



House of Commons
Committee on
Standards and Privileges

**Publication of
information about
complaints against
Members**

Sixth Report of Session 2010–11



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Report and Appendix, together with formal minutes

*Ordered by The House of Commons
to be printed 2 November 2010*

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 Kevin Barron MP (*Labour, Rother Valley*) (Chair)
Sir Paul Beresford MP (*Conservative, Mole Valley*)
Annette Brooke MP (*Liberal Democrat, Mid Dorset and North Poole*)
Rt hon Tom Clarke MP (*Labour, Coatbridge, Chryston and Bellshill*)
Mr Geoffrey Cox MP (*Conservative, Torridge and West Devon*)
Mr Jim Cunningham MP (*Labour, Coventry South*)
Matthew Hancock MP (*Conservative, West Suffolk*)
Mr Oliver Heald MP (*Conservative, North East Hertfordshire*)
Heather Wheeler MP (*Conservative, South Derbyshire*)
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

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.

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Publication of information about complaints

Background

1. In January 2010, our predecessor Committee agreed a proposal from the Parliamentary Commissioner for Standards that he should be able to provide more information about individual complaints against Members. The Committee made an announcement on 27 January, as follows:

Complaints against MPs: proposal to publish more information

The Committee on Standards and Privileges has agreed a proposal from the Parliamentary Commissioner for Standards that he should publish more information on complaints against Members of Parliament.

The proposed new arrangements are as follows:

1. The Commissioner will each month place on his website statistical information about complaints. This will cover the number of complaints he has received; the number he has accepted; the number he has not accepted by broad category; and the number which he has resolved in the previous month, including the numbers not upheld, rectified, or reported to the Committee.
2. The Commissioner will publish on his website his determination letters on specific complaints not upheld or rectified, as soon as possible after they are produced.
3. The Commissioner will publish on his website the evidence he has received in relation to complaints which he has not upheld or has rectified. It may not always be possible to publish the evidence at the same time as the relevant determination letters are published.
4. The Commissioner will list each month on his website the names of Members who are subject to an inquiry, with a brief description of the nature of the complaint.

The Committee has agreed with the Commissioner that under the proposed new arrangements the Commissioner will publish statistical information from the beginning of this financial year, quarterly for the first three quarters, and monthly thereafter, to be followed by a list of Members currently the subject of an inquiry. The Committee has agreed with the Commissioner that the publication policy will apply also to determination letters for this current and for the last financial year, and in due course to the evidence on which they are based. The Commissioner will write to each Member concerned and to each complainant and witness before publication takes place.

The new publication policy will require the approval of the House. Further announcements will be made once this has been obtained.

2. Following this announcement, the then Chairman of the Committee wrote to the then Leader of the House, requesting time for a debate to approve the new policy. The approval of the House was necessary because Standing Order No 150, which sets out the Commissioner's powers, does not include any power for him to publish information on his work. Had the Commissioner published information or papers directly related to his work, he might have breached Parliamentary privilege. The Standing Order thus required amendment before the new policy could be implemented.

3. Parliament was dissolved before time for the House to consider the change could be found. The Commissioner was, therefore, unable to implement the new policy and has continued to operate the previous policy, which dates back to 2003.

The 2003 publication policy

4. The policy promulgated in and operated since September 2003 was founded on a recommendation of the Committee on Standards in Public Life (CSPL). In its Eighth Report, published in November 2002, the CSPL suggested that:

... the relationship between the Commissioner and the media should be more formally defined. The existence of such a published strategy statement, which would set out what is to be expected when enquiries are made of the Commissioner, would give the clarity which has hitherto been lacking.¹

In response, the then Commissioner and Committee drew up Procedural Note 5, in which is set out the policy on publication of information by the Commissioner and his office, which may be summarised as follows:²

- The Commissioner publishes an Annual Report on his work, which includes information on the number and types of complaints received and their outcome, including those cases dealt with by the Commissioner under the rectification procedure.³
- The Commissioner's office does not publish information on complaints it has received but if asked whether a specific complaint has been received, is prepared, other than in exceptional circumstances, to confirm its receipt.
- The Commissioner's office also confirms, if asked, when the Commissioner has dismissed a complaint; when an inquiry has been postponed or suspended because the matter under investigation is the subject of a police investigation or court proceedings; or when he has submitted his report on a complaint to the Committee.

¹ Eighth Report from the Committee on Standards in Public Life, Cm 5663, paragraph 8.56

² The full text is at Appendix 1

³ The Commissioner is required by Standing Order No 150(10) to report each year to the House on the exercise of his functions.

5. The Commissioner's Annual Reports are published by Order of the House, having been laid before it by the Clerk of the House.⁴ Each Annual Report contains statistical information on standards cases for the financial year in question. The information published in the most recent Annual Report, for 2009–10, was as follows:

- The number of formal complaints received.⁵
- The number of complaints accepted for inquiry.
- The number of complaints not inquired into:
 - because the complaint fell outside the Commissioner's remit;
 - because the complaint did not concern a breach of the rules;
 - because insufficient supporting evidence was provided;
 - because a similar complaint had already been accepted.
- The number of complaints upheld:
 - resolved through the 'rectification' procedure;
 - subject of a Memorandum to the Committee on Standards and Privileges.
- The number of complaints not upheld:
 - without a formal report to the Committee;
 - subject of a Memorandum to the Committee;
 - other.

6. Further information is either published by the Committee or may be given out in response to enquiries, as described in the following sections.

Why the publication policy needs to change

Information on complaints received and on self-referrals

7. Any person—including another Member of Parliament—may make a complaint that a Member has broken the rules of the House or has breached its Code of Conduct.⁶ Such complaints must be made in writing to the Commissioner. To be accepted, they must be within the Commissioner's remit and they must be accompanied by sufficient supporting evidence. They must not be anonymous or pseudonymous. The decision whether to accept a complaint for investigation is entirely for the Commissioner, who only consults the

⁴ The Reports are available at www.parliament.uk

⁵ A formal complaint is a complaint made in writing by a named individual.

⁶ Complaints relating to Members' expenses are now made to the Compliance Officer of IPSA, unless they relate to events before 7 May 2010.

Committee if the complaint relates to conduct which took place more than seven years previously or to the conduct of a former MP.

8. A Member may seek to refer an allegation that has been made against him- or herself to the Commissioner. The Commissioner always seeks the agreement of the Committee before accepting a self-referral for investigation. Although self-referrals are not complaints, they are handled in the same way once the Committee has given its agreement and the publication policy applies to self-referrals as it applies to complaints.

9. Because the information on the number and type of complaints received and on self-referrals is published only in the Commissioner's Annual Report, much of it is quite old by the time it enters the public domain. It is, however, of legitimate public interest. The Commissioner suggested in January 2010 that he should publish this statistical information on a monthly basis. The previous Committee agreed and so do we.

10. The Commissioner's policy, other than in exceptional circumstances, is to confirm in response to an enquiry that a specific complaint has been received, but he does not provide further details of the complaint. We recommend that this policy continue.

11. By "exceptional circumstances" in the previous paragraph and elsewhere in this Report, we mean circumstances that the Commissioner and the Committee have agreed require a departure from the usual practice.

Information on complaints not accepted for investigation

12. It has not been the Commissioner's practice to publish letters received from or sent to those whose complaints are not accepted for inquiry. In considering whether such letters should be published, there is a balance to be achieved between protecting Members who have been the object of complaints that have failed to meet the criteria for a formal investigation and providing information which may be felt to be of legitimate public interest. In our view, it would not be in the public interest that the resources of the Commissioner's office should be used to publish allegations which lack substance or which are not relevant to his work. We therefore recommend that the Commissioner continue to publish statistical information about complaints that are not accepted for inquiry, initially every three months but monthly by early 2011, but that he should not publish information or papers relating to specific complaints. A complainant whose complaint is not accepted for inquiry is free to seek publicity elsewhere.

Information on investigations under way

13. When he accepts a complaint for investigation, the Commissioner writes both to the complainant and to the Member concerned, informing them of his decision. The recipients are informed that they should make no public use of such letters and it has been the Commissioner's practice, with the agreement of the Committee on Standards and Privileges, not to publish information on investigations that are under way. This is to avoid prejudicing the investigation. It has not been unusual, however, for the fact that a complaint has been made or accepted to become known and, when the Commissioner has been asked a direct question about whether a Member is under investigation, it has been his practice to answer it, in accordance with the 2003 policy.

14. In our view, the position with regard to complaints that have been accepted for investigation by the Commissioner is substantially different from that with regard to complaints that are still being assessed or have not been accepted for inquiry. The fact that a formal investigation is under way means that the Commissioner considers there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further. It is not unreasonable in our view that the fact of the investigation, the name of the Member concerned and the nature of the complaint should be public knowledge. On the other hand, we do not propose that the name of the complainant or the names of any witnesses should be published by the Commissioner while an inquiry is under way, or that the private address of any individual should be published at any stage.

15. We recommend that the Commissioner should list on his website each month the name of each Member or former Member who is currently the subject of an investigation by him, with a brief description of the nature of the complaint or allegation. Where an investigation has been suspended, for example because of inquiries by the police into a related matter, this should be stated. Other than in exceptional circumstances, this is all the information that the Commissioner should publish prior to the conclusion of an investigation.

Information on matters rectified and on complaints not upheld

16. Under Standing Order No 150(3), the Commissioner may in certain circumstances resolve a complaint, without making a report to the Committee. The circumstances are:

- where a Member has agreed that he or she failed to register or declare an interest, but the interest was minor or the failure inadvertent and the Member has rectified the matter; and
- where a Member has with the agreement of the Commissioner reimbursed the House for misuse of allowances, facilities or services.

With the agreement of the Committee, the Commissioner also makes no formal report to it in most cases where, following investigation, he does not uphold a complaint.

17. The two sets of circumstances described above are colloquially referred to as 'rectification'. Most of the cases resolved by rectification have involved minor or inadvertent breaches by Members or their staff of the rules relating to officially supplied envelopes and stationery, or communications with constituents. Where a Member accepts that he or she breached the rules, apologises and reimburses the House for the full value of the allowance, facility or service that was misused, the matter is regarded as closed.

18. The Commissioner includes a brief description of each case resolved using the rectification procedure in his Annual Report, but this information is published some time after the event and it has not identified the Member concerned. In our view and in that of the Commissioner, it is no longer acceptable for information either about complaints upheld and dealt with through the rectification procedure or about complaints not upheld to remain unpublished for many months, or for the name of the Member concerned to be withheld. The present procedure effectively provides the complainant and the Member concerned with discretion over whether and when to publish this information, whereas in

the view of the Commissioner and of this Committee publication should be the responsibility of the Commissioner, acting in the public interest.

19. An investigation by the Commissioner may generate substantial quantities of evidence. Evidence related to complaints that are the subject of a report from the Commissioner to the Committee is always published with the Committee's Report. On the other hand, it has not been the practice to publish evidence relating to investigations that do not result in a report to the Committee. These include most cases where a complaint is investigated but not upheld, and all cases where the rectification procedure is used. The previous Committee considered that such evidence should be published and we agree, although the evidence may need to be redacted to protect the privacy of individuals.

20. We recommend that the Commissioner should always publish on his website letters sent by him rectifying or not upholding a complaint or self-referral. Evidence that is relevant to such findings should also be published by the Commissioner on his website within a reasonable period. We recognise that it will not always be possible to publish the evidence on the same date as the letters themselves are published.

Information on complaints upheld, &c

21. Where the Commissioner upholds a complaint but it has not been rectified under the procedures set out in Standing Order No 150(3), he makes a full report to the Committee. The Committee is then able to undertake its own inquiry. Whether or not it does so, the Committee makes a Report to the House. In that Report, it summarises the Commissioner's findings and any evidence it has received from the Member concerned. The Commissioner's report, the Member's evidence and any other evidence are normally published in full as appendices to the Committee's Report, although redactions may be made to protect the privacy of individuals. We believe that this system has worked well and we have no proposal to change it.

Conclusions and main recommendation

22. The 2003 publication policy set out a general approach to the question of how to achieve a satisfactory balance between openness and confidentiality.

This approach reflects the need to hold several, potentially conflicting, principles in balance. One is the public's right to know, not least in order to have confidence in the effectiveness of the system for considering complaints. On the other hand, accused Members are entitled to a fair consideration of the complaint against them. Their public reputation is at stake and should not be put at hazard without proper cause. Nor is it necessarily in the interest of complainants for information to be disclosed, for example if this would prejudice a successful investigation of their complaint or put potential witnesses under pressure.⁷

⁷ Procedural Note 5, paragraph 3

In our view, this statement of principles remains valid. However, it is clear that the balancing point between them has shifted.

23. There has been considerable comment in the media about so-called “secret deals” between the Commissioner and Members. Much of this comment has been misconceived and some of it has been entirely mistaken. Rectification is neither a “deal” nor is it “secret.” Both the complainant and the Member concerned have always been free to make the Commissioner’s decision letters publicly available and from 2009–10 a brief description of each such case has been published in the Commissioner’s annual report. But we accept that underlying much of the reporting on this issue has been a genuine concern that information which is of legitimate public interest has not been actively placed in the public domain.

24. We acknowledge that proactive publication of information on complaints and investigations may mean that greater attention will be paid to breaches of the House’s rules than has been the case even in the last year or two. It is also necessary to protect the right of individuals who are under investigation to a fair hearing, in this as in any other forum. Taking all this into account, we nonetheless consider that it is no longer defensible that the House should publish so little information so late about a process which is intended to bolster public confidence in Parliament. We believe that our proposals for a new publication policy, which are based on those made by the Commissioner in January 2010, are proportionate and reasonable. In our view, they strike the right balance between serving the public interest and protecting the rights of the individual.

25. Accordingly, we recommend that Standing Order No 150 be amended, at the end, by inserting the following new paragraph:

(10A) The Commissioner shall have leave to publish from time to time—

(a) information and papers relating to—

(i) matters resolved in accordance with paragraph (3) of this order; and

(ii) complaints not upheld;

and

(b) information about complaints received and matters under investigation.

The Committee and the Commissioner will revise the policy set out in Procedural Note 5 to make it consistent with the proposals set out in this Report and may make further slight adjustments to the policy in the light of experience.

26. In addition to making provision for future publication, the House will wish to consider whether and if so how far to backdate the new policy. We understand that the Commissioner has been collating determination letters and relevant evidence for the financial years 2008–09 and 2009–10 and that he will be preparing papers for the current financial year to date. He expects to be in a position to publish statistical information for 2010–11 on a quarterly basis for the first three quarters of 2010–11 and monthly thereafter.

We therefore recommend that the Standing Order change should be effective immediately it is made and that the Commissioner should be authorised by Resolution of the House to publish papers relating to complaints rectified or not upheld since the beginning of financial year 2008–09 and information about complaints received and matters under investigation since the beginning of financial year 2010–11.

Summary of how the new publication policy will work in practice

27. If they are agreed by the House, the proposed new arrangements once they are fully in place will operate as follows:

The Commissioner will each month publish on his website statistical information about complaints. This will cover the number of formal complaints and self-referrals he has received; the number he has accepted; the number he has not accepted by broad category; and the number which he has resolved in the previous month, including the numbers not upheld, rectified, or reported to the Committee. He will not publish information about specific complaints or self-referrals.

The Commissioner will list each month on his website the names of Members who are subject to an inquiry, with a brief description of the nature of the complaint or allegation and the status of the inquiry. Other than in exceptional circumstances, he will not publish other information about specific inquiries.

The Commissioner will publish on his website his determination letters on specific complaints or allegations not upheld or rectified, as soon as possible after they are produced. The Commissioner will also publish on his website relevant evidence he has received in relation to complaints or allegations which he has not upheld or has rectified. It may not always be possible to publish the evidence at the same time as the relevant determination letters are published. Other than in exceptional circumstances, the Commissioner will not publish other information about specific resolved complaints or allegations.

The Commissioner will write to each Member concerned and to each complainant and witness before publication takes place.

Appendix 1: Procedural Note 5

Policy on the Disclosure of Information About the Handling of Complaints against Members of Parliament

1. This note sets out the policy, agreed by the Committee on Standards and Privileges (‘the Committee’) and the Parliamentary Commissioner for Standards (‘the Commissioner’), on the disclosure of information about the handling of complaints against Members of Parliament. Its publication meets the suggestion by the Committee on Standards in Public Life that;

“the relationship between the Commissioner and the media should be more formally defined. The existence of such a published strategy statement, which would set out what is to be expected when enquiries are made of the Commissioner, would give the clarity which has hitherto been lacking” (Eighth Report, Cm 5663, para 8.56).

General Approach

2. Both the Committee and the Commissioner will seek to be as open as they can about complaints and the operation of the complaints system, consistent with maintaining the integrity of that system and ensuring fairness both to the complainant and to a Member who is the subject of a complaint. In practice this means that they will aim for:

- as much openness as is possible about the process followed in considering a complaint.
- confidentiality wherever appropriate about individuals, especially during the investigation of a complaint.

3. This approach reflects the need to hold several, potentially conflicting, principles in balance. One is the public’s right to know, not least in order to have confidence in the effectiveness of the system for considering complaints. On the other hand, accused Members are entitled to a fair consideration of the complaint against them. Their public reputation is at stake and should not be put at hazard without proper cause. Nor is it necessarily in the interest of complainants for information to be disclosed, for example if this would prejudice a successful investigation of their complaint or put potential witnesses under pressure.

Information About the Complaints Process

4. The House has agreed that in future the Commissioner should report annually on the system for promoting and sustaining high standards of conduct among Members and on the operation of the complaints process. These reports will be published.

5. The Commissioner’s report includes information on the number and types of complaints received and their outcome, including those cases dealt with by the Commissioner under the rectification procedure. The first report was published on 17 July 2003 (HC 905, Session 2002–03).

6. Working together, the Committee and the Commissioner also intend that policy or practice notes should be published, making clear the approach which they take to various procedural issues, and in such other circumstances as are considered appropriate. In February 2003, guidance notes were published setting out the procedure for considering complaints against Members. These were updated in September 2003 to take account of decisions by the House in response to the recommendations in the Eighth Report of the Committee on Standards in Public Life. The Committee and the Commissioner hope these will be helpful both to Members and to the public.

7. A distinct section of the Parliamentary web-site has been established, containing information about the Code of Conduct for Members, the Register of Members' Interests and the system for considering complaints against Members, to ensure that this information is more readily available to the public.

Information About Individual Complaints

8. Neither the Committee nor the Commissioner considers it appropriate to release information to the media or the public about individual cases before these have been the subject of full and proper inquiry by the Commissioner, and the Committee where appropriate, and the latter has decided, in cases coming before it, in what terms it wishes to report to the House. Premature release of information may jeopardise effective inquiry into a complaint as well as the chances of a fair hearing for the Member concerned.

9. With this in mind, on receipt of the complaint, the Commissioner will take steps aimed at ensuring that the Member concerned is immediately informed of this, and of the nature of the allegations. However, he will not otherwise take the initiative in announcing that he has received a complaint. His office will nonetheless respond to inquiries, and in the case of an inquiry that relates specifically to a complaint that has been received, will be prepared, other than in exceptional circumstances, to confirm its receipt. At no time will the Commissioner reveal the specific details of inquiries he may be making.

10. When acknowledging that a complaint has been received, the Commissioner's office will make clear that the mere fact that a complaint has been received does not signify that it is well-founded. This approach is consistent with that recommended by the Committee on Standards in Public Life in its Eighth Report (Cm 5663, recommendation 25(a)).

11. The Commissioner's office will also be ready (again, if asked) to acknowledge:

a) when the Commissioner has dismissed a complaint (because, on the evidence available, it did not meet the criteria for further investigation or further investigation of the matter by him was not, in his view, justified); or

b) when an inquiry has been postponed or suspended because the subject matter of the investigation is the subject of a police investigation or court proceedings; or

c) when he has submitted his report on a complaint to the Committee. In these circumstances, the Commissioner's office will make clear that the fact that he has reported to the Committee simply means that the Commissioner has completed his inquiries: no inference can be drawn from this as to the outcome of those inquiries.

The Commissioner will ensure that both the Member complained of and the complainant are aware of the position before he releases any such information.

12. When the Commissioner has submitted a report on a complaint to the Committee, the Chairman (or the Clerk acting on his behalf) will, if asked, confirm that it has been received. While they will be prepared to indicate when the Committee is next meeting, they will not give any information as to when the Committee might be expected to consider the Commissioner's report, nor will they speculate on whether (or when) the Member might be called to give evidence or on when the Committee might be expected to agree a report to the House.

13. When the Committee has agreed a report, the Clerk informs the Member and the complainant of the publication arrangements. Once this has been done, the Chairman and the Clerk will, if asked, give out details of these arrangements in response to inquiries.

Publication of the Commissioner's Report

14. The Commissioner's report will continue to be published as an appendix to the report of the Committee to the House.

The Parliamentary Commissioner for Standards and His Staff

15. The Commissioner is an Officer of the House who at the same time is appointed from outside to provide an element, independent of Members, in the monitoring and enforcement of the Code of Conduct and Rules for Members. It is important that Members have confidence in the confidentiality of their dealings with the Commissioner and that the public know and understand the arrangements for upholding standards and considering complaints.

16. Accordingly, the Commissioner and the Committee have agreed that he and his staff should and will be free to talk at any point, in general terms, to the press and others about the system for regulating Members' conduct and investigating complaints.

17. They have also agreed that neither the Commissioner nor his staff will talk to the press or others, whether in the context of any more general interview or otherwise, about any individual complaint, other than within the framework laid down in this note, unless it has been finally disposed of. In the case of a complaint in respect of which the Committee has recommended further action against the Member by the House, this period will be regarded as having ended when the House has come to a decision on the recommendation.

18. This means that the Commissioner would not normally expect to have contact with the press about individual cases (except where indicated earlier in this note or if individual journalists are themselves involved in a particular complaint). The Chairman of the Committee will normally take the lead in dealing with inquiries from the press about the published reports of the Committee, and will discuss with the Commissioner the handling of press interest in each particular case.

Formal minutes

Tuesday 2 November 2010

Members present:

Mr Kevin Barron, in the Chair

Sir Paul Beresford

Mr Oliver Heald

Annette Brooke

Heather Wheeler

Mr Tom Clarke

Dr Alan Whitehead

Matthew Hancock

Draft Report (Publication of information about complaints against Members), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 9 read and agreed to.

Paragraph 10 read, amended and agreed to.

Paragraphs 11 to 25 read and agreed to.

Paragraph 26 read, amended and agreed to.

Paragraph 27 read and agreed to.

One Paper was appended to the Report.

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

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 16 November at 9.30 am]