



House of Commons
Committee on
Standards and Privileges

Implementing the Twelfth Report from the Committee on Standards in Public Life

Second Report of Session 2009–10

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 24 November 2009*

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 David Curry MP (*Conservative, Skipton & Ripon*)
Rt Hon Kevin Barron MP (*Labour, Rother Valley*)
Mr Andrew Dismore MP (*Labour, Hendon*)
Nick Harvey MP (*Liberal Democrat, North Devon*)
Rt Hon Greg Knight MP (*Conservative, East Yorkshire*)
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.

Committee staff

The current staff of the Committee are Mr Steve Priestley (Clerk), Miss Rhiannon Hollis (Second Clerk) and Ms Jane Cooper (Committee Assistant).

Contacts

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Implementing the Twelfth Report from the Committee on Standards in Public Life

Introduction

1. The Committee on Standards in Public Life (CSPL) published its Twelfth Report, on MPs' allowances and expenses, on 4 November.¹ In this Report, we comment only on those recommendations made by the CSPL that relate to the responsibilities of the Committee on Standards and Privileges.

2. We believe that the focus now should be on how to implement the CSPL's recommendations relating to this Committee in the most practical way. In some cases, this will require primary legislation; in others, resolutions of the House or changes to the Standing Orders will suffice. Some of the recommendations include less detail than others. In making the proposals which follow, we have sought to interpret the less detailed recommendations in the spirit of the CSPL's report as a whole.

Membership of the Committee on Standards and Privileges

3. The CSPL has recommended that "There should be at least two lay members who have never been Parliamentarians on the Standards and Privileges Committee ... [who] should be chosen through the official public appointments process and formally approved by the House."² The lay members "should have full voting rights."³

4. With the support of this Committee as a whole, our former Chairman proposed the appointment of lay members to the Committee in his evidence to the CSPL.⁴ We welcome the CSPL's endorsement of this recommendation and we have suggestions for how it might work in practice.

5. The term "full voting rights" as it appears in the CSPL's recommendation 52 is not defined. It is, however, used by the CSPL solely in the context of a discussion of standards issues. **We interpret "full voting rights" in the context of the CSPL's report as a whole as meaning that the lay members will be able to vote on any matter relating to a standards case that is before the Committee—including proceedings on a draft Report—and on any matter that relates to standards in general, such as a proposal to amend the Code of Conduct or the Rules regarding registration of interests. We would not see it as conferring on the lay members the right to vote on any matter relating to privilege.**

6. The current membership of the Committee is ten (half of whom are drawn from opposition parties) and the quorum is five. **We propose that there should in future be**

¹ CSPL 12th Report, *MPs' expenses and allowances – Supporting Parliament, safeguarding the taxpayer*, Cm 7724

² CSPL 12th Report, recommendations 51 and 48

³ CSPL 12th Report, recommendation 52

⁴ Letter from Sir George Young Bt MP to Sir Christopher Kelly, 2 June 2009

two lay members on the Committee in addition to the ten elected Members. We recommend that the quorum should consist of five elected members and one lay member. In practice, this would mean that no decision on a standards matter could be taken without direct input from one of the lay members. In addition, it would mean that at least two elected Members would be required to support a proposition in order for it to be carried against opposition from the other elected Members present. If one or more Members were to decline to vote, this threshold would be altered, depending on the numbers present.

7. We are confident that the formula outlined above is fully in line with both the letter and the spirit of the CSPL's recommendation, while maintaining an important constitutional principle—that the outcome of proceedings in a Committee of the House should be in the hands of those who are directly accountable to the electorate.

8. The CSPL's report does not refer to the possibility that a lay member could chair the Committee. However, the CSPL has previously recommended, and the House has accepted, that the Committee should be chaired by an Opposition Member of Parliament. We would expect this to continue to be the case.

9. In its report, the CSPL notes concerns expressed by the Clerk of the House that the direct participation of lay persons in the taking of decisions by a committee of the House may not be covered by privilege.⁵ The report concludes that "If the House authorities are of the opinion that clarifying the question of parliamentary privilege in that regard requires an amendment to the Parliamentary Standards Act, the Government should facilitate this."⁶ **While recognising the force of the concerns expressed by the Clerk, we agree that a means of bringing participation of lay members in this Committee's work within the ambit of privilege must be found, and we are ready to work with the Government and with the House authorities to that end.** We would expect lay members of the Committee, like other members, to be fully bound by the rules regarding confidentiality of committee proceedings.

10. There is, however, another matter relating to privilege which we understand was raised by the Clerk. This concerns participation by the Committee's lay members in its work on matters involving privilege, which is entirely separate from its work on standards issues. **We are strongly of the view—which we believe is shared by the CSPL—that participation in the Committee's proceedings by lay members must be confined to the standards issues which lie within the scope of the CSPL's report. Privilege must remain a matter for the House and its Members.** We suggest that a clear distinction will need to be drawn between matters relating to privilege and the other work of the Committee, once the lay members have been appointed. To that end, **we recommend that the existing restriction in Standing Order No 149 which limits the size of a sub-committee to seven**

⁵ CSPL 12th Report, paragraph 13.68

⁶ CSPL 12th Report, recommendation 52

be removed, allowing the Committee to appoint a Privileges sub-Committee consisting of the ten elected Members.

11. There is also nothing in the CSPL’s report about remuneration of lay members of the Committee, or payment of their expenses. However, an analogue is available in the form of provision for the specialist advisers who already assist committees of the House. **Specialist advisers are reimbursed for their expenses and are paid a modest per diem for the work they carry out for committees. We understand that the members of the CSPL are also remunerated in this way. In our view, a similar arrangement should be made for payments to the lay members.**

12. Finally, we note the CSPL’s recommendation that the lay members of the Committee should be “chosen through the official public appointments process”.⁷ It is far from clear what is meant by this phrase. In our view, it would not be right for the ministerial appointments process to be used for these purposes—and in any case, such a move would require legislation. **We do, however, believe that there should be independent, external involvement in the appointment of the lay members. And whichever body is to administer this process, we suggest that it should not be the Committee on which the lay members are to serve.** Our colleagues on the Public Administration Committee have carried out much useful work on public appointments and may wish to offer their views on how these particular appointments should be made.

Investigation of standards cases

13. The CSPL has recommended the abolition of the newly-created post of Commissioner for Parliamentary Investigations and the creation instead of a new post of “compliance officer” within the IPSA.⁸ If this proposal were implemented, the compliance officer at the IPSA would have a significantly more limited role than that which has been created for the Commissioner for Parliamentary Investigations. In consequence, the Parliamentary Commissioner for Standards would be drawn back into investigation of expenses issues.

14. The CSPL has also recommended that “The Parliamentary Commissioner for Standards should be able to conduct investigations without waiting for a formal complaint ...”.⁹ A similar proposal was recently made by the Lords’ Leader’s Group.¹⁰ This would fundamentally change the role of the Parliamentary Commissioner for Standards and require a significant step change in the scale of resources made available to his office. We are concerned to avoid a situation where the Commissioner comes under overwhelming pressure to investigate every allegation. **In our view, there needs to be a firm evidential basis for an inquiry by the Commissioner to take place** (as the Lords group recognises). This requirement could be incorporated when the necessary amendment of Standing Order No 150 is proposed. In the event of the Commissioner commencing a ‘self-start’

⁷ CSPL 12th Report, recommendation 48

⁸ CSPL 12th Report, recommendation 44

⁹ CSPL 12th Report, recommendation 50

¹⁰ *Report of the Leader’s Group on the Code of Conduct*, House of Lords, 28 October 2009

investigation, he should report that fact to the Committee and should update it on progress from time to time.

15. We have noted the CSPL's recommendation that the Commissioner "should include in any report to the Standards and Privileges Committee an indication of the seriousness of any breaches in the rules or code of conduct which have occurred."¹¹ In practice, the Commissioner already does this through his choice of language, and we note that there is no indication that the CSPL has something more formal in mind, such as a sliding scale. A formal arrangement of that kind might be seen as creating an unwelcome confusion between the roles of the Commissioner and the Committee, because it would in effect require the Commissioner to set his own tariff, which could be seen as pre-empting the Committee's judgment on a penalty. However, the CSPL clearly wishes the Commissioner in his reports to give a clearer indication of the seriousness with which he regards breaches of the rules and he has assured us that he will do so.

16. The CSPL has further recommended that "The MPs' Code of Conduct should be revised to allow complaints to be made against an MP who is a former minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACOBA)."¹² This proposal would extend the Code into an area of conduct which is not directly related to an ex-Minister's status as an MP. We would have preferred to see this matter dealt with by legislation. However, on the assumption that the House will amend the Code as recommended by the CSPL, the Commissioner and the Committee will of course operate the new provision.

Enforcement of standards

17. The CSPL has recommended that "Where an MP is found to have seriously abused the expenses system or otherwise seriously breached the Code of Conduct, the Standards and Privileges Committee should always consider recommending that the House reduce or remove the resettlement grant from that MP as part of any sanctions to be imposed and should be prepared to do this for past as well as for future breaches of the rules."¹³

18. It is this Committee's view that the CSPL has correctly interpreted the powers of the House as including the power to withhold resettlement grant, which is presently founded on resolutions of the House. It follows that it would be possible for the Committee to recommend the use of such a sanction. **We will be ready to consider recommending the withholding of resettlement grant in future cases where it appears to us to be the right sanction to apply in the light of the breach that has occurred. However, we have no plans to make it the sanction of first resort, not least because it would have the effect of postponing the imposition of a penalty, potentially by many years.**

¹¹ CSPL 12th Report, recommendation 50

¹² CSPL 12th Report, recommendation 38

¹³ CSPL 12th Report, recommendation 33

19. We have considered with great care the implications for our work of the CSPL's statement that "it would be highly undesirable for any MP leaving Parliament at the next election after seriously abusing the expenses system to receive a payment widely regarded as a 'golden goodbye'."¹⁴ This statement can be interpreted either as a reference to cases arising in the remainder of the present Parliament, or as an implied request to this Committee to reopen past cases and to consider recommending the withholding of resettlement grant from Members on whom it has already reported and who have already been punished. **To reopen past cases would in our view be wholly contrary to natural justice. As we have already indicated, the Committee proposes to regard a recommendation to withhold resettlement grant as an option in cases from this point forwards. However, we will not be reopening past cases.**

20. The CSPL has also recommended that the Independent Parliamentary Standards Authority (IPSA) should have the power to "impose, subject to the procedural safeguards laid out in the [Parliamentary Standards] Act, its own nonparliamentary sanctions for breaches of the expenses regime (including where necessary of a financial nature) analogous to those available to HMRC and DWP, without the need to report to the Commissioner for Parliamentary Standards."¹⁵ It suggests that the IPSA would publish a report on any case that raised "standards issues". "It would then be up to the Commissioner for Standards to investigate the case and, if applicable, it would be up to the Standards and Privileges Committee to decide whether a parliamentary sanction (eg suspension from the House) was appropriate."¹⁶

21. The Committee notes that implementation of these changes is likely to require legislation. **We believe that it will be necessary for the nature and extent of the planned non-parliamentary sanctions to be carefully defined, in order that they do not become in effect disciplinary sanctions, which will remain a matter for the House. We suggest that the legislation could also provide for a robust quality assurance regime in relation to the IPSA.**

The Register of Members' Financial Interests

22. We note and accept the CSPL's recommendation that the provision in the Parliamentary Standards Act to vest responsibility for the registration of Members' interests in the IPSA should be reversed.¹⁷ Our understanding is that this will mean that the House, the Parliamentary Commissioner for Standards, the Registrar and the Committee will retain their present responsibilities for drawing up and administering the Rules on interests. We have noted the Government's statements that this will be achieved by not commencing the relevant provisions of the Parliamentary Standards Act.¹⁸

¹⁴ CSPL 12th Report, paragraph 10.34

¹⁵ CSPL 12th Report, recommendation 45

¹⁶ CSPL 12th Report, paragraph 13.46

¹⁷ CSPL 12th Report, recommendation 42

¹⁸ HC Deb, 19 November 2009, col 136

23. We also note that the CSPL wishes to see the “accessibility and usability” of the Register of Members’ Financial Interests improved.¹⁹ While believing the CSPL’s criticisms in relation to ease of use of the on-line version of the Register to be somewhat unfair, we will certainly work with the Commissioner and with the Registrar to make all the Registers as ‘user-friendly’ as possible.

24. We strongly support the CSPL’s call for a “sensible de minimis rule” for registering payments from second jobs.²⁰ We hope that the Government is now in a position to make progress with this.

25. We have, however, read with some concern the CSPL’s suggestion that “MPs should be required to register positions of responsibility in voluntary or charitable organisations, even if unpaid, together with an indication of the amount of time spent on them.”²¹ This proposal will blur the Register’s central purpose of recording Members’ financial interests and we believe that it will deter Members from taking on unpaid voluntary and charitable work.

26. The CSPL also recommends that candidates in elections should have to produce their own “register” of interests.²² The Committee recognises that this is for the Ministry of Justice to implement administratively for the next General Election, although the CSPL suggests it should be given legislative force in due course. However, **this Committee considers that there may be an opportunity here to streamline the House’s registration process, in that if the requirements between the House’s Register and the register of candidates’ interests can be aligned the process of compiling the new Register following a General Election could be made more straightforward. We recommend that the Ministry of Justice take steps to achieve this.**

¹⁹ CSPL 12th Report, recommendation 35

²⁰ CSPL 12th Report, paragraph 11.34

²¹ CSPL 12th Report, recommendation 36

²² CSPL 12th Report, recommendation 37

Formal minutes

Tuesday 24 November 2009

Members present:

Mr Kevin Barron
Mr Andrew Dismore
Nick Harvey
Mr Greg Knight

Mr Chris Mullin
The Hon Nicholas Soames
Dr Alan Whitehead

In the absence of the Chairman, Mr Chris Mullin was called to the Chair.

Draft Report [Implementing the Twelfth Report from the Committee on Standards in Public Life], proposed by Mr Mullin, brought up and read.

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

Paragraphs 1 and 2 read, amended and agreed to.

Paragraph 3 read and agreed to.

Paragraphs 4 and 5 read, amended and agreed to.

Paragraphs 6 to 9 read and agreed to.

Paragraph 10 read, amended and agreed to.

Paragraphs 11 and 12 read and agreed to.

Paragraphs 13 and 14 read, amended and agreed to.

Paragraphs 15 to 23 read and agreed to.

Paragraphs 24 and 25 read, amended and agreed to.

Paragraph 26 read and agreed to.

Resolved, That the Report, as amended, be the Second Report of the Committee to the House.

Ordered, That Mr Mullin make the Report to the House.

[Adjourned till Tuesday 1 December at 9.30 am