



House of Commons
Committee on
Standards and Privileges

Publications funded from the Communications Allowance

Third Report of Session 2007-08

*Report and Appendix, together with formal
minutes*

*Ordered by The House of Commons
to be printed 17 January 2008*

HC 232
Published on 21 January 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The 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)
Rt Hon Kevin Barron MP (*Labour, Rother Valley*)
Rt Hon David Curry MP (*Conservative, Skipton & Ripon*)
Mr Andrew Dismore MP (*Labour, Hendon*)
Nick Harvey MP (*Liberal Democrat, North Devon*)
Mr Elfyn Llwyd MP (*Plaid Cymru, Meirionnydd Nant Conwy*)
Mr Chris Mullin MP (*Labour, Sunderland South*)
The Hon Nicholas Soames MP (*Conservative, Mid Sussex*)
Mr Paddy Tipping MP (*Labour, Sherwood*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

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/sandp. 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), Mr Keith Neary (Second Clerk) and Miss Michelle Owens (Secretary).

Contacts

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

Contents

Report	<i>Page</i>
Publications funded from the Communications Allowance	3
Appendix: Memorandum from the Parliamentary Commissioner for Standards	4
Formal minutes	25
Reports from the Committee on Standards and Privileges in the current Parliament	26

Publications funded from the Communications Allowance

1. A recent upsurge in complaints to the Parliamentary Commissioner for Standards involving Members' parliamentary reports to constituents have resulted in our making three reports to the House recently on specific complaints.¹ The reports concerned were funded from their Communications Allowance, in the case of publications funded in the current financial year, and their Incidental Expenses Provision (IEP), in the case of publications funded out of the allowances of previous financial years. In December 2007, the then Parliamentary Commissioner for Standards, Sir Philip Mawer, submitted a memorandum to us helpfully summarising a number of the issues arising from these inquiries, drawing out some of the common threads of these cases, and commenting on some of their wider implications. This memorandum, foreshadowed in our two previous reports of this Session,² is reproduced as an Appendix.

2. These cases have revealed some of the difficulties Members have encountered in determining the boundaries both of what was permissible in this area under the IEP rules, and of what is currently permissible under the Communications Allowance rules. They have also highlighted some of the challenges we, the Commissioner and the Department of Finance and Administration have so far faced in enforcing the relevant rules.

3. In his memorandum, Sir Philip has made a series of suggestions and proposals, with the primary aims of improving both the clarity and certainty for Members as to what should be permissible, and of making the task of enforcement easier for all concerned. The Commissioner has also been mindful of the need to ensure that such publications continue to achieve their intended purpose of providing a means by which Members can communicate to their constituents on how they have discharged their representative parliamentary functions.

4. We note that the Members Estimate Committee, the body responsible for advising the House on allowance matters, said ahead of the introduction of the new Communications Allowance on 1 April 2007 that it planned to review the rules relating to the allowance a year or so after its introduction. **We therefore draw Sir Philip Mawer's suggestions to the attention of the House, and to the Members Estimate Committee in particular in the context of its forthcoming review, and recommend that they be given careful consideration.**

1 Eighth Report, Session 2006-07, HC 1071; First Report, Session 2007-08, HC 94; Second Report, Session 2007-08, HC 182.

2 See First Report, para. 31 and Appendix 1, para. 76, and Second Report, para. 34 and Appendix 1, para. 109.

Appendix: Memorandum from the Parliamentary Commissioner for Standards

Contents

	<i>Page</i>
Publications funded from the Communications Allowance	5
Introduction	5
The History and Purpose of the Communications Allowance	6
Principles	7
Particular Issues	8
1. Timing of Issue of Newsletters and other Written Communications	8
2. Extent of Distribution of Newsletters and Other Written Material	10
3. The Use of Party Logos and Other Distinguishing Marks of Party Allegiance	11
4. The Content of Publications	13
5. The Political Parties, Elections and Referendums Act 2000	14
6. Procedures for Obtaining Advice	16
Conclusion and Summary of Recommendations	17
 Annex: Section 72 and Schedule 8 of the Political Parties, Elections and Referendums Act 2000	 20
Section 72: Campaign expenditure	20
SCHEDULE 8: Campaign expenditure: qualifying expenses	21

Publications funded from the Communications Allowance

Introduction

1. In three recent reports,¹ the Committee on Standards and Privileges has considered the outcome of inquiries I have made into complaints relating to the publication by Members of Parliamentary reports or newsletters to their constituents. Six of these newsletters had been funded from the Communications Allowance (CA), introduced on 1 April 2007: the remainder from the Incidental Expenses Provision (IEP) which preceded it. In the first of its reports, the Committee noted that a number of general points had been raised by the complaints before it, including the timing of distribution of Parliamentary funded newsletters in relation to local election campaigns and the appropriate use in them of distinctive Party emblems such as logos and Party colours.² It welcomed my intention to return to these matters in a later report.

2. This is that report. Its purpose is simple: to draw together the threads of the general issues identified in all three earlier reports and in so doing to provide a basis on which the Committee on Standards and Privileges can, if it so wishes, recommend improvements in the regime governing the CA. It is for the Members Estimate Committee (MEC) to advise the House on these matters. That Committee said when the CA rules were introduced that it planned to review them a year or so after their introduction. I hope that this report will both help inform that review and enable the Committee on Standards and Privileges—with its particular responsibility for adjudicating on complaints and thereby helping to safeguard the standards and reputation of the House—to make whatever recommendations it wishes the MEC to consider as part of that review. Both the House and individual Members are understandably feeling their way in relation to the operation of the CA, and many of the Members who have been the subject of recent complaints have said that they would welcome clearer guidance about what is or is not permissible.

3. I should make clear at the outset that the focus of this report is on written (i.e. hard copy) publications funded from the CA. There are other aspects of the CA regime—such as the use of House provided stationery and websites—which will also need to be considered when the rules on the CA are reviewed. Some of the recommendations I make in respect of written publications have a potential application in relation, for example, to websites funded by the House. However, while in some ways similar to written communications, websites are in other ways quite dissimilar, raising their own distinct set of issues. My report focuses on written publications funded by the CA because recent complaints, and the reports on them, have centred on these. I simply note that the question whether or not

1 Eighth Report of Session 2006-07 (HC 1071); First Report of Session 2007-08 (HC 94); Second Report of Session 2007-08 (HC 182).

2 Eighth Report of Session 2006-07 (HC 1071), paragraph 25.

what I recommend about such publications should also apply to other means of communication, such as websites, will require further and separate consideration.

The History and Purpose of the Communications Allowance

4. In November 2006 the House welcomed the principle of establishing a separate allowance for Members “to assist in the work of communicating with the public on parliamentary business”.³ The backdrop to this initiative was, in part, the concern of Members (urged on by various outside bodies) to put more effort into communicating with the public, in an attempt to arrest the apparent decline in involvement in the democratic process. Proposals for the allowance were set out in the MEC’s First Report of Session 2006-07.⁴ These were debated and approved by the House on 28 March 2007.⁵ The resolution carried by the House on that occasion defined the purpose of the allowance as being to assist “Members with expenditure incurred wholly, exclusively and necessarily in communicating with the public on parliamentary business”.⁶

5. Extensive guidance was issued to Members following the introduction of the new allowance on 1 April 2007, in the form of a booklet entitled “*The Communications Allowance and the use of House stationery*”.⁷ Whilst the resolutions passed by the House in November 2006 and March 2007 spoke of the allowance as being for the purpose of communication with the public, the guidance (approved by the MEC) defined the “public” more narrowly as a Member’s constituents. Thus paragraph 1.4 of the booklet said:

“The Communications Allowance is designed to help you [the Member] to improve proactive communication with your constituents.”

It is this definition of the scope of the allowance and the detailed guidance which accompanied it which have set the framework within which the Committee on Standards and Privileges and I have addressed subsequent complaints.

6. As the bulk of this memorandum focuses on ways of further improving the regulatory regime surrounding the CA, it would be appropriate to set the new allowance in context. Its introduction—at a level initially set at £10,000—was accompanied by the imposition of an annual cap of £7,000 on the amount of House stationery and pre-paid envelopes a Member could order outside the allowances for appropriate correspondence. Whilst the total sum of £17,000 pa thus available to each Member was significantly higher than the previous average spend by Members on such means of communication, it was substantially lower than the (uncapped) amount previously spent by some Members. Secondly, the existing rule that centrally provided stationery could only be used for reactive, not proactive communication was made much clearer. Thirdly, for the first time the booklet

3 Resolution of 1 November 2006, Official Report, col. 411.

4 HC 319

5 Official Report, col. 1513 ff.

6 *Ibid*

7 The text of this booklet can be found on the Parliamentary website.

issued with the approval of the MEC brought together all the relevant guidance for Members in the same place. And fourthly, some of the detailed guidance (for example, in respect of the use of Party logos) went further in attempting to set a boundary between Parliamentary and party political activity than had previous guidance, though, I would suggest, it did not go far enough.

Principles

7. It is a fundamental plank of the Parliamentary allowance arrangements that public funds can only be disbursed to meet expenditure “*wholly, exclusively and necessarily*” incurred for the purpose of enabling a Member to perform his or her Parliamentary duties.⁸ It is also a fundamental tenet that the responsibility for ensuring that claims on the allowances are properly made rests with the individual Member concerned.⁹

8. The Communications Allowance was criticised at the time of its introduction (including by a number of Members during the debates in November 2006 and March 2007) on the grounds that, in enabling Members to communicate proactively with their constituents, it would add to their already significant electoral advantage as incumbents. It is evident from the cases the Committee on Standards and Privileges has already considered that the heightened frequency of proactive communication enabled by the new arrangements creates more scope for challenge on the grounds that the content or manner of a particular communication crosses the boundary between straightforward communication about parliamentary matters (appropriate, indeed laudable) and communication of a party political or campaigning nature (inappropriate).

9. Preservation of as clear a boundary as possible between Parliamentary communication on the one hand and communication of a party political or campaigning nature on the other is essential to the continued credibility of the Parliamentary allowance arrangements. This is recognised in the MEC booklet of guidance to Members on the CA, which says:

*“Neither the Communications Allowance nor House stationery, including pre-paid envelopes, can be used for personal benefit or for party political activities or campaigning.”*¹⁰

10. The discussion of issues emerging from recent cases to which I now turn and the recommendations which follow are based on the assumption that, given that the introduction of the CA has heightened the frequency of communication between Members and their constituents and therefore the number of opportunities that may arise for complaint, it is even more important that the boundary between what is acceptable and what is not is made as clear as possible, for the benefit of Members and the public. As well as clarifying, the aim should be, wherever possible, to simplify rather than add to the

8 See the introduction to the “Green Book” on Parliamentary Salaries, Allowances and Pensions (June 2006 edition), the text of which is available on the House of Commons website at www.parliament.uk.

9 *Ibid*

10 Paragraph 15.

existing guidance. Whilst it may be that the process of clarification and simplification will result in a certain degree of arbitrariness and loss of flexibility in any new rules introduced, this should be outweighed by the advantage to Members and the public in terms of ease of understanding of the arrangements, and to the Committee on Standards and Privileges and others in enforcing them.

Particular Issues

11. The issues I discuss have all emerged from the recent reports concerning publication of Parliamentary newsletters to which I referred at the opening of this memorandum.

1. Timing of Issue of Newsletters and other Written Communications

12. Six of the nine complaints examined in those reports included as a central feature complaints about the proximity of distribution of a newsletter to a forthcoming Scottish Parliament, Welsh Assembly or local government election. There is at present no prohibition on circulating publications funded from Parliamentary allowances within the period of campaigning for elections (other than a General Election). In its First Report of the current Session, the Committee commented:

*“In our view there should be [such a prohibition] ...”*¹¹

13. I respectfully agree with the Committee. There is no doubt that publishing a newsletter close to a devolved administration or local government election¹² heightens the interest its recipients take in its contents and sharpens the appetite for complaining among political opponents. Moreover, when a publication from a Member printed in party colours and incorporating a party logo (matters to which I turn below) appears through the letter box during an election period, it is not surprising that members of the public may find it difficult to distinguish it from other campaigning material put out at the same time by the political parties. The result is to risk damage to the credibility of the Parliamentary allowance arrangements, even if the content of the material (objectively analysed) is unexceptionable. There is also the risk that, in a closely fought election, such a publication might influence the outcome of the election, an outcome which could not be reversed even if the publication was subsequently the subject of a successful complaint to the Committee.

14. If a rule prohibiting the publication of Parliamentary-funded communications during an election period were to be introduced, three questions arise:

- which elections should be covered?
- how should the prohibited or closed period be defined?

¹¹ HC 94, paragraph 25.

¹² By ‘local government elections’, I have in mind elections to regional and local authorities other than community and parish councils. There is no evidence that a ban similar to the one I am suggesting should apply in the case of community or parish council elections.

- should the restriction be confined to newsletters or also embrace other forms of proactive communication with constituents funded from the CA?

15. Addressing the first of these questions, I suggest that the elections to be covered should be those to the European Parliament, devolved legislatures, and local authorities excluding community and parish councils. (Members are already prevented from issuing such communications during Dissolution, i.e. in the immediate run-up to a General Election). A subsidiary issue is whether such a closed period should apply in the case of by-elections as well as in the case of a wider set of elections to e.g. a devolved legislature or local authority. In my view, in logic, it should: that is, the Member or Members in whose constituency the by-election is called should refrain from circulating, in the locality in which the by-election is being held, CA-funded publications during the regulated period for that by-election as defined in the following paragraph. I recognise, however, that by-elections tend to be called at short notice and there is a balance to be struck between the desire to avoid influencing such an election and the practical consideration that the lead-time for preparing and publishing e.g. a newsletter may be a long one. The position in relation to by-elections may therefore deserve further consideration.

16. As regards the second question, it seems to me important that the period should be:

- easily understood
- no longer than is strictly necessary to avoid the potential mischiefs mentioned earlier.

These considerations point, I suggest, to defining the prohibited period in terms with which Members and others will be familiar from the statutory regulatory regime applying to candidates' election expenses under the Representation of the People Act 1983 and the relevant secondary legislation in respect of devolved institutions. Under these, the regulated period for local and European Parliamentary elections begins on the last day of publication of Notice of Election. For devolved institutions, the regulated period begins on the date of dissolution of the relevant Parliament or Assembly, a date on or soon before the last date of publication of Notice of Election. In both cases this entails a period of about 5 or 6 weeks. Whilst there is a modest degree of variation in this period depending on the type of election concerned, it is a date which on each occasion will be known to or can be accurately estimated by Members and others in any particular locality and can easily be established by them and the public.¹³ It is also preferable, in my view, to trying to base such a period on the regulated period for party campaign expenditure under the Political Parties, Elections and Referendums Act 2000 (PPERA). This varies from 4 months ending on the day of the poll for elections to the European Parliament and the devolved legislatures, down to nothing (in effect) for local government elections (as party campaign expenditure at the latter is not regulated in its own right).

¹³ A slightly different situation arises in the case of by-elections where the regulated period begins on the date the vacancy is announced. Due to the nature of by-elections, this date is unlikely to be known far in advance of the relevant date.

17. As regards the third question I identified in paragraph 14 above, recent cases have focussed on the distribution during an election period of newsletters rather than other types of proactive communication with constituents funded from the CA. However, it is not difficult to envisage circumstances in which some other form of communication—such as a leaflet, circular letter or survey on a local issue—distributed during such a period could evoke similar concerns.¹⁴ In the interests of avoiding this and ensuring a simple rule which it should be easy for Members to follow, I am therefore inclined to favour prohibiting all such forms of CA-funded proactive communication with constituents—that is, newsletters, leaflets, circular letters and surveys—during an election period as defined in paragraph 16 above. The distribution of purely factual material such as details of a Member’s constituency surgeries would not, however, be prohibited.

18. Accordingly I invite the Committee on Standards and Privileges to consider recommending that:

- a) a closed period should be introduced in respect to a European Parliament, devolved legislature or local government election (excluding elections to community and parish councils) during which Members would be prohibited from proactive written communication with constituents funded from the CA;**
- b) the closed period should apply also in the case of by-elections to the aforementioned bodies;**
- c) the closed period should be defined by reference to the relevant regulatory period for candidate’s election expenses, as set out in paragraph 16 above; and**
- d) the prohibition on distribution of CA-funded material by Members to constituents should embrace not only newsletters but all other written forms of publication (such as leaflets, circular letters and surveys) with the exception of purely factual material.**

The effect of the introduction of such a closed period should be monitored and the regulations reviewed as necessary in the light of experience.

2. Extent of Distribution of Newsletters and Other Written Material

19. The Committee’s First Report of Session 2007-08 identified the fact that in the three cases examined in that report, each of the Members concerned had chosen a method of distributing their newsletter or report which had resulted in the report being published well beyond the boundaries of their particular constituency.¹⁵ The particular method selected involved the inclusion of the report as an advertisement in a newspaper. The newspaper chosen circulated widely in other constituencies, not just in that of the Member concerned.

¹⁴ An example of a complaint about a local survey issued by a Member in the run-up to local elections is contained in the Committee’s Fifteenth Report of Session 2005-06 (HC 1579).

¹⁵ HC 94, paragraphs 17-24.

20. The purpose of the CA is to enable proactive communication with a Member's constituents, not with the constituents of other Members. It is therefore important that Members choose carefully the particular method by which their communications are to be distributed and that these focus primarily on reaching their own constituents. In the case of newsletters and other printed material, the most effective means of distribution (and, it appears, from information supplied by the House's Department of Finance and Administration (DFA), probably among the most cost-efficient) is distribution direct to households via the Royal Mail or a commercial distributor. I do not suggest that distribution of newsletters is limited to this method and I recognise that flexibility is necessary as, for example, newspaper circulation areas do not coincide with constituency boundaries. However it is important that when choosing a method of distribution, Members should have in mind the need to ensure that so far as is reasonably possible, distribution is confined to their own constituents. Particular care is needed when publishing a report through a newspaper, as the cases which were the subject of the Committee's First Report of the current session illustrate.¹⁶ **I recommend that attention is drawn to this point when the guidance on the CA is next revised.**

3. The Use of Party Logos and Other Distinguishing Marks of Party Allegiance

21. In all three of its recent reports on CA-funded newsletters the Committee has had occasion to comment on the use of party logos in such publications. In its First Report of the current Session, the Committee strongly agreed with my view that what constituted the acceptable use of such emblems and logos should be reviewed. It recommended that any review:

"... should include reconsideration of the question as to whether the use of material which clearly identifies a political party should be permitted at all."¹⁷

22. Consideration of this question involves, I suggest, looking at three different, though related, matters: the use of—

- party logos
- party colours, and
- distinguishing labels, such as the use of the term "the Labour/Conservative/Liberal Democrat/etc Member for [name of constituency]".

The issue at stake is the extent to which, if at all, marks distinguishing a Member's party should be permissible in publicly funded material which, by definition, is not intended to be party political in character.

¹⁶ Ibid

¹⁷ HC 94, paragraph 16.

23. The use of none of these means of declaring a Member’s party allegiance is prohibited in CA-funded material at present. As regards logos, the guidelines approved by the MEC are, however, discouraging:

“The use of party logos, whilst not disallowed entirely, is restricted to proportionate and discreet use, alternatively you may prefer to use the House emblem (the crowned portcullis) as this reflects the Parliamentary nature and purpose of the material being circulated.”¹⁸

24. The recent cases examined by the Committee have illustrated the difficulty of applying the “*proportionate and discreet*” test in the current guidelines. Whether a logo is “*proportionate and discreet*” is very much a matter of opinion: the test is subjective rather than objective. As such, it provides only limited guidance to Members, the Committee or officials trying to advise Members on the rules, as to what is acceptable. Yet the appearance of party logos (and other such distinguishing marks) in publicly-funded material is one of the principal triggers of criticism of the current arrangements.

25. The likelihood of such criticism is compounded when logos are accompanied by the printing of materials in party colours and Members are allowed to describe themselves (on their stationery or in publications) by their party label (“*the Labour/Conservative etc Member for X*”). **My own clear preference would be to prohibit all such distinguishing marks in all House-funded material.** The justification for this would be simple: once elected to the House, Members are there to serve all of their constituents. Members’ primary allegiances are to the House and their constituents. Whilst parties are a feature of contemporary representative democracy, they are not generally part of its formal institutional expression in Parliament. There is therefore no constitutional ground, and there is no ground in equity, on which public funds need to be used to enable the promotion of one party at the expense of another in the context of generalised reports by Members on how they have represented their constituents.

26. In practice, the adoption of such an approach would mean that, regardless of a Member’s party, Parliamentary newsletters and stationery, etc. would be printed in green and bear the House’s crowned portcullis emblem. Universal adoption of the crowned portcullis would make very clear the Parliamentary purpose of such communications. It would also provide a very clear (as opposed to the present ambiguous) rule for Members to follow.

27. I recognise, however, that in practice the very pure description of the constitutional status of political parties which I have set out in paragraph 25 does not correspond with reality in a number of respects. Political parties are already in receipt of public funds in several contexts; the reality of their existence and influence cannot be ignored. The Committee and House may therefore feel that it would be sensible for the House’s rules in this area to be more nuanced.

¹⁸ The Communications Allowance and the use of House stationery, Appendix 2, paragraph 16.

28. **If the Committee wishes to take such an approach, I recommend that the use of party colours and factual descriptions of a Member’s party allegiance (‘the Labour Member for X’) continue to be permitted but party logos and party campaigning strap-lines are banned.** It is the use of logos which appears to cause the greatest confusion between Parliamentary and party political material and to be the single most frequent cause of complaint. In future, newsletters and other Parliamentary funded material should, I suggest, carry only the crowned portcullis, as a means of marking clearly their Parliamentary purpose and distinguishing them from material circulated by the political parties.

29. If the Committee or the House were to wish to continue to allow the use of party logos, my strong recommendation would be that the circumstances in which the use of logos are permitted should be more precisely defined than they are at the moment. One possibility, for example, would be to specify that a party logo should only appear in a newsletter once, on the front page, on the opposite side of the banner heading to the crowned portcullis, and should not be greater in size than 20mm by 20mm on an A4 page (these measurements to be adjusted proportionately in the case of other paper sizes). In any event, any party logo used should be smaller in size than the crowned portcullis (to give primacy to the material’s parliamentary purpose).

30. **To sum up on this point, in the interests of clarity and simplicity, my preferred approach would be for party logos and other distinguishing marks of party allegiance, including the printing of material in party colours, to be prohibited in House-funded publications. If the House wishes to adapt a more nuanced approach, I recommend that the use of party logos and strap-lines be banned (though the use of party colours and of factual descriptions of a Member’s party allegiance would continue to be permitted). If logos are to continue to be permitted, the circumstances in which they are allowed should be much more precisely defined. I also recommend that whether logos are allowed in future or not, publications funded from the CA should prominently carry the crowned portcullis, as a means of marking clearly their Parliamentary purpose and distinguishing them from material circulated by the political parties.**

4. The Content of Publications

31. The guidance on the CA approved by the Members Estimate Committee contains what appears to be pretty full guidance on the sort of material which can and cannot be included in publications funded from the allowance. This makes clear that the content of such publications must not include party political or campaigning material, including material which seeks to compare a Member’s party favourably with another, promote one party at the expense of another or undermine the reputation of political opponents.¹⁹

32. The cases considered by the Committee in its recent reports have identified that party political material can be much more subtle than copy that simply trumpets the value of a

19 Green Book, Section 6.2.1.

Member's own party or denigrates another. The reports indicate that care is needed in two particular respects:

- a) In relation to the inclusion of **photographs** which feature not only the Member but other elected representatives of the same party as the Member—these can be particularly sensitive if the only purpose of the photograph appears to be to promote the profile of the elected representative in question or they carry what appears to be a political caption. It is important therefore that any such photographs appearing in a newsletter should clearly relate to the story they are intended to illustrate. For example, if a photograph of a local councillor is included to illustrate their involvement with the Member in campaigning on a particular local issue, the fact that this is the reason for the inclusion of the photograph should be brought out clearly in the accompanying caption and/or text. If there is no such clear justification, the photograph should not be included. Particular care should be taken in relation to such photographs as a relevant election approaches.
- b) In relation to material which is laudatory of a particular Government or party's achievements but is not clearly anchored in a Member's own Parliamentary activity on behalf of their constituents. Phrases such as:
 - *“The Conservative council are already at work setting out priorities to help local residents, workers and visitors”*
 - *“This reaffirms Labour's commitment to investing in the NHS and responding to local health needs”*

in my view stray across the boundary into the promotion of a particular political party and are therefore not permissible. So also is the selective use of statistics to a similar effect.

I recommend that attention is drawn to these dangers when the guidance on the CA is next reviewed. Perhaps the appropriate test for a Member to apply when reviewing such material is ‘If you were a member of another party, would you put the point the same way?’.

5. The Political Parties, Elections and Referendums Act 2000

33. In its First Report of the current Session, the Committee on Standards and Privileges noted that the case it there considered had, for the first time, raised the question of the possible interaction in some circumstances between the rules of the House relating to the CA and the provisions of Section 72 of PPERA. It commented:

“We consider that it would be helpful to Members if, in his forthcoming report on general Communications Allowance related matters, the Commissioner considered the

*possible implications for Members of the interaction between the Communications Allowance rules and the requirements of section 72, PPERA.*²⁰

34. I have appended to this memorandum the text of section 72 and of the related Schedule 8 of PPERA in full. It is evident from the cases considered in the Committee's First Report that section 72 defines "*campaign expenditure*" in broad terms.²¹ To put the point as simply as possible, section 72 read with Schedule 8 provides that expenditure on advertising or unsolicited material addressed to electors of any nature (whatever the medium used) which is incurred on behalf of a political party falls within section 72, and thus is subject to the requirements of Part V of PPERA, if the expenditure was incurred for the purpose of, or in connection with, enhancing the standing with the electorate of the party or of its candidates standing for election in future elections which need not be imminent. The result is that publications funded from the CA (and not just newsletters but, for example, circular letters) could in certain circumstances be regarded by the Electoral Commission as having been issued for "*election purposes*" as defined in section 72(4) and thus as constituting "*campaign expenditure*", as they were in the cases which were the subject of the Committee's First Report.

35. Paragraph 2 of Schedule 8 narrows the broad sweep of section 72 somewhat by exempting from the definition of expenses qualifying as "*campaign expenditure*":

"(a) any expenses in respect of newsletters or similar publications issued by or on behalf of the party with a view to giving electors in a particular electoral area information about the opinions or activities of, or other personal information relating to, their elected representatives or existing or prospective candidates;"

This exclusion relates to "*newsletters or similar publications issued by or on behalf of the party ...*". There must be a question whether properly drafted CA-funded material, issued for a Parliamentary purpose, is "*issued by or on behalf of [a] party*".

36. It is highly desirable from the point of view of the public, Members and the Electoral Commission that there should be a consistent approach by the Commission and the House to the interpretation of this aspect of PPERA in its potential application to CA-funded publications. The experience of the Committee's First Report indicates that the House and the Commission are inclined to take a similar view of what in practice constitutes campaigning material. It would be possible, however, given the breadth of section 72, for a difference of opinion to arise in other circumstances.

37. While the recommendations about the introduction of a closed period and banning party logos which I have made in this report will not remove the need for the Electoral Commission to continue to review CA-funded publications where necessary to see if they fall within the definition of party election campaign funding in section 72, they will I hope, if adopted, significantly reduce the occasions on which the Commission will have to do so.

²⁰ HC 94, paragraph 31.

²¹ *Ibid*, paragraph 12.

The guidance issued to Members by the House should draw attention to the fact that CA-funded material which does not comply with the rules of the House may be regarded as constituting “campaign expenditure” under section 72 of PPERA, and therefore as being subject to the requirements of Part V of the Act.

38. In the longer term, once the House’s rules have been revised, the Committee may wish to give consideration to ways in which publications funded from the CA could, *provided they were compliant with the rules of the House*, be clearly taken outside the scope of section 72. Part I of Schedule 8 of PPERA appears to provide two possible solutions. Paragraph 3 of the Schedule says that the Commission may prepare a Code of Practice giving guidance as to the type of expenses which do or do not constitute “*campaign expenditure*”. Such a Code is subject to approval (and amendment) by the Secretary of State, and then laid in draft before each House of Parliament before being issued.²² One possibility would be for the Electoral Commission to exercise its power under paragraph 3 of Schedule 8 to provide that material funded from Parliamentary resources should not be regarded as constituting part of “*campaign expenses*” provided that the material in question has been issued in compliance with the relevant rules of the House.

39. A code issued under this power is likely, however, to cover many matters and therefore to be of general application. A more specific remedy may be available through the use of paragraph 4 of the Schedule, which provides that the Secretary of State may by order make such amendments of Part I of the Schedule as he considers appropriate, either on the recommendation of the Commission or after consultation with it. So an alternative possibility would be for the House to request the Secretary of State to make an order, after consultation with the Commission, which would exempt material produced in compliance with the rules of the House from section 72 by including it in the list of exclusions in paragraph 2 of Schedule 8.

6. Procedures for Obtaining Advice

40. Recent cases have underlined the importance of Members seeking advice from the Department of Finance and Administration (DFA) on the content and format, etc of publications funded from the CA. In some cases, Members had sought such advice: in others they had not done so. Seeking advice did not always result in Members being clear about what was acceptable and what was not: in other words, as the cases demonstrate, it did not obviate the possibility of criticism (by me or the Committee) when a complaint subsequently arose. However in all cases in which Members had sought advice, the fact that they had done so was relevant to the view the Committee took of the seriousness of their breach of the rules.

²² If, within a specified period, either House resolves not to approve the draft Code, the Secretary of State cannot take any further steps in relation to that draft (see PPERA, Schedule 8, para. 3(6)).

41. Several lessons emerge from these cases as to the manner in which advice was both sought and given. In drawing them out, I make no criticism either of busy Members or of hard-pressed staff. They are:

- A Member should always allow adequate time to obtain advice, and recognise the possibility that initial advice obtained may result in a further round of consultation if, for example, changes to a planned text are requested. The DFA has indicated that it will aim to review a text within 3 working days.²³ It is vital that adequate time is allowed within printing and distribution schedules for this process.
- Care should be taken to approach the right Department for advice. At present, in the case of any material funded from the CA, this is the DFA (soon to become the Department of Resources). The House of Commons stationery and pre-paid envelopes provision is currently administered by the Serjeant at Arms. It may be that the re-shaping of the House's organisation following the Tebbit review will provide an opportunity to locate these allied functions in one place.
- If the wrong Department is approached, officials should as swiftly as possible refer the enquiry to the right one. They should not, out of a desire to be helpful, indicate any view on a matter which might be misinterpreted as a decision which is strictly outside their own field of responsibility.
- When seeking advice it is essential that Members should show officials the final proposed version—i.e. a proof copy—of their publication.
- Officials should always make clear in writing to Members the scope and extent of any clearance of a publication they have given.
- A copy of the final version of any material should accompany any claim submitted by a Member for reimbursement of the cost from Parliamentary allowances.

42. **I recommend that attention is drawn to these points when any revised guidance is issued to Members.** I do not think anyone should underestimate the difficulty of some of the judgements officials are called upon to make in giving Members such guidance in individual cases and I pay tribute to the conscientious manner in which they approach this demanding aspect of their duties.

Conclusion and Summary of Recommendations

43. I hope that this analysis of some issues raised by recent complaints concerning publications funded from the Communications Allowance proves helpful both to the Committee on Standards and Privileges and to individual Members. The recommendations I have made are offered in the belief that they are practicable and, if adopted, will help improve the robustness and credibility of the House's regulatory regime in this important area as well as assisting Members to observe the House's rules and the

²³ The Communications Allowance and the use of House stationery, Appendix 2, paragraph 20.

Committee to enforce them. I recognize that the Committee will wish to reflect on the proposals carefully before deciding what view it wishes to express to the MEC and the House.

44. My recommendations may be summarised as follows:

- a) a closed period should be introduced in respect to a European Parliament, devolved legislature or local government (excluding community and parish council) election during which Members would be prohibited from proactive written communication with constituents funded from the CA (paragraph 18);
- b) the closed period should apply also in the case of by-elections to the aforementioned bodies (paragraph 18);
- c) the closed period should be defined by reference to the relevant regulatory period for candidates' election expenses, as set out in paragraph 16 above;
- d) the closed or prohibited period should cover all forms of Communications Allowance funded written material, not just newsletters, except for material of a purely factual nature (paragraph 18);
- e) the use of party logos and party campaigning strap-lines should not be permitted in House-funded publications (paragraphs 28 and 30);
- f) if the House wishes to continue to allow party logos, the circumstances in which they are to be permitted should be much more precisely defined (paragraphs 29 and 30);
- g) whether or not party logos continue to be permitted, publications funded from the CA should prominently carry the crowned portcullis emblem (paragraph 30);
- h) The guidance issued to Members by the House should draw attention to the fact that CA-funded material which does not comply with the rules of the House may be regarded as constituting "campaign expenditure" under section 72 of PPERA, and therefore as being subject to the requirements of Part V of the Act (paragraph 37);
- i) In the longer term once the House's rules have been revised the Committee may wish to consider ways of ensuring that material compliant with those rules is not regarded as falling within the scope of section 72 of PPERA (paragraphs 38-39);
- j) when the guidance on the CA is next revised, attention should be drawn to:
 - i) the need to ensure that distribution arrangements for newsletters are focused so far as possible on a Member's own constituents and do not stray unreasonably beyond the boundaries of the Member's constituency (paragraph 20);
 - ii) as regards the content of publications, the need to exercise care in relation to the inclusion of photographs of other elected representatives and generalised statements or selective use of statistics promoting a particular political party (paragraph 32);

- iii) **the potential value of Members seeking advice on a proposed publication in a timely manner (paragraph 41).**

6 December 2007

Sir Philip Mawer

Annex: Section 72 and Schedule 8 of the Political Parties, Elections and Referendums Act 2000

Section 72: Campaign expenditure

(1) The following provisions have effect for the purposes of this Part.

(2) “Campaign expenditure”, in relation to a registered party, means (subject to subsection (7)) expenses incurred by or on behalf of the party which are expenses falling within Part I of Schedule 8 and so incurred for election purposes.

(3) “Election campaign”, in relation to a registered party, means a campaign conducted by the party for election purposes.

(4) “For election purposes”, in relation to a registered party, means for the purpose of or in connection with—

- (a) promoting or procuring electoral success for the party at any relevant election, that is to say, the return at any such election of candidates—
 - (i) standing in the name of the party, or
 - (ii) included in a list of candidates submitted by the party in connection with the election; or
- (b) otherwise enhancing the standing—
 - (i) of the party, or
 - (ii) of any such candidates,

with the electorate in connection with future relevant elections (whether imminent or otherwise)

(5) For the purposes of subsection (4)—

- (a) the reference to doing any of the things mentioned in paragraph (a) or (as the case may be) paragraph (b) of that subsection includes doing so by prejudicing the electoral prospects at the election of other parties or candidates or (as the case may be) by prejudicing the standing with the electorate of other parties or candidates;
- (b) a course of conduct may constitute the doing of one of those things even though it does not involve any express mention being made of the name of any party or candidate; and

(c) it is immaterial that any candidates standing in the name of the party also stand in the name of one or more other registered parties.

(6) “Relevant election” has the same meaning as in Part II.

(7) “Campaign expenditure” does not include anything which (in accordance with any enactment) falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election.

(8) Where a registered party is a party with accounting units—

- (a) expenses incurred or to be incurred by or on behalf of any accounting unit of the party shall be regarded as expenses incurred or to be incurred by or on behalf of the party, and
- (b) references to campaign expenditure incurred or to be incurred by or on behalf of a registered party accordingly extend, in relation to the party, to expenses which constitute such expenditure by virtue of paragraph (a).

(9) In this section “candidates” includes future candidates, whether identifiable or not.

(10) Nothing in this Part applies in relation to expenses incurred or to be incurred by or on behalf of a minor party.

SCHEDULE 8: Campaign expenditure: qualifying expenses

PART I QUALIFYING EXPENSES

Expenses qualifying where incurred for election purposes

1. For the purposes of section 72(2) the expenses falling within this Part of this Schedule are expenses incurred in respect of any of the matters set out in the following list.

LIST OF MATTERS

(1) Party political broadcasts.

Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing or producing such broadcasts.

(2) Advertising of any nature (whatever the medium used).

Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.

(3) Unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area or areas).

Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).

(4) Any manifesto or other document setting out the party's policies.

Expenses in respect of such a document include design costs and other costs in connection with preparing or producing or distributing or otherwise disseminating any such document.

(5) Market research or canvassing conducted for the purpose of ascertaining polling intentions.

(6) The provision of any services or facilities in connection with press conferences or other dealings with the media.

(7) Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with an election campaign.

Expenses in respect of the transport of such persons include the costs of hiring a particular means of transport for the whole or part of the period during which the election campaign is being conducted.

(8) Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with an election campaign or for other purposes connected with an election campaign.

Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.

Exclusions

2 Nothing in paragraph 1 shall be taken as extending to—

- (a) any expenses in respect of newsletters or similar publications issued by or on behalf of the party with a view to giving electors in a particular electoral area information about the opinions or activities of, or other personal information relating to, their elected representatives or existing or prospective candidates;
- (b) any expenses incurred in respect of unsolicited material addressed to party members;
- (c) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;
- (d) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the party; or

- (e) any expenses incurred in respect of an individual by way of travelling expenses (by any means of transport) or in providing for his accommodation or other personal needs to the extent that the expenses are paid by the individual from his own resources and are not reimbursed to him.

PART II

SUPPLEMENTAL

Guidance by Commission

3.—(1) The Commission may prepare, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within Part I of this Schedule.

(2) Once the Commission have prepared a draft code under this paragraph, they shall submit it to the Secretary of State for his approval.

(3) The Secretary of State may approve a draft code either without modification or with such modifications as he may determine.

(4) Once the Secretary of State has approved a draft code he shall lay a copy of the draft, whether—

- (a) in its original form, or
- (b) in a form which incorporates any modifications determined under sub-paragraph (3),

before each House of Parliament.

(5) If the draft incorporates any such modifications, the Secretary of State shall at the same time lay before each House a statement of his reasons for making them.

(6) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the draft code.

(7) If no such resolution is made within the 40-day period—

- (a) the Secretary of State shall issue the code in the form of the draft laid before Parliament, and
- (b) the code shall come into force on such date as the Secretary of State may by order appoint;

and the Commission shall arrange for it to be published in such manner as they consider appropriate.

(8) Sub-paragraph (6) does not prevent a new draft code from being laid before Parliament.

(9) In this paragraph “40-day period”, in relation to a draft code, means—

- (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
- (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(10) In this paragraph references to a draft code include a draft revised code

Power to amend Part I

4.—(1) The Secretary of State may by order make such amendments of Part I of this Schedule as he considers appropriate

(2) The Secretary of State may make such an order either—

- (a) where the order gives effect to a recommendation of the Commission; or
- (b) after consultation with the Commission.

Formal minutes

Tuesday 15 January 2008

Members present:

Sir George Young, in the Chair

Mr Kevin Barron
David Curry
Mr Andrew Dismore
Nick Harvey

Mr Elfyn Llwyd
The Hon Nicholas Soames
Mr Paddy Tipping
Dr Alan Whitehead

Draft Report [Publications funded from the Communications Allowance], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

A Paper was ordered to be appended to the Report.

Resolved, That the Report and Appendix be the Third Report of the Committee to the House.

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

[Adjourned till Tuesday 22 January at 9.30 am

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

Session 2007-08

First Report	Conduct of Mr Elfyn Llwyd, Mr Adam Price and Mr Hywel Willilams	HC 94
Second Report	Conduct of Mr Norman Baker, Mr Malcolm Bruce and Mr Sadiq Khan	HC 182
Third Report	Publications funded from the Communications Allowance	HC 232

Session 2006-07

First Report	Evidence to the SSRB Review of Parliamentary pay, pensions and allowances	HC 330
Second Report	Conduct of Mr David Cameron	HC 429
Third Report	Complaints about alleged misuse of Parliamentary dining facilities	HC 431
Fourth Report	Conduct of Mr Julian Brazier	HC 682
Fifth Report	Handling of future complaints on misuse of the private dining facilities	HC 683
Sixth Report	Conduct of Mr George Galloway	HC 909
Seventh Report	Conduct of Mr Gregory Campbell	HC 992
Eighth Report	Conduct of Mr Martin Salter and Mr Rob Wilson	HC 1071

Session 2005-06

First Report	Conduct of Mr Jonathan Sayeed	HC 419
Second Report	Conduct of Mr John Horam	HC 420
Third Report	Conduct of Mr Tony Baldry	HC 421
Fourth Report	Pay for Standing Committee Chairmen	HC 568
Fifth Report	Electoral Administration Bill: Simplification of Reporting Requirements	HC 807
Sixth Report	Mr Stephen Byers (Matter referred on 19 October 2005)	HC 854
Seventh Report	Conduct of Mr George Galloway	HC 1067
Eighth Report	Conduct of Mr Mark Lancaster	HC 1144
Ninth Report	Lobbying and All Party Groups	HC 1145
Tenth	Conduct of Mr Michael Foster (Worcester)	HC 1223
Eleventh	Conduct of Ms Emily Thornberry	HC 1367
Twelfth	Conduct of Nadine Dorries	HC 1368
Thirteenth	Conduct of Mr John Prescott	HC 1553
Fourteenth	Conduct of Dr Desmond Turner	HC 1578
Fifteenth	Conduct of Mr Eric Illsley	HC 1579

Sixteenth

Review of the Guide to the Rules Relating to the
Conduct of Members: Consultation Document

HC 1580