is derived.*

9. Mr McLeish informed the Registrar on 3 April that he wished an appropriate Register entry to be made "*at the earliest opportunity*". In response to a question from the Registrar, he confirmed that a sub-letting arrangement had operated since 22 December 1987. The following entry was included under Mr McLeish's name in the updated edition of the Register dated 4 April 2001:

*Land and Property*

*Since December 1987 I have sub-let part of my constituency office in North Street, Glenrothes, Fife. The rental income has been paid directly into my office account.*

Mr Grieve was informed of this when he inquired of my predecessor on 4 April whether Mr McLeish had sought her guidance and what advice she had given.

10. A week after its initial story, the Scottish 'Mail on Sunday' carried a further report to the effect that during the period in which Mr McLeish had been sub-letting part of his office, he had also been claiming its full rental cost under the allowance paid to Members of the Westminster Parliament to help them maintain an office in their constituency (the Office Costs Allowance, OCA). Two days later, Mr Grieve wrote to the then Commissioner asking if Mr McLeish had clarified whether he had set off the rental income he had received from sub-letting against any claim he had made under the OCA. Copying his letter to Mr McLeish, Mr Grieve added:

*The Scottish newspapers are currently full of allegations relating to this issue and it seems to me that it is a matter that should be clarified as soon as possible. I assume that if a Member of Parliament were to claim for the full rental costs of a constituency office, whilst in fact part of that rental cost was being met by an undeclared sub-let, this would constitute a breach of the House of Commons Code of Conduct.*

11. My predecessor immediately wrote to Mr McLeish asking for his response to Mr Grieve's query "*so that I can decide whether I need to take any action*". Mr McLeish replied on 4 May: a copy of the letter is at Appendix 3. The main points Mr McLeish made were:

- a) that when elected to the Commons in 1987 he had wished to provide the best possible service to his constituents. This had involved finding a central and accessible location for his constituency office, which was relatively expensive.
- b) from the end of 1987, part of the office had been sub-let. *“Any income obtained was paid into my business office account and then contributed to the running costs of my constituency office and the services I provided to my constituents”*.
- c) after the issue of registering the sub-let had been raised, he had immediately sought advice and the matter had now been registered in the Register of Members’ Interests in both London and Edinburgh.
- d) since 1987, Mr McLeish had claimed reimbursement of his office rental under the OCA. The costs he claimed under the OCA were, like the rent from the sub-let, used for parliamentary/constituency business *“and I have gained no personal/private benefit from this”*.

Mr McLeish concluded:

*As with registration, I would be grateful for your further advice on the sub-let arrangements.*

12. My predecessor replied to Mr McLeish on 9 May asking for some further information in order to enable her to respond to his request for advice. The General Election intervened, at which Mr McLeish stood down from his Westminster seat in order to focus on his responsibilities in Scotland. This, of course, removed him from the direct ambit of the House’s standards arrangements. It also meant that my predecessor was unable to pursue her preliminary inquiries further without a formal decision by the Committee on Standards and Privileges authorising her to conduct an investigation.

13. Nonetheless, Mr McLeish continued to be in contact with my predecessor with a view to resolving the issues which had been raised. He wrote to her on 22 June 2001 in response to her queries, confirming that the rent of his office had been established following a valuation by the owner and a firm of chartered surveyors. He had claimed reimbursement under OCA of the total rent for the whole premises and of the business rate for that part of it which he occupied. The other part of the premises had been sub-let to a variety of tenants over the years: the rent they paid had gone into his office account *“which covers my parliamentary constituency activities”*; the basis of the rent level paid had been agreed *“very informally”*. The sub-tenants paid directly to Fife Council the business rate for the part of the premises they occupied. A copy of this letter is at Appendix 4.

14. Following this letter, the then Commissioner arranged to see Mr McLeish and advised him to contact the Finance and Administration Department of the House *“to discuss with them whether reimbursement is required”*. When Mr McLeish and Ms Filkin met on 2 July, Mr McLeish said that he would take her advice and contact the Department. My predecessor asked him to let her know when the matter had been resolved with the Department. This would then enable her to deal with the complaint and to write to the complainant to say that the matter had been settled.

15. Mr McLeish wrote on 13 July 2001, to say that he was in touch with the Finance Department. Thereafter, he contacted my predecessor at intervals to let her know how matters were progressing (as did Mr Grieve to find out what was happening). The contacts between Mr McLeish and the Finance Department resulted in a letter to my predecessor dated 18 October 2001 in which Mr Archie Cameron, Head of the Fees Office, said:

*... I am glad to be able to tell you that this matter has been dealt with to my satisfaction. Mr McLeish has provided me with an oral undertaking that he will repay the money he over-claimed from the Office Costs Allowance. He has apologised for the error. As you know, this arose from sub-letting part of his constituency office but continuing to submit claims from his Office Costs Allowance (OCA) for the full quarterly rentals billed to him by the landlord.*

My predecessor telephoned Mr Grieve on 22 October to inform him that his concerns about Mr McLeish's OCA claims had been settled to Mr Cameron's satisfaction. Mr McLeish confirmed the position himself the following day.

16. News of this settlement reignited controversy about the matter in the Scottish press. The headlines over the story in the Scottish edition of the Daily Mail on 23 October, for example, read "*McLeish in secret deal over false office expense claims*". Mr Grieve wrote to Mr Speaker on 25 October recounting his contacts with Ms Filkin; expressing concern both about the secrecy surrounding the settlement and the absence of the formal investigation which would have been possible had Mr McLeish still been a Member of the House; and seeking "*public reassurance ... that there has been no impropriety in this case*".

17. Amid mounting pressure about the matter in the Scottish Parliament and media, stories circulated that:

- Mr McLeish had repaid £9,000 to the Finance and Administration Department
- Mr McLeish's office address had appeared on a leaflet published at the time of the 1999 elections to the Scottish Parliament
- Digby Brown had not staffed the premises they had rented.

On 1 November 2001, the Fife Police told my predecessor that they had received an allegation against Mr McLeish of criminal fraud, made by a third-party. On the same day, Mr McLeish was reported to have confirmed on the BBC programme "Question Time" that part of his office had been sub-let to others prior to the sub-let to Digby Brown in 1998, but to have indicated that he did not know how much money he had received in rent before 1998. Further newspaper reports on 7 November said that, in affirming the previous day his intention to repay the money he owed, Mr McLeish had revealed that he had received a total of £36,000 from 5 tenants over a 14 year period. He had, however, claimed, "*this was a muddle, not a fiddle*".

18. On 8 November, Mr McLeish resigned as First Minister, immediately prior to a debate on an Opposition motion in the Scottish Parliament calling for him to step down. The following day, Mr Grieve wrote requesting an inquiry into Mr McLeish's allowance claims.

## Subsequent Developments

19. As I have earlier indicated, on 20 November 2001, the Committee on Standards and Privileges decided that it would not be appropriate to authorise a parliamentary investigation whilst a police investigation into the sub-letting of Mr McLeish's office was underway. Reporting this to Mr Grieve, the Chairman said:

*The Committee is concerned to avoid doing anything which might prejudice that investigation or any proceeding which may result from it. We have accordingly decided to await the outcome of the current police investigation before deciding whether to invite the Parliamentary Commissioner for Standards to carry out an inquiry. We will also be asking the Fees Office to keep the Commissioner informed of the outcome of its own investigation.*

20. The Director of Operations and Head of the Fees Office, Mr Cameron, wrote to me on 5 April 2002 to confirm that he had received a total repayment from Mr McLeish of £38,550 in respect of the income Mr McLeish had received from sub-letting part of his constituency office during his time as a Member of Parliament. Mr McLeish had made a payment of £10,000 on account on 20 December 2001 and had now paid the balance of the amount. Mr Cameron continued:

*During the four year period from 1994/95 to 1997/98, Mr McLeish made additional payments from his own resources to meet expenditure on parliamentary business which could not be covered by his Office Costs Allowance because there was not sufficient funds in that allowance to enable him to do so. If it can be demonstrated that these resources represented sub-let income then I am still prepared to set those off against the total amount repaid. Additionally, if Mr McLeish can produce information or documents which will substantiate a claim that sub-let income prior to 1994/95 was used to pay for expenses wholly, exclusively and necessarily incurred on parliamentary business that, too can be considered for set off against the amount repaid. Mr McLeish has co-operated fully in this matter.*

21. On 6 December 2002, Mr Duncan wrote, referring to the ongoing police investigation and requesting a parliamentary inquiry into Mr McLeish's financial affairs as a Member. I replied on 17 December indicating that his request would be considered further once the outcome of the police investigation was known.

22. On 21 March 2003, the Crown Office and Procurator Fiscal Service in Scotland announced that no proceedings would be taken against Mr McLeish. This cleared the way for the Committee on Standards and Privileges to consider whether to authorise me to inquire into the issues raised by the case in relation to the Code and Guide to the Rules for Members.

23. The Committee had previously established a clear practice that, before accepting for investigation a complaint against a former Member of the House, the Commissioner should consult the Committee. In its Nineteenth Report in Session 1997–98 (HC 1147), the Committee said:

*We would expect to invite the Commissioner to proceed with an investigation into such a complaint if the allegation were of a serious nature.*

The Committee had authorised two such inquiries on previous occasions. In addition, in another case, the investigation of which bridged a General Election, the Committee found against several former Members and indicated what punishments it would have recommended had they still been Members of the House (First, Seventh and Eighth Reports, HC (1997–98) 30, 240 and 261). At its meeting on 8 April, the Committee authorised me to inquire into the complaints by Mr Grieve and Mr Duncan.

## My Inquiries

24. In accordance with my normal procedure, I wrote to Mr McLeish on 8 April reminding him that the Committee had put Mr Grieve’s complaint on hold pending the outcome of the police investigation, and informing him that they had now authorised me to investigate it. I drew Mr McLeish’s attention, in particular, to the provision of the Code of Conduct for Members which reads:

*No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.*

I also drew to his notice the complaint by Mr Duncan. I invited Mr McLeish’s account of the circumstances relating to the complaint and, in particular, asked if he would set out the periods during which, and the persons to whom, any part of his constituency office was sub-let during the time when he rented the office and was claiming rent on it under the Office Costs Allowance. I asked how fully those parts of the office were utilised during the periods when they were sub-let and how precisely the income from the sub-letting was used.

25. At the same time I wrote to Mr Grieve and Mr Duncan telling them that I was proceeding with my inquiries and giving them the opportunity to submit further material in support of their complaints if they so wished. Neither has done so. I have also been in touch with the Finance and Administration Department and with the Fife Police.

## Mr McLeish’s Response

26. Having received my letter, Mr McLeish telephoned to say that he was about to go abroad for a period but would write on his return. I received his reply on 4 June. A copy is at Appendix 5.

27. The main points Mr McLeish makes amplify what he had earlier told my predecessor:

- a) on his election to Westminster in 1987 he was “*determined to provide a first class parliamentary constituency office for the people of Central Fife*”.
- b) the town centre location he chose was excellent but the rent high. The landlord declined to lease him half the property, so he found himself with more space than he needed.
- c) from December 1987 onwards, he therefore sub-let part of the premises to a total of six different tenants for varying periods between then and June 2001.

- d) the income from the lets and the reimbursement of the rental costs from the Fees Office was spent entirely on his parliamentary constituency office.
- e) once he became aware of concern that he had failed to register the sub-lets in the Register of Members' Interests, the omission was rectified immediately.
- f) after discussion with my predecessor, he had contacted the Head of the Fees Office, Mr Cameron, to resolve how the income from the lets should be treated. Mr McLeish continues:

*Despite the vagueness of the rules and regulations governing the payment of office cost allowance (reflected in the dramatic tightening up of the rules after the 2001 election), despite the fact that the Fees Office had no records covering the period between 1987 to 1995/96 and despite the fact that I had no records covering the same period, I was determined to resolve the matter as soon as possible. After discussing the matter in some detail with the Fees Office, including a meeting in London, and accepting Mr Cameron's advice, I agreed to pay back the amount I had claimed from the Fees Office equivalent to the income received from the sub-lets ...*

- g) Mr McLeish had always complied fully with the advice he had received from Mr Cameron and from my predecessor, as well as from the staff of the Standards Committee of the Scottish Parliament.

28. Commenting on what happened, Mr McLeish said that:

- a) he was not aware of any problem concerning what he was doing with the sub-lets until April 2001.
- b) he had made no improper use of any payment or allowance made to him for public purposes.
- c) the income from the sub-lets was used for public purposes, i.e. the running of his constituency office.
- d) the matter had been thoroughly investigated by the Fees Office (with total repayment being made of his expenses claim equivalent to the total income from the sub-lets), the Inland Revenue and the police.

29. He concluded:

*I therefore regret what has happened. I and my family have paid a very heavy price for my failure to register the interest and to seek advice earlier on the question of the sub-lets and the income received.*

*If I had done this, appropriate and early action would have been taken. And all of this could have been avoided.*

### **The Relevant Provisions of the Code and Guide**

30. Before summing up my findings of fact and conclusions, it is appropriate to set out the provisions of the Code of Conduct and the Guide to the Rules on the Registration and

Declaration of Interests which were in force when Mr McLeish was a Member of the House and are particularly relevant to an evaluation of what happened in this case. It is also necessary to set out the main rules attaching to the payment of the Office Costs Allowance (OCA).

31. The penultimate paragraph of the Code reads:

*No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.*

No change was made to this provision of the Code when it was revised in May 2002.

32. Under Category 8 of the Rules on the Registration and Declaration of Interests then in force, Members were required to register any land or property (other than their homes) “*which has a substantial value or from which a substantial income is derived*”. The term “*substantial income*” was not defined until the revision of May 2002, when the House set a value on this of more than 10% of the current parliamentary salary, i.e. at present £5,500.

33. The guidance to Members on the payment of the Office Costs Allowance (OCA) has been revised regularly over the years, with the approval of the Speaker. Most recently, the House’s Resolutions of 5 July 2001 introduced new allowances and governance arrangements. Under the new arrangements, the cost of constituency office accommodation may be met from the Incidental Expenses Provision. However, the fundamental principle of the rules has remained unchanged throughout. The edition of the guidance issued to Members in May 1999, for example, said:

*The Office Costs Allowance (OCA) should be used to cover the normal expenses required to set up and run a parliamentary office, including the payment of secretarial and research assistance. To qualify for OCA, any expenditure must be incurred **wholly, exclusively and necessarily in the performance of parliamentary duties**. This is a strict and long-established rule, approved by successive Speakers. You cannot therefore claim for expenditure that is personal or party-political.*

## Findings of Fact

34. Although comprehensive records covering the whole period of Mr McLeish’s OCA claims are no longer available, there is no dispute about the essential facts in this case:

- a) on his election to the Parliament at Westminster in 1987, Mr McLeish rented a town centre constituency office in Glenrothes which was too big for his needs.
- b) over the period between December 1987 and June 2001, he sub-let the part of the premises he did not need to a total of six different sub-tenants. Information supplied by Mr McLeish about the names of and rent received from each of those sub-tenants is at Appendix 6.
- c) during this period, Mr McLeish claimed under the OCA the total cost of renting the whole of the premises. He did not off-set against his claim the income he received from the sub-lets.

- d) the income from the sub-lets went into his constituency office account. There is no evidence that Mr McLeish benefited personally from it and the police inquiry found no evidence of any criminal intent.
- e) Mr McLeish did not register the fact that he was receiving rental income from the sub-lets in the Register of Members' Interests until April 2001, after the matter had come to light following the report in the Scottish 'Mail on Sunday'. However, once the error emerged he rapidly took advice and rectified his omission.
- f) similarly, after the issue had been raised publicly, he took advice on the treatment of the income from the sub-lets, accepted that advice, and repaid a sum equivalent to the total income he had received (£38,550).

35. Mr McLeish denies any improper use of the allowances he received and has expressed his regret for what happened.

## Conclusions

36. On the evidence available, I conclude that Mr McLeish broke the Code of Conduct and the Rules in two respects:

- a) by failing to register, prior to 4 April 2001, the fact that he was receiving a substantial income from sub-letting part of his constituency office.
- b) by not off-setting the rental income he received from the sub-lets against his claims under the Office Costs Allowance (OCA).

### *Failure to Register*

37. The Rules current at the time required Members to register any land or property "*from which a substantial income is derived*". Although what was meant by "substantial" was not at that time defined, and the amount of rent received varied over time, the annual sum involved was certainly viewed as one justifying registration when the matter was raised with my predecessor in April 2001, and I see no reason to dissent from her judgement. Moreover, applying the current test of what constitutes "a substantial income" in this context, the amount received was in some years more than 10% of the then parliamentary salary.

### *The Treatment of Rental Income*

38. By failing to offset the rental income he received against his OCA claims, Mr McLeish was in effect over-charging the public purse for the rental cost of his offices. To put the matter differently, in charging the full rent to the OCA, he was claiming more than the rental expenditure he had necessarily incurred in pursuit of his parliamentary duties.

39. That said, it has to be acknowledged that Mr McLeish was not improperly using the allowance, in this sense: that he was not siphoning off the income he received from the sub-lets for his own private purposes. The evidence available confirms Mr McLeish's account that the income went into his constituency office account, where it was used for office purposes.

40. It should also be acknowledged that the implication of Mr Cameron's letter to me of 5 April 2002 (quoted at paragraph 20 above) is that Mr McLeish made a number of additional payments from his own resources between 1994/95 and 1997/98 to meet expenditure on parliamentary business which could not be covered by his OCA because there were insufficient funds available, and may have made such payments before then. Mr Cameron has indicated that if Mr McLeish were able to show that what he had spent in this way had come from rental income, he might not have been required to repay that amount to the Fees Office.

41. If it accepts my analysis and conclusions, the Committee will, no doubt, wish to take these factors into account when assessing what penalty it would have recommended had Mr McLeish remained a Member of the House. The Committee may also wish to bear in mind Mr McLeish's expression of regret for what happened; his co-operation with my predecessor, with Mr Cameron and with my own inquiry; and the impact this affair has already had on him and his family.

*26 June 2003*

*Sir Philip Mawer*

# Appendices to the Appendix

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## Appendix 1: Letter to the Chairman from Mr Dominic Grieve MP

### Re: Complaint against Henry McLeish as Member of Parliament for Fife Central

I am sorry to trouble you about this matter but the events of the last fortnight give serious cause for concern.

In early April of this year, the press identified that Henry McLeish had not registered the sub-letting of part of his constituency office to a firm of solicitors for which he received rental income of £4,000 pa. The matter was brought to my attention as the Conservative Spokesman for Scotland and I wrote to Mrs Filkin asking to be kept informed of the matter: I enclose a copy of that letter.<sup>1</sup>

She replied to me on 5 April in a letter, a copy of which I enclose,<sup>2</sup> indicating that Henry McLeish had now registered the entry indicating that he had received rental income on the sub-let since December 1987.

At the same time, Henry McLeish's spokesman indicated that the money from the sub-let had been used towards the running costs of his constituency office. In the light of that reply I wrote to Mrs Filkin on 10 April asking her to clarify with Henry McLeish that he had set off any rental income he received from the sub-let against claims that he made to the Finance and Administration Office under the Office Costs Allowance. Mrs Filkin indicated to me that she considered my expression of concern on this point to be pertinent and she informed me on 12 April that she had written to Henry McLeish to establish the facts and she would write again to me in due course.

I would emphasise that at the time of writing to Mrs Filkin on 10 April I did not consider that I had evidence on which to make a formal "complaint". My understanding, in any event, was that Mrs Filkin would wish to carry out a preliminary inquiry to ascertain if an investigation was warranted.

Following these events, I understood Mrs Filkin to be pursuing her initial inquiries. From conversations which I had with her at intervals, she informed me that the matter was proceeding very slowly and I formed the impression that Henry McLeish had either chosen or was not in the position to respond promptly to such points as she had raised with him. Matters proceeded so slowly that Mrs Filkin's preliminary inquiries were not answered by the time that Henry McLeish ceased to be a Member of Parliament on Dissolution.

Following the General Election Mrs Filkin informed me that she no longer had the power to conduct a formal complaints investigation against Henry McLeish but that she would seek to conclude her inquiry so as to be able to reply to the query I had raised. The matter was commented on in the press in Scotland at that time and the spokesman for Henry McLeish stated that "Mr McLeish fully intended to write back to Mrs Filkin setting out the position regarding her letter to me, but the process was delayed by the election. Mr McLeish still intends, although there is no obligation on him, to write back to her as a matter of courtesy so that she can close her file on this issue and that will be end of it." (see *The Scotsman* of 14.6.01).

Thereafter, I continued to wait to hear from Mrs Filkin in line with what Henry McLeish had said through his spokesman. Mrs Filkin informed me that Henry McLeish was in contact with the Fees Office and that the matter was taking longer than she had expected.

On Monday, 22 October, Mrs Filkin contacted me once again to inform me that Henry McLeish had reached "a settlement" with the Fees Office. Because she herself no longer had investigatory powers there was nothing further that she could do and she was obviously unable to give me the details of that settlement. In fact, due to pressure from the national media in Scotland, it emerged in the course of 23 October that the "settlement" involved a repayment of £9,000 by Henry McLeish to the Fees Office, without the basis of that settlement

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1 Not appended to the Commissioner's memorandum.

2 Not appended to the Commissioner's memorandum.

being explained in any way. Over the last two weeks much more has of course emerged, including that some £36,000.00 was received in rent from a number of sub-lettings and yesterday Henry McLeish resigned as First Minister.

It seems to me that the situation is extremely unsatisfactory. Notwithstanding verbal and, I infer, written assurances to Mrs Filkin, there has never been a full answer to the questions that were raised but instead a settlement with the Fees Office which must inevitably appear to be shrouded in secrecy. The terms of the settlement and the subsequent information that have emerged must give rise to anxiety that there may have been a breach of the House of Commons' Code of Conduct for Members that would have warranted a formal investigation if Henry McLeish was still a Member, either by Mrs Filkin or by the Standards and Privileges Committee.

In view of the understandable public concern on this matter I would be grateful, therefore, if you and the Committee could consider ordering a full enquiry so that all the outstanding issues can be resolved.

*9 November 2001*

## **Appendix 2: Letter to the Chairman from Mr Peter Duncan MP**

You will be aware that the former Member of Parliament for Central Fife, Henry McLeish, resigned his position as First Minister in Scotland during the autumn of 2001.

I understand there is an ongoing investigation by Fife Police into Mr McLeish's financial affairs relating to his parliamentary duties.

I believe it would be appropriate for your Committee to instigate an investigation into the appropriateness or otherwise of Mr McLeish's financial affairs, so far as they relate to his time as a Member of the House of Commons.

*6 December 2002*

## **Appendix 3: Letter to the former Commissioner from Mr Henry McLeish**

### **Query re sub-let of part of constituency office**

I refer to the above and would like to firstly apologise for the inconvenience I have caused to you and the Registrar of Members' Interests over the sub-let of part of my constituency office.

Let me explain the background to the current position.

When I was elected to Parliament in 1987 I wished to provide the best possible service to my constituents. This involved finding a central and accessible location for my constituency office. The office obtained, and which I presently occupy, satisfied that criteria but remains relatively expensive.

From the end of 1987 to the present time part of the constituency office has been sub-let. Any income obtained was paid in to my business office account and then contributed to the running costs of my constituency office and the services I provided to my constituents.

After the issue was raised publicly I immediately contacted the Registrar of Members' Interests to enquire whether this sub-let should have been registered. As a consequence of the help and assistance from the Registrar this was completed satisfactorily within a few days. This was the subject of Mr D Grieve's letter of 4 April, 2001 to yourself and your subsequent response to him dated 5 April, 2001.<sup>3</sup>

At the same time I also contacted the Clerk of the Standards Committee in Edinburgh to obtain her advice and after discussion with her this has now been included in the Register of Members' Interests for the Scottish Parliament.

Over the period since 1987 I have claimed from the House of Commons, as part of my Office Costs Allowance, reimbursement for my office rental which I pay direct to my Landlord c/o Graham & Sibbald in Dundee. The income obtained from the sub-let has been passed to my office business account and this remains the position at present. The office costs claimed from the House of Commons and the variable income from the sub-let are used for parliamentary/constituency business expenses.

All of this income has been used for parliamentary/constituency business and I have gained no personal/private benefit from this. This was the issue raised by Mr Grieve in his second letter to you dated 10 April, 2001 and which was the subject of your letter to me dated 12 April, 2001.<sup>4</sup>

As with registration, I would be grateful for your further advice on the sub-let arrangements.

I hope that the information outlined above is of assistance to you but please do not hesitate to contact me if I can be of further help.

*4 May 2001*

## **Appendix 4: Letter to the former Commissioner from Mr Henry McLeish**

### **Mr Dominic Grieve's query re sub-let of part of constituency office**

Thank you for your letter of 9 May, 2001 regarding the above and may I firstly apologise for the delay in replying to you.<sup>5</sup>

I was also grateful for the brief telephone discussion we had nearly two weeks ago.

The property involved was rented in 1987 from Graham & Sibbald who act as the agent for the property owners, E Q Melville Esq, Dean Entertainments Ltd, 191 Nicol Street, Kirkcaldy, Fife. The rent level for the whole of the property is set by due process of valuation by the owner and the Chartered Surveyors, Graham & Sibbald. For business rate purposes the property has always been assessed and dealt with in two parts, 14A and 14B Hanover Court. Over the period there have been a number of sub-tenants involved in the property but of course only one sub-tenant at any one point in time. Over this period I have submitted quarterly the invoice from the agents, Graham & Sibbald, for reimbursement of the total rent to the Fees Office of the House of Commons.

The rent paid by the sub-tenant was paid to me and then paid directly into my office account which covers my parliamentary constituency activities. The basis of the rent level paid was agreed very informally and because the sub-tenant was occupying half of the property then the rental income reflected this.

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3 Not appended to the Commissioner's memorandum.

4 Not appended to the Commissioner's memorandum.

5 Not appended to the Commissioner's memorandum.

As outlined above the business rate for the property (Unit 14B) occupied by the sub-tenant was paid by them directly to Fife Council the rating authority. I pay the full business rate on 14A and this amount is reimbursed by the Fees Office on a monthly basis.

I hope the details outlined above cover questions 1 and 2 of your letter and I would think that question 3 is also dealt with. To that extent the assumption made in question 3 is correct.

I hope these further details are helpful but I would be happy to provide further information if required. I will be in London on Monday 2 July, 2001 and would, at your convenience, find it useful to meet with you to discuss this matter further. This would be of help to me and would also provide a better opportunity to add any further information which you may require.

Once again thank you for your courtesy and I look forward to hearing from you.

*22 June 2001*

## **Appendix 5: Letter to the Commissioner from Mr Henry McLeish**

### **Sub-let of office**

I refer to the above and your letter dated 8 April 2003.<sup>6</sup>

I enclose for your interest a response to the issues raised.<sup>7</sup> It is important to point out that a great deal has happened since the initial complaint.

After being elected to Westminster in 1987 I was determined to provide a first class parliamentary constituency office for the people of Central Fife. Location was important. I took the lease of a property in the town centre of Glenrothes. Although the location was excellent the rent was high and as a consequence of the refusal of the landlord to lease me half the property I was forced to occupy the whole of the building which was too large for my purposes.

Later in 1987 I agreed to sub-let parts of the property (the details of the lets are enclosed).<sup>8</sup> The income from the lets and the reimbursement of the rental costs from the Fees Office were spent entirely on my parliamentary constituency office.

I was first made aware of the concerns about the office from the press in April 2001. This was about my failure to include the sub-lets in the members register of interests. On the Monday/Tuesday after the weekend disclosure I contacted the House authorities in London and in Edinburgh. The sub-lets were immediately recorded in the register of members interests.

Issues were also raised about the expenses I had claimed from the Fees Office and the income I received from the lets. After discussing the matter with Mrs Filkin she agreed that the best course of action was to resolve the matter with Mr Archie Cameron, Head of the Fees Office. This was done. Despite the vagueness of the rules and regulations governing the payment of office cost allowances (reflected in the dramatic tightening up of the rules after the 2001 elections), despite the fact that the Fees Office had no records covering the period between 1987 to 1995/96 and despite the fact that I had no records covering the same period I was determined to resolve the matter as soon as possible. After discussing the matter in some detail with the Fees Office, including a meeting in London, and accepting Mr Cameron's advice I agreed to pay back the amount I had claimed from the Fees Office equivalent to the income received from the sub-lets (the amounts are enclosed)<sup>9</sup>

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6 Not appended to the Commissioner's memorandum.

7 See Appendix 6.

8 See Appendix 6.

9 See Appendix 6.

i.e. £10,000 on account on 20 Dec 2001 and £28,550 being the balance of the total amount due for repayment of £38,550 confirmed in Mr Cameron’s letter to you dated 5 April 2002.<sup>10</sup>

Mrs Filkin was kept fully informed of developments and was content to leave the matter with the Fees Office. I have always co-operated fully with Mrs Filkin, Mr Cameron and with Holyrood (over the register of members interests).

At no time, until April 2001, was I aware of any problems or difficulties surrounding what I was doing with the sub-lets. ‘No improper use was made of any payment or allowance made to me for public purposes’. Similarly the income from the sub-lets was used for public purposes namely the running of my parliamentary constituency office.

This matter has been thoroughly investigated by the Fees Office—with total repayment being made of the expenses claim equivalent to the total income received from the sub-lets; the inland revenue and the police.

I therefore regret what has happened. I and my family have paid a very heavy price for my failure to register the interest and to seek advice earlier on the question of the sub-lets and the income received.

If I had done this, appropriate and early action would have been taken. And all of this could have been avoided.

*Received 4 June 2003*

## Appendix 6: Information provided by Mr Henry McLeish

### Sub-lessees

Date	Tenant	Rent
Dec 1987–Aug 1989	Honeywell Shield Limited (Security systems)	£4,000.00
<i>Note: Honeywell Shield was taken over by Britannia Security Systems during this period</i>		
Oct 1989–Dec 1994	Capital Solutions (Office equipment)	£12,000.00
May 1995–July 1997	Fife Council (Economic Development Unit)	£10,122.00
1996–1998	Third Age Group	£2,400.00
Dec 1997–May 1998	Thompsons (Solicitors)	£1,000.00
Nov 1998–June 2001	Digby Brown (Solicitors)	£9,000.00

*Received 4 June 2003*

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<sup>10</sup> Not appended to the Commissioner’s memorandum.

# Formal minutes

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**Tuesday 8 July 2003**

Members present:

Sir George Young, in the Chair

Mr Russell Brown  
Ross Cranston  
Mr Derek Foster

Mr Michael Jabez Foster  
Mr Andrew Mackay  
Richard Ottaway

The Committee deliberated.

Draft Report [Complaints against Mr Henry McLeish], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the memorandum from the Parliamentary Commissioner for Standards be appended to the Report.

*Ordered*, That the Appendix to the Report be reported to the House.—(*The Chairman.*)

[Adjourned till Tuesday 15 July at 2.30 pm.]

## Reports from the Committee on Standards and Privileges in the current Parliament

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### Session 2002–03

First Special Report	Standards of Conduct: Letters from the Committee on Standards in Public Life	HC 516
First Report	Complaint against Mr Nigel Griffiths	HC 195
Second Report	Eighth Report of the Committee on Standards in Public Life: "Standards of Conduct in the House of Commons"	HC 403
Third Report	Complaints against Mr Michael Trend	HC 435
Fourth Report	Complaints against Mr Henry McLeish	HC 946

### Session 2001–02

First Report	Complaint against Mr Geoffrey Robinson: Supplementary Report	HC 297
Second Report	Complaint against Mr Roy Beggs	HC 319
Third Report	Complaint against Mr John Maxton	HC 320
Fourth Report	Restrictions on the Initiation of Parliamentary Proceedings: A Consultation Paper	HC 478
Fifth Report	Complaints against Mr Keith Vaz	HC 605–I & II
Sixth Report	Registration of Interests by Members who have not taken their seat	HC 624
Seventh Report	Complaints against Mr Nigel Griffiths	HC 625
Eighth Report	Complaints against Mr Archy Kirkwood	HC 755
Ninth Report	A new Code of Conduct and Guide to the Rules	HC 763
Tenth Report	Complaint against Mr Peter Brooke	HC 1147