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Independent Complaints and Grievance Policy  
Programme Team

## Independent Complaints and Grievance Scheme Delivery Report

Published July 2018



# Foreword from the Steering Group

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It is vital that all those who engage with Parliament, whether working or visiting, are treated with dignity and respect. In turn, they need to understand the behaviour that is expected of them to ensure a respectful and safe environment. The new Behaviour Code recognises the need for Parliament to meet the highest ethical standards of integrity, courtesy and mutual respect and this has been uppermost in our minds as we have undertaken our task.

The Working Group on an Independent Complaints and Grievance Policy, in responding to allegations and testimony of bullying, harassment and sexual harassment at Westminster, recognised that a change in workplace culture was urgent and essential and made recommendations on how Parliament could achieve this change. Following the resolution of the House of Commons on 28th February, the Steering Group was established to oversee the delivery of those recommendations and we have met regularly over the past 4 months to support the officials and advisers tasked with implementing the Scheme.

We have been dealing with difficult, complex and sensitive issues. Steering Group members have brought a diversity of views and experience to their role which has enriched our discussions. We believe the new Scheme represents a strong foundation from which to promote better behaviour and improve the culture of Parliament. We say a strong foundation as we believe that achieving positive change will require persistence, flexibility and the on-going evaluation of the impact of the measures outlined in this report. Parliament must continue to build on the work we have done to ensure that the positive change we want to see comes to pass and to take forward any outstanding issues that have not been possible to resolve yet and which will make the Scheme even stronger. This includes the issue of independence and long term cultural change. We are determined that this will be a living document and that all in our community endeavour to uphold its values every day.

We are not aware of any legislature elsewhere in the world that has put in place such a significant package of measures to create lasting, positive change in the culture of a Parliamentary Community. We have achieved a great deal but we also acknowledge that there is more to do, and we therefore look forward to the outcome of the reviews to be held six and eighteen months after implementation.

We are aware that for the new Scheme to be a success we need to be able to deal with problems of the past. We are therefore establishing an independent review of historic allegations that will be open for six months to hear any complaints from Members' staff, MPs or Peers who have experienced bullying, harassment, or sexual misconduct. This will use similar terms of reference to the Dame Laura Cox review, and will focus on providing guidance, support and closure to all those who feel they have been wrongly treated. We believe it will provide a way for all voices to be heard with the six month review of the Scheme considering whether there is anything further that can be done to help people find the resolution they seek.

The Independent Inquiry into the Bullying and Harassment of House of Commons Staff by Dame Laura Cox QC has been running in parallel to our work. Although our focus has been the Parliamentary Community as a whole and Dame Laura’s inquiry is focused on House of Commons staff only there are likely to be lessons for this Scheme when she reports later in the year. We strongly recommend that the findings from Dame Laura’s inquiry, together with the findings from the independent review outlined above should be taken into account in the six-month review. Some members of the Steering Group advocated strongly for the start of the new Scheme to be delayed until after Dame Laura Cox’s inquiry reports so that final decisions could be made in the light of her findings and recommendations, including on pre-Scheme cases. On balance it was felt that there is an urgent need for this Scheme to be in place as soon as possible to provide the support and protection that everyone deserves.

This is a once in a generation opportunity to make the change needed to ensure that we all consider what we can do to promote dignity and respect. We encourage all members of the Parliamentary Community to support this Scheme and uphold the values it promotes.

We are grateful to all of those who have been involved in the development of this Scheme, including those who have had the courage to share their testimony. In particular we are grateful to the Programme Team and our expert advisers who have achieved such in a lot in a short space of time.

Rt Hon Andrea Leadsom MP (Chair)	Rt Hon Baroness Evans of Bowes Park	Baroness Bloomfield of Hinton Waldrist (substitute for Baroness Evans of Bowes Park)
Dawn Butler MP	Emily Cunningham (NUJ, SNP staff)	Max Freedman (Unite)
Ken Gall (TUS President HoC)	Georgina Kester (MPSA)	Emma Little Pengelly MP
Caroline Lucas MP	Rachael Maskell MP	Cath Miller (substitute for Caroline Lucas MP)
Layla Moran MP (substitute for Jo Swinson MP)	Liz Saville Roberts MP	Pete Wishart MP
Jo Swinson MP	Baroness Young of Hornsey	

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# The Independent Complaints and Grievance Scheme for Parliament

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## Introduction

1. Following the resolution of the House of Commons on 28th February 2018 and the agreement of the House of Lords Commission on 18th March 2018, officials of both Houses, with the support of expert advisers, have been working to deliver the recommendations of the Cross-Party Working Group on an Independent Complaints and Grievance Policy. This report from the Programme Team provides the detail of the new policies and procedures required to promote a culture of respect and tackle unacceptable behaviour.

## Background

2. The context for this work arose from allegations and accounts in the press about inappropriate behaviour and a culture of bullying and sexual harassment at Westminster. This resulted in the setting up of a cross-party, bicameral Working Group on an Independent Complaints and Grievance Policy. The Group published its report<sup>1</sup> on 8 February 2018 which was followed by a debate in the House of Commons on 28th February. Following that debate, the House of Commons agreed the following resolution:<sup>2</sup>

“Resolved,

That this House endorses the recommendations of the Working Group on an Independent Complaints and Grievance Policy; and asks the House of Commons Commission to authorise House officials, reporting regularly to a steering group of Members and others in consultation with the Committee on Standards and the Parliamentary Commissioner for Standards, to undertake the work necessary to establish:

(1) a Behaviour Code for Parliament that covers bullying and harassment, and sexual harassment, and applies to all persons working for or with Parliament, or who are lawfully on the parliamentary estate;

(2) an independent complaints and grievance scheme to underpin the Code, together with associated policies, appropriate sanctions and the contractual arrangements necessary for delivering the scheme;

(3) particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate;

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1 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-02-08/HCWS460/>

2 <https://hansard.parliament.uk/Commons/2018-02-28/debates/DDEFA813-D9D0-4F25-B1FA-97799098300D/IndependentComplaintsAndGrievancePolicy>

- (4) a system of training to support the Code;
  - (5) a human resources support service for staff employed by Members of Parliament or jointly by political parties, delivered by a third-party provider, and a handbook for these staff;
- and to identify any amendments that may be necessary to Standing Orders and the Code of Conduct, for the approval of the House.”

The report was endorsed by the House of Lords Commission in March 2018.

## Steering Group Membership

3. The Steering Group held its first meeting on 6 March 2018. The following individuals were members: Andrea Leadsom MP (Leader of the House of Commons and Chair of the Steering Group), Baroness Evans of Bowes Park (Leader of the House of Lords), Baroness Bloomfield of Hinton Waldrist (substitute for Baroness Evans), Dawn Butler MP (Shadow Minister for Women and Equalities), Emily Cunningham (National Union of Journalists (“NUJ”) representative SNP staff Westminster), Max Freedman (Unite), Ken Gall (Trade Union Side President (TUS) House of Commons), Zainab Gulamali (Plaid Cymru substitute), Emma Little Pengelly MP (Democratic Unionist Party “DUP”), Caroline Lucas MP (Co-Leader of the Green Party), Cath Miller (Green Party substitute), Georgina Kester (Members and Peers’ Staff Association “MAPSA”), Rachael Maskell MP (Labour), Layla Moran MP (Liberal Democrats substitute), Liz Saville Roberts MP (Plaid Cymru), Jo Swinson MP (Liberal Democrats), Pete Wishart MP (SNP) and Baroness Young of Hornsey (Crossbench Peer).

## Steering Group Objectives

4. At its meeting on 23rd April 2018, the Steering Group agreed its terms of reference including the following objectives:
- a. To develop the Independent Complaints and Grievance Policy through overseeing the work needed to deliver this, ensuring that it is faithful to the Cross-Party Working Group on an Independent Complaints and Grievance Policy Report.
  - b. To support the SRO and the programme team in making decisions, and providing challenge and guidance for the successful delivery of the workstreams within the Independent Complaints and Grievance Policy Programme.
  - c. The initial scope contained the following workstreams:
    - a Behaviour Code for Parliament that covers bullying and harassment, and sexual harassment, and applies to all persons working for or with Parliament, or who are lawfully on the parliamentary estate;

- an independent complaints and grievance Scheme to underpin the Code, together with associated policies, appropriate sanctions and the contractual arrangements necessary for delivering the Scheme;
- particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate service and an independent specialist investigator;
- a system of training to support the Code;
- work to effect cultural change in order to support the principles of the Behaviour Code;
- work to ensure the Parliamentary Commissioner for Standards, the House of Lords Commissioner for Standards, the House of Commons Committee on Standards and the House of Lords Sub-Committee on Lords' Interests and the Committee for Privileges and Conduct are consulted and that changes to Standing Orders or the Code of Conduct necessary to support this work are identified and amendments are brought to both Houses to approve.

### **Programme Team**

5. A Programme Team of parliamentary officials and specialist advisers was established by the Commissions of both Houses to deliver the recommendations of the Cross-Party Working Group.

### **The "Parliamentary Community"**

6. Reference is made throughout this report to the Parliamentary Community. The Parliamentary Community includes: staff employed by or working for the House of Commons, Parliamentary Digital Service and the House of Lords, MPs and MPs' staff, interns and other paid or unpaid staff, holders of parliamentary security passes including those employed by external organisations, Peers and Peers' staff.

# 1 A Behaviour Code for Parliament

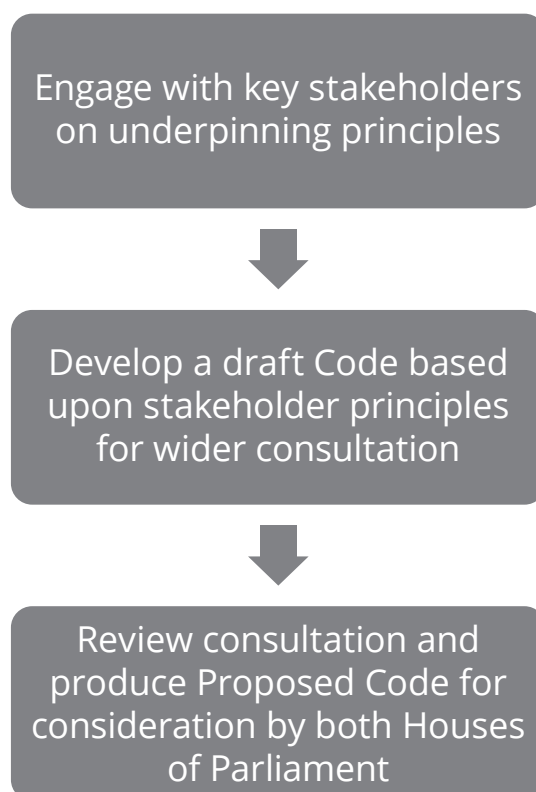
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7. The Working Group report identified that a “Behaviour Code is needed to encompass a shared set of explicit behavioural expectations of all those working for and within Parliament”. These standards underpin interaction between members of the parliamentary community, including visitors, and are a clear statement of how people are expected to behave, and how they can expect to be treated. The Behaviour Code represents a positive view of the future and the Culture Change workstream is focused on how it can be brought to life and embedded.

8. It is important to note that the Behaviour Code is a statement of principle and cultural intent. It is not a set of rules; the bullying and harassment and sexual misconduct policies outline breaches of acceptable behaviour that could result in a complaint being made through the Scheme. Posters and other informational materials will make sure that this is clear to avoid any confusion.

## Creating the Code

9. The Steering Group agreed the following process for developing the Behaviour Code:



Further detail on the development of the Code is included in Annex A.

## Identifying Underpinning Principles

10. In conjunction with the House of Commons Evaluation and Insight Team and Ipsos MORI, deliberative workshops on the principles to underpin the Behaviour Code were held in April. Attendees at these workshops included MPs and Peers,

their staff, and staff of both Houses. Discussions also took place with trade union representatives, the Press Gallery Committee and the Committee on Standards on the development of the Behaviour Code.

## Reviewing feedback and producing the Proposed Code

11. Based on the principles identified in the deliberative workshops, a public consultation was undertaken on a draft Code. The Steering Group reviewed this consultation feedback to produce the Proposed Behaviour Code and identify some illustrative examples. It is important to note that the examples set out in Annex A are not exhaustive and by taking a principles-based approach, the Code is intended to be meaningful in all of Parliament's different working and visiting environments.

## The Proposed Behaviour Code



### Behaviour Code

**Whether you are a visitor or working in Parliament at Westminster or elsewhere, there are clear guidelines in place on how you should be treated, and how you should treat others:**

Respect and value everyone – bullying, harassment and sexual misconduct are not tolerated

Recognise your power, influence or authority and don't abuse them

Think about how your behaviour affects others and strive to understand their perspective

Act professionally towards others

Ensure Parliament meets the highest ethical standards of integrity, courtesy and mutual respect

Speak up about any unacceptable behaviour you experience

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

If you have experienced bullying, harassment or sexual misconduct you are encouraged to report it and/or seek support by contacting:

Independent Sexual Misconduct Advice Service – 0800 112 4318

Independent Bullying and Harassment Reporting Service – 0800 028 2439

## 2 An independent complaints and grievance Scheme to underpin the Code

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*‘Procuring independent services including...a workplace dispute resolution service to anyone wanting to report...bullying or harassment’ (Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 88a)*

### Section 2A: A detailed bullying and harassment policy and procedures

12. The Working Group report recommended “the development of an independent complaints and grievance scheme” including a new Parliament-wide policy “for responding to and managing complaints of...bullying and harassment”.<sup>3</sup> This should be “accompanied by a comprehensive set of supporting procedures”, written in consultation with relevant stakeholders. The policy and procedures should be subject to a full equality impact assessment process and detailed legal checks.<sup>4</sup>

13. An external HR policy consultant was engaged, whose schedule of work included a best practice review and a Parliament-wide consultation exercise. Staff representatives for Members’ and Peers’ staff, TUs representatives for both Houses and representatives from the Workplace Equality Networks were involved in the policy development. Other consultees on the detailed policy and procedure included the Steering Group, the legal and sexual violence against women Specialist Advisers to the Steering Group, the Commissioners for Standards for both Houses and the HR teams for the Lords, Commons and Parliamentary Digital Service.

14. Legal advice was provided by the Office of Speaker’s Counsel in the House of Commons and an equality analysis was conducted on the end-to-end bullying and harassment scheme, which was circulated to the Workplace Equality Networks for input. The policy, procedures and flowchart were revised to reflect the feedback received during this consultation period. We are grateful to all those who provided feedback, all of which was thoughtful and much of which was included in the final versions. The importance of reviewing this policy and procedures in light of the operation of the Scheme after the first six months was also noted.

#### Procurement processes

15. The Working Group report also specified that “[t]here will be [a] separate reporting helpline... for allegations of...bullying and harassment” providing “an improved and inclusive reporting and monitoring mechanism”. Support and guidance would be provided to complainants, an independent specialist investigative process where required and access to informal resolutions (where appropriate and agreed by both parties).<sup>5</sup>

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3 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 21

4 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 39–40

5 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 29–31

16. Within the wider bullying and harassment service, market testing was carried out and two separate procurement exercises were agreed. These were: a reporting helpline and an investigation service. It was agreed that the reporting helpline would also need to include the ability to provide first-line support and advice to both complainants and responders, and the investigation service would need both expertise in gathering and assessing evidence and in supporting informal resolutions. Procurement strategies, timetables and tender specifications were drawn up and as specified in the Working Group report “staff representatives [were] also involved in the procurement processes” and criteria around diversity and inclusion were written into the tenders.<sup>6</sup>

### Reporting helpline

17. A tender exercise was conducted for the bullying and harassment helpline, and the Workplace Equality Networks were represented on the evaluation panel. Information and briefings about the parliamentary community and its complex relative power dynamics are being provided to the successful suppliers, and appropriate information recording and escalation protocols have been developed and documented. Effective communication will also be important to raise the profile and awareness of the new helpline and reinforce its independence.

### Independent investigation and dispute resolution services

18. A single tender specification for investigators for both bullying and harassment and sexual misconduct was developed, but separated into two ‘lots’ to reflect the qualitative difference between sexual harassment and other types of inappropriate behaviour. This tender is currently underway and allows for a range of different investigators with different areas of expertise to bid to provide investigation and workplace dispute resolution services on a case-by-case basis. Protocols for conducting investigations, recording information, producing case reports and managing requests for informal resolutions are being developed to promote consistency, maintain quality and fulfil relevant information rights and information security obligations.<sup>7</sup>

### Monitoring and review

19. After launch, reports made to the new helpline will need to be carefully (and anonymously) monitored to ensure that both complainants and responders who need the service are able to access it in ways that meet their varying needs. It will also be important to ensure that effective first line advice is provided to everyone, regardless of their identity in the Parliamentary Community, and that the helpline ensures that people who call are made aware of the other sources of emotional and practical support available.<sup>8</sup>

20. The Working Group noted the importance of understanding ‘both reporting levels and the types of issues raised, to inform the development of awareness-

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6 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 41

7 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 55

8 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 31

raising campaigns and wider cultural change initiatives'.<sup>9</sup> Regular reporting is being built into the arrangements for managing these services. We also expect this information to be important in evaluating the success of the new Scheme, including as part of the six and eighteen-month reviews, alongside monitoring data about the number, type and outcomes of complaints investigated. A Contract Manager has been recruited to provide support to both the bullying and harassment and the sexual misconduct reporting and investigation services.

## **Section 2B: Particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate**

21. The Working Group report recognised that sexual harassment is qualitatively different in a number of ways to other forms of unacceptable behaviour and therefore requires its own set of procedures and personnel. A workstream dedicated to developing the support requirement and policy and procedures for responding to sexual harassment was established with the following aims:

- to conduct research in to the experiences and views of sexual harassment among the Parliamentary Community to feed into the development of the Sexual Misconduct Policy and Procedure,
- to develop a Sexual Misconduct Policy and Procedure,
- to develop the requirement and put in place the contractual arrangements for an Independent Sexual Misconduct Advisory Service (ISMA Service), and
- to develop the requirement for an Independent Investigation Service.

### Further Research

22. An anonymous online portal was available from May until July for the sole purpose of gathering testimonies and feedback from staff in Westminster and in constituency offices. Seven focus groups were also held; four separate groups in Westminster with MPs/Peers, MPs'/Peers' staff, TUS and Workplace Equality Networks (WENs). Additional focus groups were held in Edinburgh, Belfast and Cardiff.

23. In addition, an Advisory Group on Sexual Misconduct was set up to offer specialist expertise and advice. Membership included Dr Helen Mott, Sexual Harassment Specialist Adviser and expert representatives from; Cambridge University, Goldsmiths University, Equality and Human Rights Commission, King's College London, Holly Dustin, the London School of Economics and Political Science, Women's Aid, Imkaan, University College London, The 1752 Group, University of Westminster, Universities UK, End Violence Against Women Coalition, Metropolitan Police Service, Reshape, Commons and Lords TUS Reps.



24. The main methods for gathering evidence of bullying, harassment and sexual harassment among the Parliamentary Community were an online portal through which people could anonymously share their experiences and through focus groups. Evidence submitted to the on-line portal relating to sexual harassment related to verbal or physical harassments. Examples were given of inappropriate comments, inappropriate and unwanted sexual advances and unwanted touching were given.

25. The focus groups identified some key themes, including the role of entitlement and power in enabling harassment and preventing people speaking up about it, 'hot spots' on the Parliamentary Estate of small, isolated spaces, and behaviour on overseas trips.

### The policy and procedures

26. There is a wealth of research regarding workplace sexual misconduct, harassment and violence and this, together with the expertise of the Advisory Group and the research gathered from the Parliamentary Community, has informed the development of the policy and procedures.

27. The Working Group report identified a number of areas for the sexual misconduct policy to include. These are: zero tolerance, definitions, legislation, behaviours, intersectionality, impact, victimisation, vexatious complaints confidentiality, provision of support, time limits and responsibilities. The policy takes into account all of these areas.

28. The procedure for people reporting sexual misconduct has also been developed using expert advice and the research undertaken by the workstream team. This led to the development of a pathways based approach with three pathways as set out below:

- Pathway 1 Independent Sexual Misconduct Advisory Service (ISMA Service):

The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisers (ISVAs) who provide specialist support, advice, signposting and advocacy acting as case managers.

- Pathway 2 Appropriate Measures (optional):

This pathway can be followed whether or not the reporter wishes to follow the formal complaint pathway. As outlined in section 3 of the procedure, the ISMA Service case manager will help to broker and facilitate an appropriate measures intervention with the parties concerned.

- Pathway 3 Formal Complaint:

The Formal Complaints pathway, has two stages: an initial assessment and a formal assessment. Both stages are managed by the Independent Investigation Service. The appropriate decision-making body is responsible for decision and action.

29. The draft policy and procedure have been distributed to a range of stakeholders including; TUS, IPSA, Workplace Equality Networks, the Parliamentary Commissioner for Standards (PCS) and the Lords Commissioner for Standards. A number of consultation meetings have taken place and stakeholders also had the opportunity to submit written feedback.

#### Independent Sexual Misconduct Advisory Service (ISMA Service)

30. Arrangements have been put in place for a one-year pilot ISMA Service. This will be reviewed after six months and plans are underway to develop a tender for a three-year service thereafter based on learning from the pilot. The initial contract has been awarded to Rape Crisis and the service will cover:

- A freephone confidential helpline, 7am–9.30pm.
- Management of on-going risk.
- Face to face sessions.
- Full time equivalent Independent Sexual Violence Advisor located at Westminster.
- Support, guidance and signposting into other services.
- Identifying and classifying disclosures.
- Support and facilitation of the Appropriate Measure pathway.

#### Independent Investigation Service

31. As set out in Section 2A of this report, a tender is currently underway to provide investigation and workplace dispute resolution services on a case-by-case basis.

### 3 A system of training to support the Code

*‘A core level of training will be available to everyone, underpinning the Behaviour Code. For those who employ or manage others, training will be available to assist professional practice. Training can also be delivered as an outcome of an informal or disciplinary process, where training needs have been identified.’<sup>10</sup>*

*‘A Good Employer Standard could be developed for MPs and Peers who employ staff and ensure that all appropriate training is taken up by them and their staff members.’<sup>11</sup>*

32. Four training sub-workstreams were identified from the Working Group’s recommendations:

- **Behaviour Code.** Interventions to support the dissemination of the Code to MPs, Peers and staff working on the Parliamentary Estate (regardless of who their employer is) or in constituency offices.
- **Tackling bullying, harassment and sexual misconduct.** Interventions to address the specifics of bullying, harassment and sexual misconduct, including what is and is not acceptable behaviour and outlining the options and recourses available to those affected
- **Sanctioned Training.** Tailored interventions to be available as part of the outcome to a complaint made under either of the two new policies.
- **Management Practice.** Interventions to improve line management practice, including well-being but also skills and knowledge enabling MPs, their staff and any Peers who employ staff to become more effective managers of people. To include the development of a ‘good employer’ standard.

The intention is to make all training available to Peers. This will be considered as part of the implementation of the the Scheme in the House of Lords

33. Research into the effectiveness of training in preventing and tackling bullying, harassment and sexual misconduct was reviewed, guided by an expert academic, Dr Helen Mott. A review was also undertaken of our existing offerings in the area of management practice as well as the inductions currently carried out for each of the relevant audiences. This phase has resulted in the design of the following interventions:

#### Behaviour Code

34. Fifteen to twenty minute sessions to be integrated into existing inductions for Commons Members, their staff and Parliamentary staff. The content will cover:

- organisational messaging on zero tolerance

<sup>10</sup> Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 78

<sup>11</sup> Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 81

- information about the Behaviour Code
- the types of behaviours that will not be tolerated
- what the policies are
- encouraging participation in the workshops on tackling bullying, harassment and sexual misconduct

These sessions have been designed and will be delivered from September 2018 onwards.

### **Tackling bullying, harassment and sexual misconduct**

35. The training will include two to three-hour workshops, tailored for each of the different audiences. The content will include:

- what constitutes bullying and harassment and sexual misconduct
- the impact of inappropriate behaviours
- the impact of power and unconscious bias on behaviours
- ways to help prevent all forms of bullying and harassment at work
- what to do if unacceptable behaviour happens
- the role of the manager in preventing all forms of bullying and harassment at work
- informal and formal approaches to tackling unacceptable behaviours
- raising a complaint; seeking support; building confidence to speak up and challenge; the role of the bystander

A procurement exercise will begin by the end of July 2018 with pilot sessions due to be delivered in November 2018.

### **Sanctioned training**

36. Where training is deemed an appropriate outcome as a result of an informal or formal process, a coach experienced in addressing behaviours related to bullying, harassment and sexual misconduct will be commissioned to work with the individual. The focus of the intervention will vary according to the individual and circumstances but would be aimed at enabling them to:

- understand the impact of their behaviour
- understand how it may be experienced by others
- explore what influences their inappropriate behaviour
- take responsibility for their behaviour and commit to make changes

A procurement exercise will begin by the end of July with a service available from September 2018.

## Management Practice

37. Two 90-minute workshops for Members, linked to the Good Employer Standard and supplementing the inductions and workshop on tackling bullying, harassment and sexual misconduct will be available:

- Good employment practice covering fair recruitment practices, unconscious bias in the selection process, HR policies and procedures.
- Managing people effectively covering planning work and setting team and individual objectives, monitoring performance, sharing and requesting feedback, supporting staff development.

38. One-day and three-day Office Manager programmes (our current programmes, adapted to reflect the Behaviour Code and related topics e.g. unconscious bias) will be available from August 2018.

39. Following a review of a range of workplace standards, an outline approach to a Good Employer Standard has been developed and will be ready for full consultation in September 2018. The Standard would have at its heart a series of principles and related practices:

Principles	Practices
<b>We follow good employment practice</b>	<ul style="list-style-type: none"> <li>• we recruit staff using a fair and open selection process</li> <li>• we have well-communicated HR policies and procedures</li> <li>• we provide new staff with a thorough induction</li> </ul>
<b>We manage people effectively</b>	<ul style="list-style-type: none"> <li>• we agree clear work goals and expectations with staff</li> <li>• we share and request feedback</li> <li>• we encourage our staff to learn and develop</li> </ul>
<b>We create respectful and safe working environments</b>	<ul style="list-style-type: none"> <li>• we uphold the Parliamentary Behaviour Code</li> <li>• we foster a diverse and inclusive working culture</li> <li>• we fulfil our health and safety obligations</li> </ul>

## 4 Human resources support service for staff employed by Members of Parliament or jointly by political parties

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*‘Procuring an HR advice service for Members’ staff’ and ‘Developing a handbook for Members’ staff’<sup>12</sup>*

40. During the Working Group’s life, a new interim Members’ Staff HR Service was launched by the House of Commons Commission in recognition of the immediate difficulties reported to the group by the staff representatives and the staff members who gave evidence. The House of Lords established similar interim arrangements for Peers’ staff through an employee assistance programme. The report described the need for the longer-term HR service to be ‘delivered through a third-party provider and [to] cover the full range of potential employment concerns and disputes’.

### Market engagement

41. Early research established that the proposed employee HR service was not easily available in the market. The suppliers we contacted were either able to provide HR advice to line managers, or to provide generic advice to employees that would not be tailored to the parliamentary structures. A tailored service was also required to include the ‘reference to a new MPs Staff Handbook’<sup>13</sup> specified by the Working Group.

### Procurement process

42. A Prior Identification Notice (PIN) was therefore issued, to allow potential suppliers to indicate their interest in setting up a service for Members and Peer’s staff. A number of suppliers submitted responses, but there were concerns about whether these would offer good value for public money. The service specification was therefore revised, in consultation with staff representatives on the Steering Group. The interim Members’ Staff HR Service was also reviewed to help identify likely usage levels and a revised PIN was issued. This resulted in sufficient market engagement to underpin a full tender exercise, which is currently underway.

### Members’ Staff Handbook

43. A draft Members’ Staff Handbook for MP’s staff has been developed bringing together “information about the terms and conditions, mandatory and optional policies and guidance provided by Ipsa”.<sup>14</sup> To ensure a seamless service, this draft will be shared with the successful supplier and launched as part of the longer-term HR service in respect of MP’s staff. Printed copies of the handbook will be made available.

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12 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 88b and 88d

13 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 75

14 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 75

## 5 Committee on Standards and Parliamentary Commissioner for Standards

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### Standing Order and Related Changes

44. Each House currently has a Code of Conduct and arrangements for regulating the behaviour of its Members, including independent investigation of allegations of wrong-doing. The Working Group on an Independent Complaints and Grievance Policy sought to ensure that Members of each House were subject to the same standards as others on the estate, and that, as far as possible, the complaint and investigation processes did not distinguish between Members and others. It also recognised that these new processes had to be constructed in a way which fitted with the House's existing disciplinary arrangements.

45. The arrangements for handling cases involving Members will need to be adapted for the House of Lords. This chapter focuses on the changes needed to incorporate the new system into the House of Commons process.

46. The House of Commons rules of conduct, which give practical effect to the Code, do not focus on personal behaviour of Members. The Parliamentary Commissioner's remit for investigation does not currently allow investigation of such behaviour, unless it involves damage to the reputation of the House and its Members.

47. When the Independent Complaint and Grievance Policy was debated on the Floor of the House of Commons in February 2018, the motion was amended to make it clear that detailed proposals on handling complaints relating to Members should be drawn up in consultation with the Committee on Standards and the Parliamentary Commissioner for Standards. The subsequent input from the Committee and the Commissioner were invaluable in working out the details of these proposals, and there is now broad consensus on the interface between the ICGP and the existing arrangements.

48. It is also worth noting that the Commons Committee on Standards contains seven lay members, who have extensive regulatory and disciplinary experience, as well as seven MPs. Their experience has been set out in a recent Committee on Standards Report.

### Investigation

49. The Working Group on an Independent Complaints and Grievance Policy originally envisaged that investigation of MPs' conduct would in the first instance be conducted solely by the independent investigator, with a subsequent appeal to the Parliamentary Commissioner for Standards. The Working Group's original conception would have entailed many cases being resolved at this initial investigation stage without reaching the Commissioner at all.

50. After engagement with the Commons Committee on Standards and the Parliamentary Commissioner for Standards and the Lords Commissioner, it became clear that the relevant Commissioner should have oversight of the investigation process. This change will make no practical difference for the complainant at the outset. Concerns about Members will be raised through the telephone helpline, and handled in the same way as other calls. If the matter progresses, the Commissioner will be responsible for overseeing the investigation. This will be conducted by an investigator from the same pool of investigators as are employed on the general parliamentary contract. The protocols for the investigators' work will be the same for MPs as for other responders. If investigation is required, the investigator will act on behalf of the Commissioner, who will have oversight of the investigation process

51. The advantages of this approach are:

- The Commissioner will be able to monitor all complaints about Members, and will have an overview of the situation that they would not have, if complaints resolved at the first stage did not come to them;
- Investigations will be carried out to a consistent standard, and the risk that a Commissioner might have to re-investigate, causing inconvenience and distress to both complainant and responder, will be avoided;
- The Commissioner is entirely independent, and that independence is underpinned by their appointment on a non-renewable fixed term.

### **Withdrawal of complaint**

52. There were discussions with the Commons Committee on Standards and the Commissioners about whether complainants should be able to withdraw complaints after they had gone beyond the initial assessment stage. On the one hand, breaches of the standards set for Members by their House are matters of concern to the relevant House, which has an interest in upholding high standards. Moreover, there is a risk that complainants could be pressurised into withdrawing their complaints. Conversely, there is a risk that complainants will be unwilling to come forward if they are unable to change their mind later in the process. In consultation with the Steering Group, we consider the danger that people will not come forward overrides other considerations. It should be possible for complainants to withdraw complaints against Members as they could withdraw complaints against anyone else.

### **Penalties**

53. The Commissioner will have power to propose remedies—in effect, sanctions—if she sees fit. Given the broad range of behaviours which might be sanctioned, it is likely that the remedies will be equally varied; apologies, training or behaviour agreements will be available, but there may be cases when some other remediation would be appropriate. Standing Order changes are proposed to



give the Commissioner the power to agree remedies within a framework agreed by the Committee. It will be open to the Committee on Standards to publish reports setting out its principles which would assist the House.

54. If an MP resists a remedy proposed by the Commissioner, or if their behaviour warrants a stronger sanction, the Commissioner will prepare a memorandum for the Committee on Standards, which will be able to recommend stronger sanctions—up to and including expulsion—to the House. The details of how that approach will work in practice are discussed further in the section on confidentiality below.

## Appeals

55. The Commissioner will review the initial investigations and the complainant will be able to exercise the appeal rights set out in the policy at that stage. The Committee on Standards will hear appeals against a finding of the Commissioner raised by either the responder, or the complainant. If the latter, appeals will be possible only in instances where correct procedure is questioned or substantial new evidence has since become available and we anticipate that such appeals would not necessarily require a hearing. If a hearing is required, we note that the Committee on Standards has power to work through sub-committees, and could appoint such a sub-committee if it considers a complainant might be intimidated by appearing before a fourteen member committee.

## Powers of lay members on the Committee on Standards

56. In addition to its membership of Members, the Committee on Standards also has seven lay members. The lay members and their role on the Committee is important to ensure that appeals are not heard solely by Members considering the behaviour of other Members. The powers of the lay members of the Commons Committee on Standards will be enhanced by a change to Standing Orders setting out a mechanism to allow them to participate in an indicative vote on freestanding motions, the result of which will be published. This is in addition to their existing power to append an opinion to any report so the lay members views will be effective and recorded both in dealing with the reports which would arise from an appeal by a Member and in any decision on whether an appeal from a complainant should be upheld, which might, for example, result in it being remitted for further investigation. This is a significant change in the procedure and practice of the Committee on Standards. The reviews of the policy should consider the practical effect of this change to the Standing Order. If the enhancement of the powers of lay members has not proved effective, it could be possible further to enhance those powers through primary legislation to allow lay members to vote in substantive Divisions in Committee, although such a proposal might well have serious implications for the maintenance of parliamentary privilege.

## Code of Conduct

57. The first point of the Behaviour Code makes it clear that bullying, harassment and sexual misconduct are not tolerated. Amendments to the Code of Conduct for MPs will be put forward to ensure that the Code of Conduct is linked to the

Behaviour Code, so that the Commissioner and the Committee can deal with complaints arising from the Behaviour Code. The first amendment will make it clear that MPs are expected to abide by the principles underlying the Behaviour Code.

58. The rules of conduct in the Code of Conduct for Members of the House of Commons will also be amended to make it clear that bullying and harassment and sexual harassment are breaches of the Code by including a new requirement for Members to treat those with whom they come into professional contact with dignity, courtesy and respect. These changes will ensure that complaints of bullying and harassment against Members can be dealt with even if the behaviour complained about does not reach the current high bar of bringing the House into disrepute and that Members, like others, are bound by the House's policy on bullying and harassment and sexual harassment.

## Confidentiality

59. Most of those to whom the Behaviour Code will apply will be in existing employment relationships. Members' staff will in many cases be employed by the Member concerned. Parliamentary staff will be employed by the relevant House or Houses; and contractors will employ staff who work on the estate. Any disciplinary proceedings against such people will not be made public.

60. The Working Group, Steering Group, Commissioner and Committee have all considered the question of Members' confidentiality in detail. Members' behaviour is subject to levels of scrutiny unusual for staff. There is a balance to be struck between the need for transparency about lawmakers' conduct and the danger that publication of unfounded allegations, or even minor transgressions, could have a disproportionate effect on the Member.

61. Under the current system, the Commissioner records the start of an investigation online together with an indication of the rule which may have been breached. No further information is given until the end of the investigation, when either a memorandum is submitted to the Committee on Standards, which is recorded online, or the complaint is dismissed or rectified. In each of these cases a summary and relevant correspondence is published online by the Commissioner.

62. The Independent Complaints and Grievance Policy is intended to set up a system in which people are encouraged to report and matters can be resolved at an early stage. In those cases, it would not be appropriate to release names of those under investigation at the outset. It is worth noting in this context that the publication of the details of a complaint is likely to lead the media to attempt to identify the complainant.

63. There needs to be some flexibility: a Member is likely to want publication of the fact that a complaint which has attracted widespread media attention has not been upheld but as general principles we consider that for ICGP complaints which are handled confidentially:

- a. There should be no publication of the fact that an investigation has commenced;
- b. If an unpublicised complaint is not upheld, the MP's name should not be published;
- c. In deciding whether to publish details of individual complaints which have proceeded to the stage of investigation by the Commissioner and have been remedied, the Commissioner should consider:
  - i. the potential effect on the reporter and respect any desire for confidentiality on the reporter's part, and
  - ii. whether naming the responder is proportionate in relation to the finding, bearing in mind the effect on the responder's reputation.

64. The House of Commons may wish to take the opportunity to reflect on the wider publication system. From 2003 onward, the Commissioner did not publish information on complaints received (other than in the Annual Report) although if asked whether a specific complaint had been received, its receipt would be confirmed. In 2010 the procedure was changed to the current system in which the names of those under investigation are published. In recommending the change, the then Committee on Standards and Privileges noted that there were several, potentially conflicting, principles in play:

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 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 complainant for information to be disclosed, for example of this would prejudice a successful investigation of their complaint or put potential witnesses under pressure.

65. Until 2010, information about MPs being investigated was not routinely published. In 2010, the Committee on Standards and Privileges recommended the publication both of information about the resolution of complaints which did not form the subject of a memorandum and of information about complaints received and matters under investigation. Standing Order 150 was subsequently amended to this end.

66. The current Committee on Standards and the Commissioner for Standards do not support any change to the reporting of complaints in non-Behaviour Code cases. There is room for legitimate differences of opinion about where the balance between the competing interests identified in 2010 should lie. Given that Behaviour Code investigations will not be announced until proceedings have concluded, there is a case for treating all investigations in a similar way, and amending Standing Order No. 150 by 12(b) which gives the Commissioner power to publish information about complaints received and ongoing investigations.

## Complainant/reporter confidentiality

67. The Committee on Standards and the Parliamentary Commissioner for Standards were concerned that Behaviour Code cases could not be dealt with entirely privately. As the Registrar of Members' Interests has stated:

The real question [...] is not whether information about allegations of harassment, bullying and sexual harassment should be published; but how best to balance the public interest in disclosing some information about such cases with the need, which will vary in each case, to protect sensitive personal information about complainants and victims, who may be vulnerable, and about witnesses and the subjects of complaint.

68. We understand the position advanced by the Committee and Commissioner. While, as set out below, entry level matters may be dealt with confidentially, both those working in Parliament and the public at large need to know that serious cases are being dealt with effectively. This requires a degree of transparency on outcomes.

69. Not every case will reach the level where the Commissioner is required to prescribe a remedy through the formal process. In such cases, there will not be any announcement of the investigation at any stage, although statistical records will be kept and statistical analysis may be published. If matters cannot be resolved without the Commissioner's direct involvement, the Commissioner should undertake that in deciding what to publish if a complaint is upheld she will take account of the impact on the complainant/reporter and responder and the privacy of the complainant/reporter.

70. If matters are escalated to the Committee, the complainant's or reporter's name and identifying details will be redacted. The House will be invited to take action on serious matters with information about the conduct in question which does not identify the complainant or reporter, unless the complainant/reporter has agreed. It would be inappropriate to attempt to identify the complainant or reporter in debate, and we are confident the Speaker would deprecate any attempt to do so.

71. We are reassured by the undertakings from the Committee on Standards that:

- Not every case accepted for investigation will reach the level where a remedy is required; in those cases there will not be any announcement of the investigation.
- Even where an investigation takes place and the Commissioner is involved in resolving it, the investigation will not be announced until its conclusion.
- At that stage a summary of the facts and findings will be published; in deciding on the contents of this, the Commissioner will pay careful attention to the sensitivities and wishes of the complainant/reporter.

- In truly exceptional circumstances, the Commissioner may disclose some information before the case has been concluded, either to other agencies, if this is needed in order to protect the interests of vulnerable people, or more generally, if she suspects that a Member is a serial harasser or bully.
- We do not believe that the party whips should be supplied with any confidential information relating to an upheld complaint; they will have access to any published information, and should not have privileged access to information that other third parties do not see.
- Where cases are serious enough to be referred to the Committee, or if they go to the Committee on appeal, the Committee will publish a report to the House, with the complainant/reporter anonymised and subject to any redactions the Committee considers necessary to protect the complainant's privacy.

We particularly note the assurance that if there is no remedy required there will be no announcement of the investigation

### **Other dependencies**

72. The Commissioner and Committee may wish to review their existing processes in the light of the measures agreed by the House. More discretion may be needed in the light of the inclusion of Behaviour Code breaches in the Commissioner's remit, since many matters which do not require police intervention may technically be offences against the person, and because there will be consultation with the police at the assessment stage. We recommend that any such review should take account of the need for flexibility, proportionality and responsiveness to the complainant's/reporter's wishes. We are confident that the Commissioner and Committee will deal with this appropriately.

## 6 Culture Change

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73. The Working Group identified a number of areas where work is needed to create the environment within which the Scheme can be effective. The cultural change workstream has sought to use evidence about the negative aspects of Parliamentary culture garnered through the Working Group’s inquiry, work undertaken by the Commons Reference Group on Representation and Inclusion and further consultation to inform the work of the wider programme, particularly the Behaviour Code and Training workstreams; and to coordinate and promote measures being taken throughout Parliament to effect cultural change.

### Embedding the Behaviour Code

74. In recognising power dynamics and encouraging professionalism, the Behaviour Code addresses known risk factors in Parliamentary culture: the significant power imbalances that exist between and within the different groups of people working in Parliament, including the fact that many young people work in vulnerable low-status positions, often with a lot invested in getting on in politics; and the blurred boundaries between personal and professional relationships that can exist in an institution where people tend to socialise together as well as working long hours. The Code also emphasises the need to consider others’ perspectives, which may come less naturally in an environment in which people are working for different employers and in pursuit of different ends.

75. The Code is a tool for cultural change by setting standards for good behaviour, by encouraging the Parliamentary Community to “speak up” against bad behaviour and by giving them the language to do so. To give the Code meaning and bring it to life:

- Work is underway over the summer and into the autumn to explore with different groups of people working in Parliament what the Code means in their context; stimulate discussions about acceptable and unacceptable behaviour, supplementing the formal training described in chapter 3; and generating examples which can be used in future training and communications activity. This will include areas which employ contractors to reinforce the message that the Code really does apply to everyone working here.
- The Steering Group and the senior leadership groups of each House Administration will act as “champions” of the Code, ensuring it is visibly displayed, lending high-profile support to the training, role-modelling, speaking up and contributing to communications.
- It will be given a high-profile via the communications strategy set out in chapter 9.

76. In the autumn, both House Administrations have agreed to support a “language to challenge” campaign, sharing advice on challenging poor behaviour based on lived experience. The campaign will visibly promote good behaviour (“no

by-standers”), implicitly raise awareness of what unacceptable behaviour looks like, and support passholders in developing tactics and techniques that they might use to achieve this aim.

77. Evidence points to the importance of incentivising good behaviour as well as tackling unacceptable behaviour. A new Parliamentary Diversity and Inclusion Award will therefore recognise an individual who has role modelled the positive behaviours in the Code and/or is known for directly challenging unacceptable behaviour.

## **Engendering confidence in the new Scheme**

78. The new policies and processes will be effective only if a culture exists in which individuals are supported to use them and have the confidence to do so, and if they can see that unacceptable visible behaviour has consequences. A number of interventions will assist:

- Bullying and Harassment and Sexual Misconduct Advisory Services have been established as described in chapter 2.
- The senior leadership of parties and of the House Administrations must continue to emphasise zero harassment of bullying, harassment and sexual misconduct.
- Line managers will be given the tools to support staff through in-house training or the Good Employer Standard (as applicable).
- There will be greater transparency around complaints processes.

## **Promoting co-professionalism**

79. The Working Group also concluded that a “key objective in bringing about change will be the introduction of measures to promote a culture of co-professionalism.” This means creating an inclusive environment in which everyone working in Parliament is treated equally, and equally valued for the contribution they make to Parliament’s work.

80. Members’ staff giving evidence to the Working Group described feeling isolated and excluded. Historically the House authorities have provided little support to Members’ staff beyond that accessed on behalf of their employers. Henceforth, the HR support service described in chapter 4 will be available to both MPs’ and Peers’ staff. The Commons Executive Board has also confirmed, in the context of the ICGP programme’s work, the more recent direction of travel to align provision for House and MPs’ staff as much as possible, and agreed to roll-out the pilot MPs’ induction Scheme and incentivise attendance.

81. In response to evidence from House of Commons staff, the Administration is exploring the removal of unnecessary rules about access to facilities or services by grade, or visible signs of hierarchy, which can make more junior staff feel that they are second class citizens in the House and encourage a servant/master culture.

82. Co-professionalism is also about respecting the boundaries of peoples' working lives. Work is underway in the Commons to clarify and agree expectations of what is acceptable and unacceptable in terms of the demands placed on individuals. For MPs' and Peers' staff, the Good Employer Standard will provide an opportunity to have these discussions with their employers.

### **Mitigating risk**

83. Work is underway to identify scenarios in which individuals are particularly vulnerable to bullying, harassment or sexual misconduct, and introduce mitigations.

### **Monitoring and review**

84. The Working Group recommended that the progress and impact of the proposed arrangements should be monitored, reviewed and evaluated regularly.

85. Although it will be important to monitor the use of the new complaints processes, complaints data will not in itself provide a clear picture of the incidence of bullying, harassment and sexual harassment; nor evidence that the culture has become more supportive of complainants. The Boards of House Administrations have agreed to consider how data on (a) incidence of bullying, harassment and sexual harassment and (b) confidence in management to tackle the problem are best captured through staff surveys. MAPSA has also agreed to repeat the survey it carried out of Members' staff in 2017. This survey data could also be used to inform proposed reviews at six and eighteen months, as described in chapter nine.

### **Next steps**

86. The measures described here are not exhaustive. In the Commons, further work will be informed by the report of the inquiry being undertaken by Dame Laura Cox, expected in the autumn. Cultural change takes time and will require a persistent and ongoing focus on the part of all the actors involved.



## 7 Pre-Scheme Cases

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87. The Steering Group are determined that the new Scheme is not a ‘day zero’ approach that ignores the problems of the past. We know that unacceptable behaviour can have devastating long-lasting consequences for people. Our approach to developing the new Scheme, and in responding to the issue of older incidents, is to focus on those who have experienced unacceptable behaviour. In developing this package of measures for behaviour which predates the new Scheme we have thought hard about how we might best facilitate the resolution people are seeking. Key to this is providing information, advice and clarity about the routes open to people and listening to and counselling individuals to support them to gain closure.

88. It is incumbent on us to not raise expectations that are unlikely to be met and which may add to the distress and frustration that people may already be feeling. The unfortunate reality is that the further back in time you go the further the availability of evidence, the quality of recollection and the possibility of achieving natural justice for either party recedes. The advice we have taken from Tom Linden QC is clear that an investigation of a complaint will be more difficult the further into the past you go. That is why we have selected the start of this Parliament for the retrospective application of investigations under the Scheme.

89. What we have done is set out the options available to complainants to pursue a route that offers the best chance to deliver what they need to find resolution. Research indicates that personal resolution is not a straightforward matter and we will therefore ensure that there will be skilled and experienced support available to help people identify what resolution looks like for them and how they might be able to achieve it. To reiterate, anyone with a complaint will be able to call the independent helpline and seek help and guidance.

90. This package of measures for older cases is not the end of the story. It is essential that lessons are learned from unacceptable behaviour, whenever it happened, so an independent inquiry will be established by the Steering Group to hear from those Members, Peers and their staff who have experienced bullying, harassment or sexual misconduct. Mirroring the terms of reference of the Dame Laura Cox QC inquiry, a report with recommendations on policy changes will be prepared for the six-month review of the Scheme. The information gathered will also be used to inform ongoing culture change work. Support and advice will be available to those wishing to add their testimony to this inquiry, including how someone might be able to resolve any outstanding concerns outside of the scope of any investigatory process.

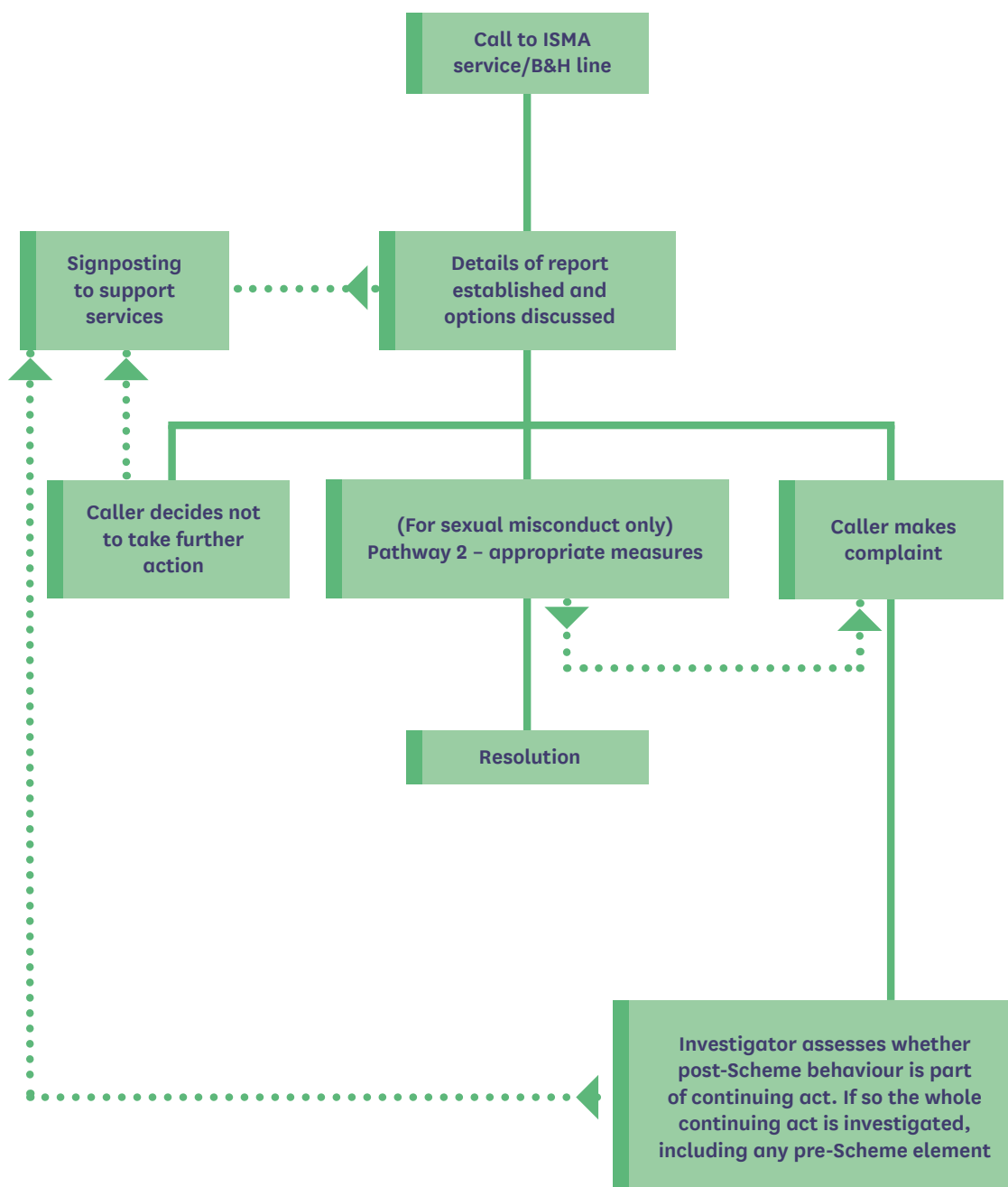
### Routes for Pre-Scheme Complaints

91. The following examples illustrate the routes available for people with pre-Scheme complaints. It is impossible to identify every potential scenario, and that is why the support services will provide individualised advice.

## SCENARIO A—‘Continuing Acts’

92. This scenario covers a situation in which people who are complaining about an incident which occurred after the new Scheme has been introduced may be able to include previous incidents of inappropriate behaviour in their complaint where such behaviour amounts to a continuing act. In addition, the investigators may also be able to consider reports of allegations prior to the Scheme as evidence when considering complaints. Previous incidents are therefore relevant in this scenario.

### Continuing Act

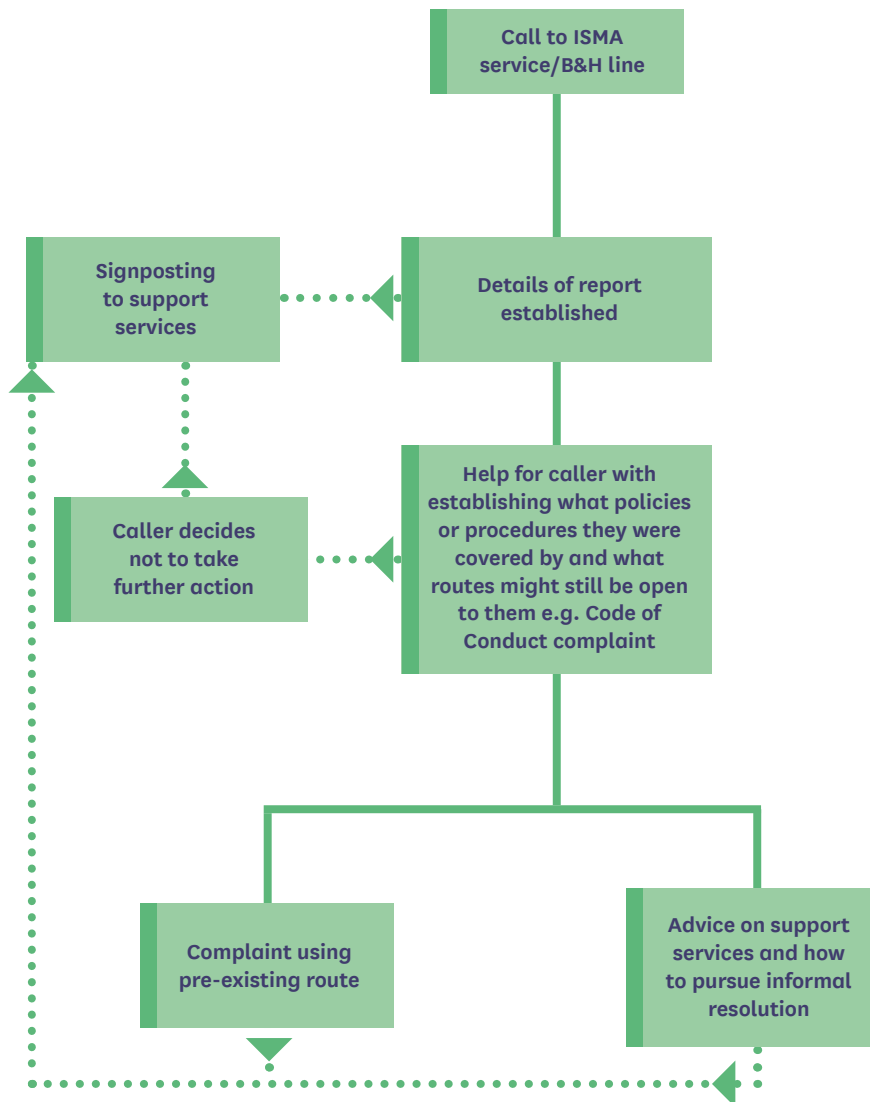


### SCENARIO B—Incident involving an MP in September 2014

93. In this scenario, a complaint of unacceptable behaviour is made against a MP by someone who has not previously felt able to report the incident. They will be able to talk through the details with an independent adviser and be pointed in the direction of where they can get support and counselling services.

94. For such cases the complaint would be investigated, and a decision on any further action made, using the policy or code in place at the time. As it is a complaint against a MP, the route available would be via the Parliamentary Commissioner for Standards. The Commissioner can look at historic allegations under the existing Code of Conduct now, dating back seven years, if she considers it appropriate, and will continue to be able to do so in the future. The Steering Group is not seeking to change this.

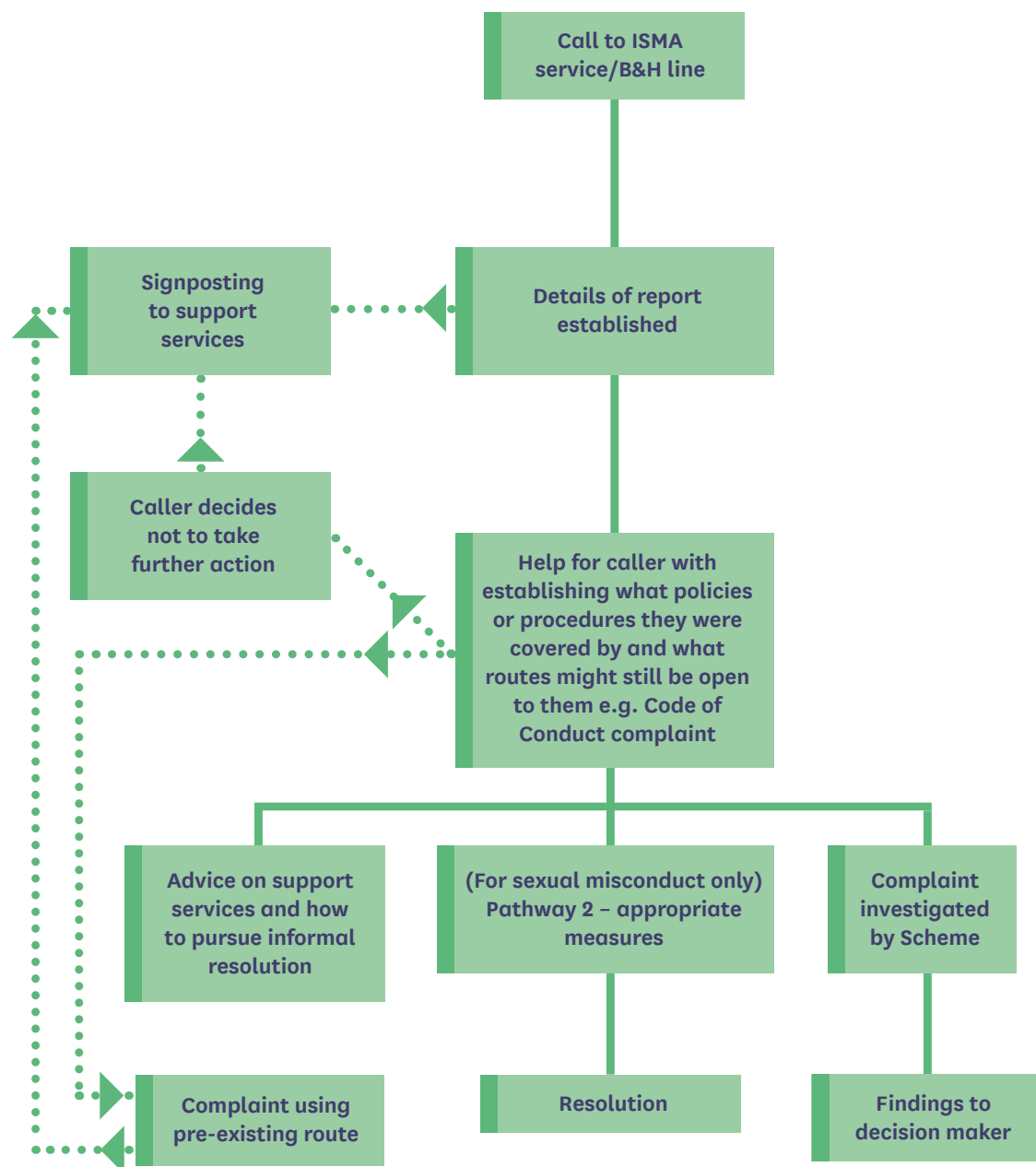
#### Complaint against a Member for incident which occurred in September 2014



## SCENARIO C—Incident involving a staff member between June 2017 and the start of the new Scheme

95. The Steering Group has agreed that the new Scheme can investigate incidents that occurred from the start of this Parliament (June 2017). In this scenario, the incident occurred in September last year and therefore it will be investigated under the new arrangements. The advice and support is available as it is for other cases, and the complainant will be talked through the options available to them.

### Complaint against MP’s staff member in September 2017



96. We recognise that there is no approach that can completely satisfy all the stakeholders in this process equally, given the different views on how to achieve the most credible and effective system possible. For example, some members of the Steering Group, including the trade unions, advocated strongly that the Scheme should apply to all allegations raised, regardless of date, with the investigators taking a judgement as to whether fairness could be maintained given the passage of time, availability of evidence and seriousness of the allegation. Others expressed concern about the risk of unconscious bias in such a discretionary approach and we again draw attention to the risk of raising expectations that may not be met.<sup>15</sup>

97. We affirm our commitment to doing everything in our power to provide support for the victims of bullying, harassment and sexual harassment in the knowledge that the impact of these behaviours can be severe and long-lasting. This is an issue that will be kept under constant review. Any evidence about the impact of this policy with relation to pre-Scheme cases or recommendations about how to deal with past bullying, harassment or sexual harassment will be considered during the six-month review of the Scheme.

## 8 Reviewing the Scheme & additional work to be undertaken

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98. It is important to note that neither the Steering Group nor the Programme Team see the creation of the Scheme as an end-point. The introduction of the Scheme is the beginning of a sustained, well supported and appropriately resourced approach to promoting a positive and supportive environment for those working in or visiting Parliament. The Working Group recommended that at least two reviews of the Scheme be undertaken six and eighteen months after implementation. These and potential future revisions of the Scheme will ensure that it continues to develop based on feedback, best practice and the needs of the Parliamentary Community.

### The Six-Month Review

99. Including representatives of staff and unions, Members and Peers, the six-month review will consider, amongst other things:

- Third party and cluster reporting
- The operation of the complaints system to date
- The wording and interpretation of the Behaviour Code
- The take-up of training and development relating to the Scheme
- The effectiveness of the support provided to complainants and those subject to complaints
- The equality of application of sanctions

The review will also address the outstanding issue of visitors to MP constituencies.<sup>16</sup>

### The Eighteen-Month Review

100. The eighteen-month review will assess both the effectiveness of the Scheme and the impact of the Scheme on changing the culture of Parliament. The eighteen month review should also consider how sanctions are being applied and whether they are being applied equitably between different groups. The review should assess whether there is any evidence of bias in the way sanctions are applied.

### The House of Lords

101. The House of Lords governance and employment structures differ to those in the House of Commons, and so implementation will need to be progressed in parallel in the two Houses. The House of Lords Commission and House of Lords Management Board have been the primary bodies overseeing Lords engagement with the Programme in relation to Members and their staff, and staff of the House, respectively.

102. The Commission and Management Board have committed to tackling the issues raised by the Working Group. Members, their staff, and staff of the House have been fully involved in the consultations relating to the Behaviour Code and the bullying and harassment and sexual harassment policies and procedures.

103. Specific deliverables from the programme will follow the usual governance processes within the House. Thus, for example, proposals for new training for Members and their staff will be looked at by the Lords Services Committee when they are brought forward, and proposals relating to culture change will be taken to the Commission and the Management Board.

104. Work on how the new processes and procedures will apply to Lords members under the Code of Conduct, and to members' staff, will be taken forward in July. The Sub-Committee on Lords' Interests will consider how the Behaviour Code and the policies and procedures on bullying and harassment (including sexual harassment) should be incorporated into the Code of Conduct and how the existing processes for investigating breaches of the Code need to be adapted. It is expected that the Sub-Committee will start this work before the summer recess. The Lords Commissioner for Standards will continue to be involved in during the Sub-Committee's work. The Sub-Committee will report to the Committee for Privileges and Conduct who will make recommendations which will be put before the House for approval in the Autumn.

### **Application of the Scheme to Staff of the House of Lords**

105. In the House of Lords, the Commission does not have any role in the employment of House staff. Instead, this is reserved to the Clerk of the Parliaments and the Management Board, and the application of the Scheme to House staff is a matter for them.

106. The House of Lords Administration will now formally consult with TUS on the new Behaviour Code with a view to incorporating this and the Bullying and Harassment and the Sexual Misconduct policies into the existing policies in the House of Lords staff handbook. The six-month and eighteen-month review will be an opportunity to review and revise the Scheme.

107. House of Lords L&D will continue to collaborate with House of Commons L&D to implement learning initiatives to support the Scheme

## 9 Communicating the Scheme

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108. The communications approach to support the roll out of the Scheme is underpinned by three key objectives:

**INFORMATION:** Ensure all stakeholders are fully informed about development, benefits, launch and continued iteration of the new prevention processes and resolution routes.

**REPUTATION:** Support the internal and external reputation of Parliament by building trust and confidence that significant and permanent cultural, behavioural and process change is happening.

**ENGAGEMENT:** Encourage and support engagement from key stakeholder groups, and foster a sense of shared responsibility across Parliament for cultural and behavioural change.

109. The communications approach for all stakeholders is:

**Backed by explanatory narrative:**

Communications will be consistently underpinned by explanatory narrative giving workstream context and objectives, and setting expectations of scope.

**Outcome and user benefit focused:**

Communications will be focused on the impact and benefits for parliamentary stakeholders, and seek to answer the questions: What difference will they see and feel in their daily working lives?

**Supportive and pragmatic:**

Communications will offer the current 'support and report' pathways, ensuring that solution pathways are signposted always, so that stakeholders who may be affected by communications and engagement know where they can access help, and can feel safe in doing so.

**Transparent:**

Communications will deliver a sense of both transparency and progress, with regular updates of programme delivery.

**Clear in direction:**

Calls to action required to support the delivery of the Scheme will be clear and accessible, with projected outcomes and timelines clearly signposted.



110. Key messages are:

- Urgent and comprehensive action has been taken by Parliament to help prevent sexual harassment and bullying, and to improve internal processes for resolving these issues.
- Parliament is consulting widely with all stakeholder groups and external, independent experts in related fields (such as sexual harassment) to ensure the solutions are appropriate and robust.
- This is just the start of a comprehensive and iterative process, safeguarding all those who connect or interact with Parliament in any capacity will remain a priority.

111. The internal and external headline message for the Scheme's delivery should be focused on a positive vision of permanent cultural change—the final combined outcome of more robust prevention and resolution processes.

## ANNEX A—BEHAVIOUR CODE REPORT

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# Proposed Behaviour Code

**June 2018**

## DEVELOPING A BEHAVIOUR CODE FOR PARLIAMENT

### Introduction

This document contains the proposed Behaviour Code, some illustrative examples to help explain the Code and information on the consultation process which informed its development.

### Background

The Working Group on an Independent Complaints and Grievance Policy (ICGP) was established in November 2017. The ICGP Working Group was cross-party and bicameral and included representatives of unions and employees' organisations active in Parliament.

The underlying aim of the Working Group was to establish the tools required to change the culture across Parliament and deliver a positive, safe environment for people to work in and visit.

### Working Group Report

The ICGP Working Group's report was published in February 2018 and recommended that new policies and independent advice and investigation services should be developed. The report also recommended further work be undertaken on training and cultural change, and the development of a new Behaviour Code.

The House of Commons endorsed the Working Group's recommendations for these proposed workstreams on 28 February. To deliver this work, an ICGP Steering Group was established to monitor implementation by Parliamentary officials.

The ICGP Steering Group membership reflects a broad range of parliamentary stakeholders and includes representation from both the Lords and the Commons.

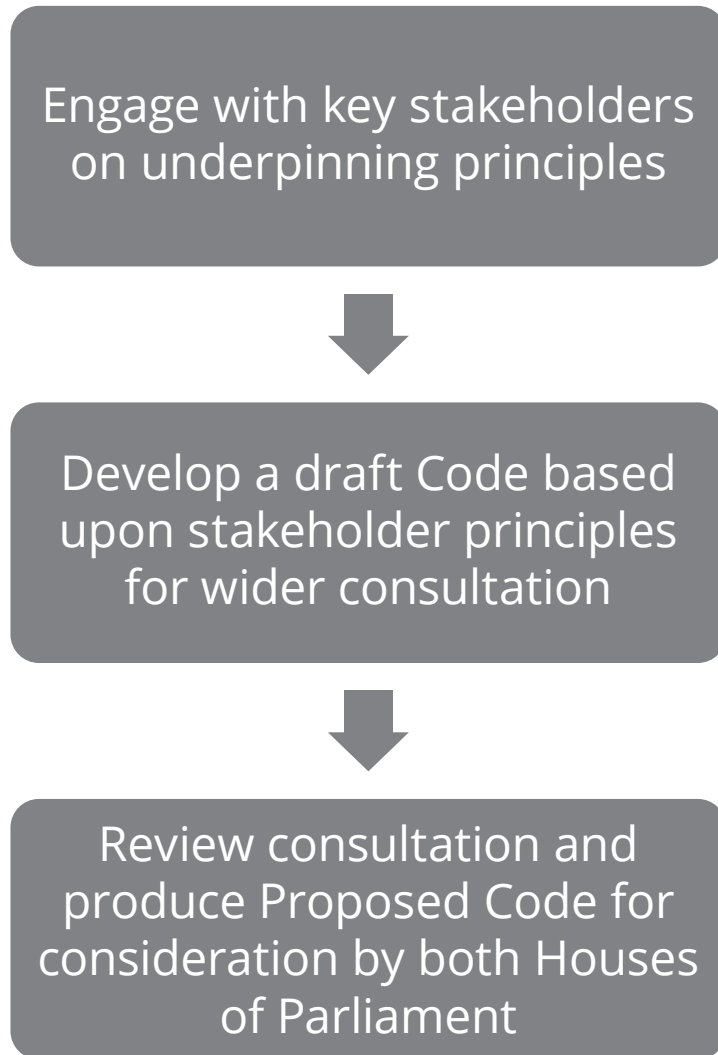
### Behaviour Code

The Working Group report identified that a new binding Behaviour Code was needed to encompass a shared set of explicit behavioural expectations of all those working for and within Parliament. These standards would underpin the whole Independent Complaints and Grievance Policy and be a statement of how people are expected to behave whether they work for Parliament or are visiting.

The Behaviour Code is the lynchpin of the work of other workstreams, and is the prime driver of the core benefits of preventing bad behaviour. The Culture Change workstream is closely aligned with the Code and its implementation.

### Creating the Code

The Steering Group agreed the following process for developing the Behaviour Code:



### Identifying Underpinning Principles

In conjunction with the House of Commons Evaluation and Insight Team and Ipsos MORI, deliberative workshops on the principles to underpin the Behaviour Code were held in April. Attendees at these workshops included MPs, Peers, Members' staff and House staff. Discussions on the development of the Behaviour Code were also undertaken with trade union representatives, the Press Gallery Committee and the Committee on Standards.

### Developing a draft Code for consultation

In summary, the outcome of these deliberative workshops indicated:

- There was widespread support for the introduction of a Code
- One of the greatest benefits will be culture change and clarifying rights and responsibilities
- Need to be clear and comprehensible, the Code will protect, and provide guidance to, a wide variety of people

- There was a question around detail—enough to make sense, but not too much to enable `loopholes`—defining every circumstance is impossible but the communication and engagement period should provide stories explaining how it might affect people
- Power dynamics need to be considered as part of the Code
- Making sure that the Code signposts where breaches need to be reported and that they are taken seriously.

The Steering Group reviewed the outcomes of the workshops and developed a draft Code for wider consultation. As well as internal stakeholders, a social media campaign was undertaken and the UK Parliament website carried a copy of the draft Code with information on how to provide feedback.

### Reviewing feedback and producing the Proposed Code

In summary, consultees:

- Viewed the Code as an overdue and welcome initiative to encourage behaviour change
- Had differing views on the benefits of brevity and clarity versus the need to provide greater detail
- Wanted the tone of the Code to be bolder and less aspirational
- Were unsure whether the Code was meant to cover visitors as well as passholders
- Identified phrases missing from the Code, most importantly sexual harassment
- Made specific wording suggestions for the principles

The Steering Group reviewed this consultation feedback to produce the Proposed Behaviour Code and identify some illustrative examples. It is important to note that these examples are not definitive and by taking a principles-based approach, the Code will be meaningful in all the different working and visiting environments in Parliament.



## Behaviour Code

Whether you are a visitor or working in Parliament at Westminster or elsewhere, there are clear guidelines in place on how you should be treated, and how you should treat others:

Respect and value everyone – bullying, harassment and sexual misconduct are not tolerated

Recognise your power, influence or authority and don't abuse them

Think about how your behaviour affects others and strive to understand their perspective

Act professionally towards others

Ensure Parliament meets the highest ethical standards of integrity, courtesy and mutual respect

Speak up about any unacceptable behaviour you experience

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

If you have experienced bullying, harassment or sexual misconduct you are encouraged to report it and/or seek support by contacting:

Independent Sexual Misconduct Advice Service – 0800 112 4318

Independent Bullying and Harassment Reporting Service – 0800 028 2439

### Illustrating the Code

**This information is provided to help explain the Code, it is not a definitive interpretation. The principles-based approach allows the Code to be meaningful in the many different contexts where it applies.**

**Respect and value everyone—bullying, harassment or sexual harassment is not tolerated**

Parliament is committed to being an ethical, inclusive environment and has zero tolerance for unacceptable behaviour. The following is not an exhaustive list but you can expect:

- Not be mocked, undermined, shouted at or belittled
- Not to have personal comments made about your appearance or characteristics, whether positive or negative
- Not to be coerced into physical contact
- Not to be coerced into attending out of work time events
- Not to be touched inappropriately

### **Recognise your power, influence or authority and don't abuse them**

In Parliament much power sits in the hands of particular individuals or groups and this makes it more difficult to challenge abuses of that power.

As an MP, Peer, manager or official you have a particular responsibility to behave respectfully and promote a positive and safe environment. You should understand that power relationships can affect how people perceive you, for example on the issue of consent. The definition of consent provided by the Sexual Offences Act 2003, is agreeing to something by choice and having the freedom and capacity to make that choice.

Some examples of unacceptable behaviours relating to power are:

- Making personal threats to someone or victimising them if they do not do something you want
- Using your influence, power or authority to improperly protect, damage or influence the career or employment conditions of another.
- Supporting the victimisation of someone by others, including using your influence with others or the media (mobbing)
- Promising to advance someone's career in return for sexual favours
- Using language that undermines someone for the job they do or their perceived status

Often these behaviours are implied, rather than clearly stated, and it is important to understand that implication or suggestion is also unacceptable.

Power relationships in our context are not straightforward. Although not immediately obvious, a staff member may also have power over a Member (threats to complain vexatiously and publicise it). A visitor to Parliament may also be powerful, for example a CEO or a parliamentarian from overseas.

It is important to recognise that there is an inherent conflict of interest and potential misuse of power or authority in having an intimate relationship with anyone under your supervision. Should you find yourself in such a relationship, you should find a way to resolve this conflict of interest.

### **Think about how your behaviour affects others and strive to understand their perspective**

You should realise that not everyone sees the world the way you do. Behaviour that you may think is okay in your group of friends or colleagues, such as ‘banter’, is not acceptable in a professional environment. Striving to understand other perspectives is about thinking of others and acknowledging differences as equally valid to your views of what is right or normal. It is not, however, about excusing unacceptable behaviour, for example racism and sexism is wrong whatever the context.

### **Act professionally towards others**

You can expect that you will be treated properly wherever and whenever you are working. For example, a boss or colleague should be aware that you are protected by this Code when on a committee visit in the UK or abroad or attending a work reception.

The Code applies:

- During evening/weekend work in the same way as daytime hours
- Wherever you are working—whether at an outreach visit, constituency event or trip abroad
- Whether in person or through social media and other online platforms.

The Code also requires us to recognise the blurred spaces between work and social space, and not to exploit them

### **Ensure Parliament meets the highest ethical standards of integrity, courtesy and respect**

It is imperative to the reputation of Parliament and trust in democracy that those working in or for Parliament should be held to standards that should set an example to others. Your role, background, whether you are elected or not, or other characteristics should not matter to the way you are treated or treat others. All of us are engaged in delivering for the citizens of the UK and unacceptable behaviour prevents us from doing so.

### **Speak up about any unacceptable behaviour you experience**

If we are going to achieve a change in the culture of Parliament to ensure that people can visit and work in an atmosphere of respect, safety and freedom from abuse then we need to tackle unacceptable behaviour. The overall complaints and



grievance Scheme will provide channels to raise concerns and support to help you do so. You will be protected from any discrimination or victimisation arising from speaking up about unacceptable behaviour.

The Scheme is based upon natural justice, confidentiality, and support for all of those involved in a complainant.

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

Although not a behaviour principle, it has been written on to the face of the Code to demonstrate Parliament's commitment to promoting a positive, respectful and safe working environment by tackling unacceptable behaviour. The whole Scheme has been developed with independence and natural justice at its heart to promote confidence in investigations and the assessment of findings. There will be regular reviews, including surveys, to make sure that it is working.

# ANNEX B—Bullying and Harassment Policy

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## Independent Complaints and Grievance policy: Bullying and Harassment

### 1 Introduction and aims

1.1 Parliament believes that all people have the right to be treated with dignity, courtesy and respect and we expect all members of the Parliamentary Community to treat others accordingly.

1.2 Our Behaviour Code, this policy, the Sexual Misconduct policy and the associated procedures provide a framework for us to create a respectful and courteous working environment and to respond to any allegations of unacceptable behaviour promptly, fairly and effectively. Bullying and harassment are unacceptable in all circumstances and abuse of power can be an aggravating factor in such cases.

1.3 This policy and procedure relate specifically to bullying and harassment. It outlines how concerns about bullying and harassment by members of the Parliamentary Community can be raised and how complaints will be investigated as part of the Independent Complaints and Grievance Scheme. If complaints are upheld under this policy, the matter will be referred to different bodies depending on the identity of the person who the complaint is against. These bodies will have and use their own policies and procedures to reach a decision, including the application of any sanctions.

1.4 This policy and procedure are here to provide support for anyone involved with incidents or complaints of alleged bullying and harassment, whether you have experienced bullying or harassment or have had a complaint of bullying or harassment made against you. The aims of the policy and procedure are to:

- Ensure that all members of the Parliamentary Community are aware of their responsibilities in relation to bullying and harassment;
- Provide a fair, transparent and consistent approach for reporting, investigating and responding to allegations of bullying and harassment.
- Provide information about sources of support available to anyone who experiences bullying or harassment or who is accused of bullying or harassment.

### 2 Definitions

2.1 There are many definitions of bullying and harassment and both terms are often used interchangeably. The definition for harassment below reflects the definition set out in Section 26 of the Equality Act 2010. The definition for bullying below is based on classification provided by ACAS. These definitions will be used for determining whether any behaviour reported under this policy and procedure constitutes bullying or harassment.

2.2 All behaviour that does constitute bullying or harassment is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute bullying or harassment. When alleged incidents of bullying or harassment are reported under this policy, any investigation will assess whether or not the incidents constitute bullying or harassment.

### What is harassment?

2.3 Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Under the Equality Act 2010, harassment is related to one or more of the relevant 'protected characteristics' which include age, sex, race, disability, religion or belief, sexual orientation and gender reassignment.

2.4 Sexual harassment is qualitatively different from other forms of unacceptable behaviour, including bullying and non-sexual harassment. There is a separate Sexual Misconduct policy and procedure for dealing with allegations of sexual misconduct and more information about reporting incidents under both policies can be found in clause 2.15 of this policy.

2.5 Harassment may be persistent or an isolated incident and may manifest obviously or be hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications such as social media. Harassment through social media could involve a serious one-off incident but is more likely to be the result of a sustained on-line campaign.

2.6 Harassment can be intentional or unintentional. For example, if a person speaks or behaves in a way that they do not find offensive, but that another person does. The key is that the words or behaviour are unwanted or unacceptable to the recipient. The purpose or effect of the unwanted conduct violates the recipient's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

2.7 A person may also be harassed even if they were not the intended 'target' of harassment. For example, a person may be harassed by jokes about a religious group that they do not belong to, if these jokes create an offensive environment for them.

2.8 Harassment associated with different protected characteristics may be quite different in nature and may relate to more than one protected characteristic. Examples of harassment, other than sexual harassment, may include, but are not limited to:

- Deliberate exclusion from work activity or conversations;
- Sending or displaying offensive material in any format (including posters, graffiti, emails, messages, clips or images sent by mobile phone or posted on the internet);

- Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype) in relation to their age, disability, gender reassignment, race, religion or belief, sex or sexual orientation;
- Use of unacceptable or inappropriate language or stereotypes relating to race or ethnicity;
- Deliberately holding meetings or social events in a location that is not accessible for an individual with a disability;
- Using profanities or swearing that could have the effect of intimidating a person.

### What is bullying?

2.9 Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation.

2.10 Like harassment, bullying can take the form of physical, verbal and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person, by telephone or in writing, including emails, texts or online communications such as social media. It may be persistent or an isolated incident and may manifest obviously or be hidden or insidious.

2.11 Examples of bullying may include, but are not limited to:

- Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language
- Physical or psychological threats or actions towards an individual or their personal property;
- Practical jokes, initiation ceremonies or rituals;
- Overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures;
- Inappropriate comments about someone's performance;
- Abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work, or coercing someone to meet such expectations;
- Use of unfair sanctions in relation to disciplinary or attendance procedures;
- Ostracising or excluding someone from meetings, communications, work events or socials;

- Sending, distributing or posting detrimental material about other people, including images, in any medium.

### What does the law say about bullying and harassment?

2.12 In some cases, acts of bullying or harassment can be civil offences, which can be brought to an employment tribunal or county court.

2.13 In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence. Examples may include, but are not limited to:

- Physical assault;
- Making violent or death threats;
- Stalking;
- Hate crimes.

2.14 Clauses 2.16 and 2.17 of this policy contain more information about how this policy and procedure deal with criminal investigations into conduct that may also amount to bullying and harassment.

### What is not covered by this policy?

#### Sexual harassment

2.15 This policy and procedure does not cover complaints of sexual harassment specifically. Where someone has a complaint of sexual harassment as part of a wider pattern of other bullying or harassing behaviour, they can choose to use this policy or the Sexual Misconduct policy (but not both) to make their complaint. Where a complaint is made under this policy and a substantial sexual harassment element becomes apparent during the course of investigation, the complaint may be transferred to the Sexual Misconduct procedure, if appropriate. The Sexual Misconduct policy includes access to specialist advice relating to sexual harassment, so may be more appropriate in cases where sexual harassment comprises a substantial part of the complaint.

#### Criminal investigations

2.16 This policy and procedure relates to forms of misconduct in the workplace and not the investigation of specific criminal offences.

2.17 Where someone has reported an alleged criminal offence to the police and has made a complaint under this policy and procedure, the circumstances of the case will be considered to determine whether it is appropriate to investigate the matter under this procedure at the same time, or whether action under this

procedure should be paused until the criminal investigation is complete. The Independent Reporting Helpline can provide information about sources of support to both complainants and respondents involved in criminal investigations.

### Other workplace disagreements or disputes

2.18 Many workplace disagreements or disputes will not constitute bullying or harassment. Examples include, but are not limited to, concerns or disputes about working practices and conditions or disagreements or conflicts between people working together. These should be dealt with informally or by using other workplace policies and procedures, as appropriate.

2.19 As part of their role, managers should be able to issue reasonable instructions and expect them to be carried out; set and manage standards of performance; and use attendance, performance and disciplinary procedures. Legitimate actions by a manager would not constitute bullying or harassment in and of themselves. However, in circumstances where the management actions were unreasonably or coercively applied (see 2.11), this may constitute bullying or harassment and could be reported using this policy and procedure.

## 3 Terms used in this policy and procedure

3.1 **Complainant:** This is an individual who reports bullying and harassment through the Independent Reporting Helpline. They may or may not also choose to pursue their complaint of bullying or harassment through the Independent Investigation Service.

3.2 **Respondent:** This is an individual who is accused of bullying or harassment.

3.3 **Report:** This is when a complainant reports an incident to the Independent Reporting Helpline.

3.4 **Complaint:** This is when a complainant chooses to pursue their complaint through the Independent Investigation Service after reporting it to the Helpline.

3.5 **The Independent Reporting Helpline:** This is the service for reporting incidents of alleged bullying or harassment and finding out about sources of support available for complainants and respondents. The Helpline also retains confidential records and provides regular anonymised reports about the levels of Helpline usage and the types of issues raised, to monitor the quality of the service and inform the development of awareness-raising campaigns and cultural change initiatives.

3.6 **Independent Investigation Service:** This is the service which is available if a complainant decides that they want to take action in relation to an alleged incident of bullying and harassment (as opposed to only using the Helpline to report an incident or access support). Deciding to pursue a complaint under the Independent Investigation Service does not prevent the complainant from withdrawing the case at any stage during the investigation. The Independent

Investigation Service also retains confidential records and provides regular reports about the levels of use and types of complaints investigated and resolved, to monitor the quality of the service and inform the development of awareness-raising campaigns and cultural change initiatives.

**3.7 Case Manager:** Any complaint made to the Independent Investigation Service is allocated to a Case Manager, who is responsible for undertaking an initial assessment of the complaint to determine whether it is likely that there is a case to answer. They are also responsible for helping to broker informal resolutions between the complainant and respondent, where appropriate; or for undertaking a formal assessment of the complaint, based on gathering further evidence from those involved. Case Managers will always be independent, with specialist expertise and training in resolving and investigating complaints of bullying and harassment.

**3.8 Decision-making bodies:** These are the organisations within the Parliamentary Community which have responsibility for the complainant or respondent. In general, decision-making bodies for the respondent are notified when a case progresses beyond the initial assessment stage. For example, this might be the complainant's or respondent's employer, or one of the Commissioners for Standards and the relevant committee on standards for a Member or Peer. Decision-making bodies are also responsible for deciding and implementing appropriate actions and/or sanctions when a complaint is upheld by the Independent Investigation Service.

## 4 Scope

Who does this policy and procedure apply to?

**4.1** This policy and procedure applies to all acts of workplace bullying and harassment by and against any member of the Parliamentary Community, including bullying or harassment by a third party, such as a visitor to the Parliamentary Estate.

**4.2** For the purposes of this policy and procedure, the Parliamentary Community comprises all those working for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of their employment and/ or parliamentary work. This includes:

- Members of Parliament (MP) or Peers;
- Employees of MPs or Peers or other people working for them, such as volunteers, people undertaking work experience or interns;
- Employees of the House of Commons and Parliamentary Digital Service, following a decision by the House of Commons Commission on 16 July 2018.<sup>17</sup>

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<sup>17</sup> This was updated on 16 July 2018 and that the text previously said "[House of Commons staff subject to a decision by the House of Commons Commission]"

- [Employees of the House of Lords;—subject to House of Lords Management and TUS consultation]<sup>18</sup>
- Employees of other Parliamentary organisations (for example, CPA UK, BGIPU, an All Party Parliamentary Group)
- Specialist Advisers and others supporting Parliamentary work, including people employed by political parties or collectively employed by MPs (e.g. PRU, PRS and Group staff);
- Members of the Press Gallery;
- Contractors, agency workers, inward secondees or interns to any of the relevant bodies above;
- Visitors at Westminster

4.3 Under this policy and procedure, it is possible to report and make a complaint about bullying and harassment in the following circumstances:

- Where the respondent was working for or with Parliament at the time the alleged behaviour took place; and
- Where the respondent is working for or with Parliament or continues to hold a Parliamentary pass at the time the complaint is made.

4.4 The work of the Parliamentary Community is broad, and can involve office work, public facing work, travel and social events, as well as non-standard working hours. As a result, this policy and procedure applies to behaviour by members of the Parliamentary Community anywhere where they would not be other than for the purposes of their employment or parliamentary work. For the avoidance of doubt, this includes on the Parliamentary Estate, at constituency offices or other places of work, or in the course of parliamentary duties and activities (e.g. UK or overseas travel or social events related to parliamentary business).

How does this policy and procedure deal with multiple allegations of bullying or harassment?

4.5 Bullying or harassment may be:

- by an individual against an individual or against several people, or;
- by several people against an individual or against several people.

4.6 This policy and procedure can be used to report and investigate any allegations of bullying or harassment on an individual or collective basis (e.g. where a group of people allege bullying and harassment by the same respondent(s)). Where complaints are made collectively, all complainants must provide consent for their evidence to be included in the collective complaint. A complainant may still choose to make an individual complaint separately, if they would prefer not to be part of a collective complaint.

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18 This section of the policy will be updated in light of any decision by the House of Lords Management Board



4.7 Where someone makes a complaint against several people, this may be managed as a single investigation or as multiple investigations relating to each respondent. The most appropriate course of action will depend on the circumstances of the case. In either event, the Case Manager from the Independent Investigation Service will consider the case against each respondent on an individual basis when making their assessment of the evidence.

4.8 Where several complaints are made independently about one person, each of these will be managed on an individual basis. The decision-making body with responsibility for the respondent will respond to each investigation finding separately but may also take into consideration previous findings when deciding on an appropriate course of action or sanctions.

#### How does this policy and procedure work alongside other ways of reporting bullying and harassment?

4.9 This policy and procedure are not intended to replace any individual action in reporting incidents of bullying or harassment directly to the police, their employer, an employment tribunal, a political party, the Parliamentary Commissioner for Standards or the House of Lords Commissioner for Standards.

4.10 Where a complainant chooses to use another policy to make a complaint of bullying or harassment, the Case Manager from the Independent Investigation Service reserves the right not to investigate the same incident under this policy and procedure.

4.11 This policy does not replace safeguarding obligations for all members of the Parliamentary Community. For example, if you are concerned about behaviour towards a vulnerable adult, you should report this to the Designated Safeguarding Lead, as outlined in the Safeguarding policy. The Independent Reporting Helpline and Independent Investigation Service will also carry out risk assessments and have agreed escalation processes in cases where an individual or others are at risk of harm that cannot be mitigated in another way.

#### How does this policy deal with malicious complaints of bullying or harassment?

4.12 We expect all individuals involved in a complaint made under this policy to act with integrity and provide accurate information, since false accusations of bullying and harassment can have serious consequences.

4.13 If someone makes a complaint as a result of a genuine mistake or misunderstanding, this would not be a malicious or vexatious complaint. Likewise, if the outcome of an initial or formal assessment under this policy is not upheld (i.e. not found to be bullying or harassment), it should be emphasised that this would not mean the complaint would be judged as malicious or vexatious.

4.14 For an investigation to indicate that a complaint may be malicious or vexatious, there would have to be strong evidence of manifestly false accusations or deliberate intent to falsely discredit the respondent. Examples of malicious or vexatious complaints could include a succession of complaints without reasonable

grounds from one complainant against a respondent; or a series of complaints between two or more people, one apparently made in response to another ('tit-for-tat' complaints).

4.15 Where a complaint has been found to be potentially malicious, vexatious or deliberately false, this will be based on the evidence gathered by the Case Manager from the Independent Investigation Service. In this case the decision-making body for the complainant will be notified and can deal with the matter using their own policies and procedures, which may include disciplinary action or other sanctions, depending on the role of the complainant in the Parliamentary Community.

## 5 Timescales for reporting incidents of bullying or harassment

When can I report an incident of bullying or harassment?

5.1 It is always preferable to address issues of bullying or harassment as soon as they arise, so that they can be resolved as quickly as possible. As a general principle, reporting or making a complaint of bullying and harassment should be done as soon as is reasonable after the incident in question. This will ensure informal resolution (where appropriate) can be attempted as quickly as possible and will facilitate effective formal assessments (e.g. by gathering evidence and statements from those involved whilst the event is fresh in their minds).

5.2 There may be times when a complainant does not want to or feel able to make a report soon after an alleged incident or incidents of bullying or harassment. Where a lengthy period of time has elapsed between the most recent incident of alleged bullying or harassment and a report or complaint being made, as part of their initial assessment, the Case Manager will examine the nature of any evidence available to determine whether this is likely to be sufficient to proceed with a formal assessment. For example, in circumstances where there is no contemporaneous evidence of an incident taking place and/or where witnesses have since left the Parliamentary Community, it may be difficult to gather sufficient evidence to make a formal assessment of the complaint.

5.3 Complaints can be investigated under this policy if they post-date the start of the 2017 Parliament. This includes continuing acts where at least one act complained about falls within that timeframe. People who have concerns about behaviour prior to this may be able to raise a complaint under a different pre-existing policy or as a criminal case and can call the Independent Reporting Helpline for advice about sources of support that they can access. A record will also be made by the Independent Reporting Helpline.

5.4 If someone wishes to report a criminal or civil offence, different time limits may apply depending on the nature of the offence. Anyone considering this action should speak to the Independent Reporting Helpline, who will be able to offer advice about reporting criminal or civil offences and accessing legal advice, if appropriate.

## 6 Responsibilities for members of the Parliamentary Community

6.1 All members of the Parliamentary Community should treat others with dignity, courtesy and respect and be aware of the types of behaviour that are unacceptable under this policy.

6.2 The Behaviour Code encourages all members of the Parliamentary Community to speak up about unacceptable behaviour they experience or observe. Whilst reporting or complaining of alleged bullying and harassment under this policy is subject to certain conditions (see Sections 2 and 4 of this policy), this should not prevent anyone from raising their concerns elsewhere (e.g. with their line manager or HR service).

6.3 Anyone who is involved in the informal resolution of a complaint, formal investigation of a complaint, or action taken as a result of a complaint also has a particular responsibility to act with integrity (see clause 4.12) and to maintain confidentiality throughout (see section 8 of the Independent Complaints and Grievance: Bullying and Harassment Procedure). This is particularly important since breaches in confidentiality can result in both workplace and media exposure or scrutiny for those involved, which can be deeply upsetting and damaging.

## 7 Policy review

7.1 Policy finalised: July 2018.

7.2 Policy review date: as part of the review conducted six months after the Scheme becomes operational.

## Independent Complaints and Grievance procedure: Bullying and Harassment

### 1 Introduction

1.1 This procedure outlines how we deal with complaints of bullying or harassment. You can use it to find out:

- How to make a complaint about bullying or harassment;
- What to do if someone has made a complaint of bullying or harassment about you;
- How complaints of bullying and harassment are managed;
- What might happen as a result of a complaint being made under this procedure;
- Sources of support if you have a complaint or if someone has made a complaint about you.

The procedure should be read in conjunction with the Independent Complaints and Grievance Policy for Bullying and Harassment.

## 2 Reporting an allegation of bullying or harassment

What should I do if I believe I am being harassed or bullied by someone working for or with Parliament?

2.1 In the first instance, you will need to consider whether what you have experienced may amount to bullying or harassment (see section 2 of the Independent Complaints and Grievance Policy for Bullying and Harassment). To help you do this, you should to keep records of what you have experienced, including a description of what has happened, where and when it took place, any witnesses and relevant documentation (e.g. emails, letters, social media posts). You may find it helpful to keep a diary and a note of all incidents; often with bullying it is only when you look back on a catalogue of negative behaviours do you recognise that it is bullying.

2.2 If you think you may have been bullied or harassed, you should report this to the Independent Reporting Helpline, The Helpline also provides a safe space, as discussing your experiences can help you understand whether you have been bullied or harassed. The Helpline can provide information about sources of advice and support for you, both within the Parliamentary Community and externally. Depending on your role within the Parliamentary Community, this may include Trade Union representatives, Members and Peers' Staff representatives, Harassment and Bullying Contacts, your line manager, a HR adviser or a counselling/welfare service. You can find out more about sources of support here. You may also choose to contact any of these sources of support prior to approaching the Helpline, if you would like help or advice about making a report.

2.3 When you contact the Helpline, you will be given the choice to report the incident anonymously or to provide information such as your name, role and contact details, which would be needed if you want to go on to make a complaint about the incidents to the Independent Investigation Service, either immediately or in the future.

2.4 Once you have reported any incident(s) to the Helpline, you can choose what to do next.

- **Make a report only:** You may not want to take the matter any further, if you do not want to make a formal complaint or take any informal action in response to the incident. If you later change your mind and decide to make a formal complaint, you may do so.
- **Informal resolution outside this procedure:** You may want to try and resolve the matter informally yourself, or with appropriate support (e.g. from your line manager). The Helpline can provide advice about how you can do this. Examples might include raising the issue with the person involved, either in writing or in person, perhaps as part of a facilitated conversation, to explain which aspects of the person's behaviour you find

unacceptable or unwelcome, how you'd like this to change and any other resolution you would like (e.g. an apology). Any informal resolution would usually be written down and it is best practice to include a review date, as part of a facilitated conversation if necessary.

- **Make a formal complaint:** In some circumstances, it is not possible or appropriate to seek informal resolution, so at any stage after making a report to the Helpline, you can make a formal complaint to the Independent Investigation Service (see section 4 of this procedure). If agreements on how a matter should be resolved informally are then not adhered to, i.e. the behaviour continues, then a formal complaint may also be appropriate.

2.5 The decision whether to progress to a formal complaint under this procedure is wholly up to you. In exceptional circumstances, if a report involved risks or safeguarding issues which could not be mitigated in any other way, the Helpline may reserve the right to refer the report to other services without your express permission, in the interests of protecting you and other members of the Parliamentary Community. This might be, for example, in cases where someone is in immediate physical danger. All the people who work for the Helpline have received training in risk assessments and safeguarding issues and there are clear and agreed escalation processes for such cases.

2.6 The Independent Investigation Service will also conduct regular risk assessments and follow agreed escalation processes if risks to you or others cannot be mitigated in another way. An investigator will also escalate a case if they believe that your complaint of bullying and harassment includes behaviour that might amount to a major criminal offence.

2.7 In that case, the Scheme will share anonymised information with the police under a protocol that is designed to make sure that our internal investigation does not inadvertently prejudice a criminal investigation. The police will be responsible for deciding whether they need to investigate the matter further, and this may include asking for identifying information. Decision-makers may also have information sharing requirements under their own policies.

2.8 If you decide to make a formal complaint, you are able to withdraw the complaint and/or seek informal resolution at any stage of the investigation and assessment.

[What should I do if I believe I have been bullied or harassed by a visitor to the Parliamentary Estate?](#)

2.9 To manage the incident at the time you can contact the Parliamentary Control Room, who will take the necessary action. You can also report the incident to the Independent Reporting Helpline and pursue a complaint through the Independent Investigation Service.

## What should I do if I'm not sure whether to report an incident to the Independent Reporting Helpline?

2.10 The table below provides guidance to help you decide whether and how to report an incident.

<b>I'm not sure whether what I've experienced constitutes bullying or harassment</b>	<b>I don't know whether to report what I have experienced as sexual harassment</b>	<b>I believe what I have experienced may constitute a criminal offence</b>
Read the definitions of bullying and harassment in section 2 of the Independent Complaints and Grievance Policy for Bullying and Harassment. If you are still not sure, call the Independent Reporting Helpline who can provide information about where you can get further advice and support to discuss your circumstances and help you decide.	If you have experienced sexual harassment as part of a wider pattern of other bullying or harassing behaviour, you can choose to report this using this procedure or the Sexual Misconduct procedure (but not both). The Sexual Misconduct procedure includes access to specialist sexual harassment advice, so should be used where the inappropriate behaviour you have experienced is exclusively or substantially sexual, or where this is the behaviour that concerns you most.	The police are best placed to deal with any concerns about alleged criminal offences. You can contact the Independent Reporting Helpline, who can provide information about sources of advice and support within the Parliamentary Community and externally, whether or not you want to report the matter to the police. If appropriate, you should also tell your manager, or the Member or Peer you work for, so that they can provide any support you may need at work.

2.11 If you are worried about making a report to the Helpline or do not feel able to do this yourself, you can make arrangements to do so with support. For example, a Trade Union representative or Members' Staff representative could be with you when you contact the Helpline.

## 3 Responding to a complaint of bullying or harassment

I have been advised that a complaint has been made against me—what should I do?

3.1 You could find out that someone has concerns about bullying or harassment at different times, including if they approach you to discuss the matter informally or if they make a formal complaint about you to the Independent Investigation Service (see sections 4 and 5 of this procedure). Regardless of when or how you find out, you will probably find this stressful and upsetting so you can contact the Independent Reporting Helpline to find out about support that is available for you.

3.2 If the person approaches you informally to try and resolve the matter, this can be a good opportunity to repair and maintain your working relationship. You may be able to understand more about the incident(s) they are concerned about, as well as giving you an opportunity to explain things from your perspective, and discuss how you can work effectively together in future.

3.3 If you find out about a complaint of bullying or harassment made against you as a result of a formal complaint being made to the Independent Investigation Service, the Case Manager will help ensure that you are aware of how the complaint will be managed and the sources of support that you can access.

3.4 If someone makes a formal complaint about you, you will be told the details of the complaint being investigated and have the opportunity to respond. If both parties agree, a formal complaint can also be resolved informally. Once a complaint has been made, any informal resolution would be brokered by the Case Manager, rather than undertaken directly by both parties.

3.5 You may find it useful to compile your own record of any incident(s) relating to a complaint or any future incident(s) that arise whilst a complaint is being assessed, including a description of what has happened, where and when it took place, any witnesses and relevant documentation (e.g. emails, letters, social media posts).

## 4 Stage 1: Making a formal complaint

What is the first step in making a formal complaint of bullying or harassment?

4.1 Making a formal complaint of bullying or harassment can be done by contacting the Independent Reporting Helpline who will, with the complainant's consent, make arrangements for a Case Manager from the Independent Investigation Service to contact the complainant.

4.2 Formal complaints can be made in writing using the Bullying and Harassment Complaint Form. However, complainants can speak with their Case Manager in person or by phone to assist with making a formal complaint. In this case, the Case Manager will ensure that they have sufficient detail of the complaint in line with the template. Section 8 of this procedure provides more information about arrangements for meetings as part of the initial and formal assessment stages.

4.3 The Case Manager will first make an initial assessment of the complaint to determine whether, in their specialist opinion, there is likely to be a case to answer. To do this, they will check that the complaint meets the conditions for being reported under this policy and procedure (e.g. that the complaint is made by and against people who are covered by this policy). They will also examine the wider context of the complaint to ensure this is the right policy to use; and whether the alleged behaviour has the potential to reach the threshold for constituting bullying or harassment. In some cases, this initial assessment stage will need to include contacting the respondent.

4.4 The outcome of the initial assessment could be as follows:

Case to answer	No case to answer	
<b>The complaint can be made under this policy and the incident(s) warrant further investigation (i.e. they may constitute bullying or harassment)</b>	<b>The complaint would not constitute bullying or harassment</b>	<b>The complaint cannot be made using this policy because it does not meet the relevant conditions</b>
The Case Manager will notify the complainant and the decision-making body for the respondent. The decision-making body may choose to inform the respondent themselves (e.g. to ensure they are supported at the time) or for the Case Manager to inform the respondent.	The Case Manager will notify the complainant and the respondent (if they are aware of the complaint). The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify the complainant and the respondent (if they are aware of the complaint). The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.

4.5 Where an initial assessment has found a case to answer, the decision-making body for the complainant and reporter should consider any management actions that may be appropriate as the complaint is managed either through brokered resolution or formal assessment (e.g. temporary changes to working hours or responsibilities).

### What happens next?

4.6 If the initial assessment has found that there is a case to answer, there are two possible outcomes:

- Informal resolution brokered by the Case Manager;
- Formal assessment of the complaint by the Case Manager.

4.7 In the case of complaints made against Members or Peers, in cases where the initial assessment identifies that there is a case to answer, this will be passed to the relevant Commissioner for Standards for the respondent. They will commission the same or another investigator from the Independent Investigation Service to undertake the full assessment and will have oversight of the investigation and any informal resolutions.

4.8 Usually, the Case Manager will encourage both parties to seek informal resolution, which requires the agreement of both parties, unless the circumstances make this inappropriate. Even if informal resolution has been attempted previously, a brokered approach at this stage can be effective in resolving the problem.

4.9 The complainant also has the option to withdraw their complaint or not to take any further action after the initial assessment.



## What is involved in informal resolution at this stage?

4.10 The Case Manager will advise both parties about options for informal resolution and the support they can provide (e.g. arranging a meeting with both parties to discuss the matter). The options for brokered informal resolution include (but are not limited to):

- A facilitated phone call or meeting between the complainant and respondent;
- Communication in writing from the complainant;
- Another appropriate individual (e.g. line manager, Member or Peer in their role as an employer) supporting communication between both parties.

4.11 The outcomes from brokered informal resolution could include (but are not limited to):

- An apology or acknowledgement of behaviour from the respondent;
- An agreed behaviour contract for working together in future;
- Training for the respondent to increase awareness; or for a particular team/area to enable cultural change or increased awareness;
- Agreement to external mediation.

4.12 Mediation is a voluntary and confidential form of resolving workplace disputes between people, in which a trained, impartial mediator meets with those involved (both separately and jointly) to understand the issues and assist both parties in finding options for resolving their difference or dispute. It is an alternative to internal forms of informal resolution, as it involves an external mediator without any prior involvement in the complaint.

4.13 Since mediation is most likely to be successful if certain conditions are met and is not suitable in all cases, the Case Manager will discuss with both parties whether the following conditions apply:

- Whether both parties agree to mediation;
- Whether the problem is appropriate for mediation (in some cases mediation may not be appropriate due to the nature of the issue or the power dynamics in the relationship);
- Whether there is commitment on both sides to seeking resolution.

If these conditions are met at the pre-mediation stage, the Case Manager will make arrangements for independent mediation.

4.14 At any stage during informal resolution, the complainant can choose to move to formal assessment. However, if the complainant is satisfied with the outcome of the informal resolution or mediation, there is no need to do anything further.

4.15 If a complaint is resolved via brokered informal resolution, there would be no assessment made in relation to the respondent (i.e. whether the complaint constituted bullying or harassment), since no formal assessment would be made as part of informal resolution activities.

## **5 Stage 2: Formal assessment of complaints**

5.1 There may be circumstances in which informal resolution to a complaint is either inappropriate (for example, if the nature of the complaint is particularly serious), unwanted by either or both the complainant and respondent, or in which informal resolution or mediation are unsuccessful. In these cases, the complainant can request a formal assessment of the complaint, which will be undertaken by the Case Manager.

### **What happens during a formal assessment?**

5.2 The Case Manager will make arrangements to gather further evidence about the complaint from the complainant, the respondent and any witnesses. This would usually involve holding detailed evidence gathering meetings with those involved and/or requesting written evidence.

5.3 Before starting a formal assessment, the Case Manager would create an assessment plan, outlining the approach for evidence gathering (e.g. including the timetable, list of witnesses, any documentation to be requested). This may be shared with the complainant, the respondent and the decision-making body for the respondent. The outcome of a formal assessment is a written report with details of the complaint and the evidence that has been gathered relating to the complaint.

5.4 The report will make an assessment, the outcomes of which may be:

Upheld	Not upheld		
The incident(s) are assessed as potentially constituting bullying or harassment	The incident(s) are assessed as not constituting bullying or harassment,	The complaint was made falsely as a result of misunderstanding or a genuine mistake	The complaint is potentially malicious, vexatious or deliberately false
The Case Manager will notify both parties and their respective decision-making bodies. Further action can be taken by the decision-making body for the respondent.	The Case Manager will notify both parties and their respective decision-making bodies. Further investigation or action can be taken by the decision-making body for the respondent under their own policies and procedures, if the report contains evidence of inappropriate behaviour that does not constitute bullying or harassment but may be a breach of the decision-making body's own policies or codes of conduct. The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify both parties and their decision-making bodies. The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify both parties and their respective decision-making bodies. Further action can be taken by the decision-making body for the complainant.

5.5 The standard of proof used for this formal assessment will be proof on the balance of probabilities (i.e. that the incident(s) in question are more likely than not to have occurred and are considered in the specialist opinion of the investigator to potentially constitute bullying or harassment. In cases where there is limited evidence available, the Case Manager will comment on this and the role it has played in their assessment.

## 6 Stage 3: Decision and action

6.1 Once the Case Manager has completed the formal assessment, the decision-making body for the respondent will be sent the report. If there has been an assessment of bullying and harassment by the investigator, the decision-maker will use their own policies and procedures to deal with the matter, including conducting any additional investigations and imposing any sanctions.

6.2 Potential sanctions are outlined in the table in Appendix 1 of this procedure. The nature of sanctions will depend on a range of factors and the individual circumstances of each case. Decisions about sanctions may take into account the following factors:

- The complainant's wishes (as documented in the Independent Investigation Service report);
- The decision-making body's legal and internal obligations;
- The severity of the bullying or harassment in question;
- Known precedents from comparable cases; or
- Previous complaints about the individual's behaviour, including any breaches of previously agreed informal resolutions or sanctions (e.g. behaviour agreement)

6.3 If the following aggravating factors are uncovered in the course of any fact finding or investigation, they should be taken seriously and may impact on the sanctions:

- The increased impact that bullying or harassment has if someone has been targeted because of their identity or perceived identity;
- Retaliation or victimisation as a result of the complaint;
- Breaches of the confidentiality of the complaint;

6.4 There may be times when it is not appropriate for complainants to know full details of any sanctions imposed (e.g. via disciplinary proceedings). Complainants will always be made aware of and consulted about any sanctions that involve the public identification of either themselves and/or the respondent, and their views will be fully taken into consideration.

6.5 If a complaint has been found to be malicious, vexatious or deliberately false, the decision-making body for the complainant will be notified. They will use their own policies and procedures to deal with the matter, including conducting any additional investigations and imposing any sanctions.

## 7 Reviews

What if I don't agree with the outcome of an initial or formal assessment?

If an initial assessment finds no case to answer or a formal assessment at the investigation stage does not uphold a complaint of bullying or harassment the complainant can ask the Independent Investigation Service to review the outcome. This review will be conducted by an investigator who has had no previous involvement in the case.

7.1 A review can only be requested on the following grounds:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

7.2 For complaints against a Member or a Peer, initial assessments will be reviewed by the relevant Parliamentary Commissioner for Standards. If you are a complainant, you will be able to contribute to this review by putting forward any evidence that you feel may have affected the assessment finding in relation to:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

7.3 If a review finds that further evidence is admissible, the case will generally be re-assessed by the original Case Manager, taking into account the additional evidence. If the review finds that the correct procedure had not been followed or a different type of investigation is needed, the case may be re-assessed by a different investigator.

7.4 If a formal assessment upholds a complaint of bullying or harassment at the investigation stage, this will be reviewed by the decision-making body (e.g. via a hearing/interview under their own policies and procedures). The respondent will have an opportunity to represent any concerns they had about the investigation conducted by the Independent Investigation Service as part of this process.

## 8 Arrangements for initial and formal assessment meetings

8.1 This section of the procedure provides more detailed information about how initial and formal assessment meetings are conducted. It contains information for complainants, respondents and witnesses.

### Notification of meetings

8.2 If you are a complainant, respondent or a witness involved in an assessment, you may be invited to meeting(s) with the Case Manager. The Case Manager will always provide written notification of meetings, including the time, date and place of the meeting; the purpose of the meeting; and any relevant information, including documentation and witness statements, if appropriate.

### The right to be accompanied

8.3 If you are a complainant or respondent, you can be accompanied in any meetings under this procedure by a colleague from the Parliamentary Community or trade union representative.

8.4 Prior to any meeting and with at least one day's notice, you should confirm to the Case Manager who will be accompanying you to the meeting.

8.5 The following conditions apply to your choice of companion:

- Colleagues are not obliged to act as a companion and may decline a request if they wish.
- The Case Manager may, at their discretion, permit a companion who is not a colleague or trade union representative where appropriate (e.g.

to provide support for someone who may have difficulty understanding English, including an interpreter, or who may have particular needs as a result of a disability).

- If your choice of companion is unavailable when the meeting is scheduled, you will usually be able to rearrange the meeting at a mutually convenient time, although if this would result in a significant delay the Case Manager may ask you to choose someone else and/ or proceed with the meeting.
- Companions can make representations, ask questions of the Case Manager, and sum up your position, but are not allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

8.6 If you are interviewed as a witness, you would not usually be accompanied in the meeting. However, the Case Manager may, at their discretion, permit you to have a companion if appropriate to the circumstances (e.g. if you have difficulty understanding written or spoken English or have particular needs as a result of a disability).

### Attendance

8.7 If you are a complainant or respondent, you must take all reasonable steps to attend any meetings. Failure to do so without good reason will be taken seriously and recorded in the assessment report. If you or your companion cannot attend the meeting you should inform the Case Manager immediately, who will ask you to identify an alternative time within five working days. If you fail to attend without good reason, or are persistently unable to do so, the Case Manager will make their findings based on the available evidence and without your contribution.

### Confidentiality

8.8 Complaints under this policy will be treated confidentially and will only be discussed with those who are legitimately involved in resolving it by the Independent Reporting Helpline, Investigation Service and decision-making bodies. If you are involved in a complaint as a complainant, a respondent or a witness you should also treat the matter as strictly confidential. Likewise, if you are involved in informal resolution outside this procedure in any capacity (e.g. as a line manager, HR adviser), you should maintain confidentiality, as appropriate.

8.9 Complaints to the Independent Investigation Service cannot be raised anonymously since this would not allow the respondent to understand the complaint against them or for the complaint to be resolved or investigated fully. This will always be discussed with you before progressing with the complaint. You may also make anonymous reports to the Independent Reporting Helpline, who can use these for monitoring purposes.

8.10 During the course of initial and formal assessments, relevant extracts of statements or minutes from meetings with the complainant, respondent and witnesses may be made available to both the complainant and respondent to ensure

that all parties involved can understand and respond to relevant evidence provided by others. Copies of relevant documentation (e.g. email or other correspondence, social media posts) may also be provided.

## Records

8.11 If you are a complainant, respondent or witness, you will be provided with a copy of the minutes from any meeting you attend under this procedure. You will be given the opportunity to review the minutes and ensure they are an accurate record. If you dispute any aspect of the minutes, a record of this will be kept alongside the minutes.

## 9 Timescales

9.1 The intention is always that complaints made under this procedure are dealt with promptly. However, complaints of bullying or harassment can vary in complexity and circumstance, so some complaints may take longer to resolve than others.

9.2 The flowcharts accompanying this procedure outline the usual timescales for each stage of the procedure. Since a formal assessment can take a number of weeks to complete, before starting the assessment, the Case Manager will provide an assessment plan, including a provisional timetable (see section 5.3). If there are any significant changes to the timetable during the assessment period, the Case Manager will notify the complainant and respondent of this in writing as soon as possible providing the reason(s) for this change.

## 10 Data protection

10.1 All those involved in this procedure, including the Independent Reporting Helpline, Independent Investigation Service and decision-making bodies will collect and process personal data in accordance with the Data Protection Act 2018. The basis for processing data under this procedure will be Legitimate Interest.

10.2 Records of reports and complaints will generally be kept for at least 12 months by the Independent Reporting Helpline and Independent Investigation Service and, where relevant, may be retained by the decision-making body for the complainant and respondent in accordance with their own data protection policies. The Independent Reporting Helpline and Independent Investigation Service will also keep anonymised records of the number and types of reports and cases that they receive, in line with the data protection policies agreed with parliament.

10.3 Records of complaints will include a copy of the written complaint, details of any assessment (including supporting documents such as witness statements and meeting notes) and a record of any action taken as a result of the complaint.

## 11 Support for those involved in complaints of harassment or bullying

11.1 The Independent Reporting Helpline can provide information about sources of support for complainants and respondents, both within the Parliamentary Community and externally.

11.2 Whether you are a complainant or respondent, we encourage you to let your manager, HR service or other relevant parties know that you are involved in a complaint of bullying and harassment under this procedure. They will be able to discuss any actions that could be available to support you both during and after an investigation (e.g. temporary changes to working practices, hours, accompaniment during working hours).

## 12 Tools and resources

12.1 The following tools and resources are available to accompany this procedure:

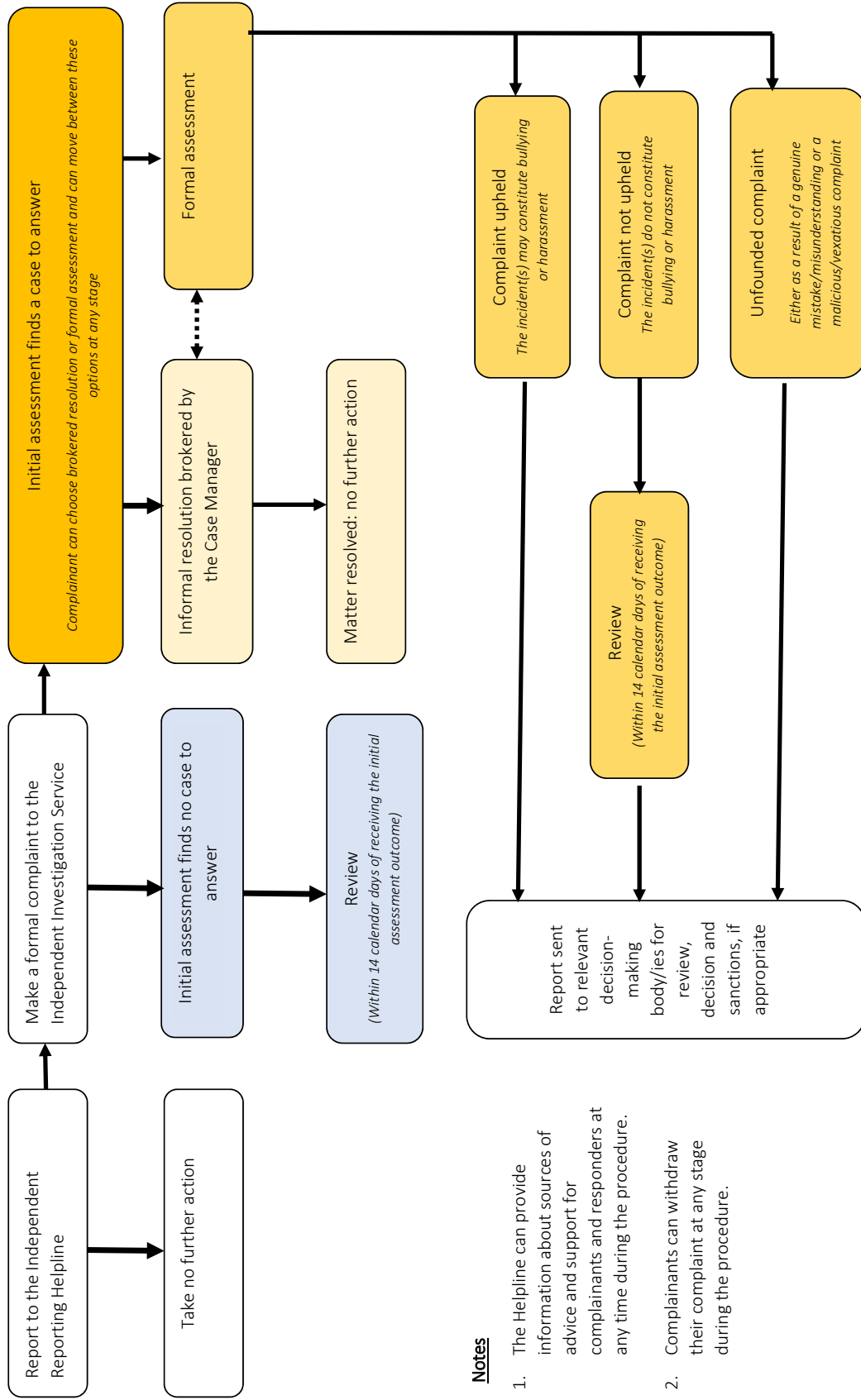
- Flowcharts showing the procedure for the complainant and respondent;
- Table outlining usual time periods for assessment of formal complaints;
- Template form for making a formal complaint.

Respondent	Decision making body	Sanction	How sanctions are imposed
MP / Peer	The Commissioner for Standards (Commons or Lords) in conjunction with the relevant committee of the Houses for the most serious cases or where alternative resolutions have failed.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties or imposed by the Commissioner for Standards  (Commons or Lords)
		Suspension / recall (in the House of Commons)  Suspension / expulsion (in the House of Lords)	The Commissioner for Standards (Commons or Lords), in conjunction with (Sub) Committees of the relevant House, a Resolution of the relevant House, and the provisions of the Recall of MPs Act 2015, and the House of Lords (Expulsion and Suspension) Act 2015



<b>Respondent</b>	<b>Decision making body</b>	<b>Sanction</b>	<b>How sanctions are imposed</b>
<b>An MP's or Peer's employee or someone employed by a political party to work on the Parliamentary estate</b>	MP, Peer or political party who employs them (or otherwise engages them—e.g. intern, volunteer, work experience agreement, or contract for services)	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
<b>Employees of the House of Commons Administration, House of Lords Administration, Parliamentary Digital Service</b>	House Authorities, through the appropriate management chains.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
<b>Relevant passholders</b>	Relevant officials and processes for suspending or revoking parliamentary passes. The passholder's employer may also be notified, where relevant.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties
		Withdrawal of pass	Relevant officials and processes for revoking parliamentary passes. The passholder's employer may also be notified, where relevant.

Independent Complaints and Grievance procedure for bullying and harassment: flowchart



**Notes**

1. The Helpline can provide information about sources of advice and support for complainants and responders at any time during the procedure.
2. Complainants can withdraw their complaint at any stage during the procedure.

<b>Stage of procedure</b>	<b>Responsibility</b>	<b>Timescale</b>
Acknowledgement of complaint	Case Manager	Within 5 calendar days of the complainant's request
Notice of meetings with the Case Manager	Case Manager	A minimum of 5 calendar days before the meeting
Provision of draft minutes from meetings	Case Manager	Within 5 calendar days of the meeting
Agreement of minutes of investigation meetings	Reporter, responder or witness	Within 7 calendar days of receiving the minutes
Review of initial or formal assessment	Reviewing Case Manager or PCS	Subject to variation but usually within 14 calendar days of receipt of the assessment report.

# ANNEX C—Sexual Misconduct policy

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## Sexual Misconduct Policy and Procedure

### Policy

1. Introduction and Aims
2. Zero Tolerance Approach
3. Definitions
4. Legislation
5. Behaviours
6. Consent
7. Terms used in this policy and procedure
8. Intersectionality and Impact
9. Scope
10. Other ways of Reporting Sexual Misconduct
11. Victimisation
12. Malicious or Vexatious Complaints
13. Confidentiality
14. Provision of Support
15. Time Limits
16. Responsibilities of the Parliamentary Community

### Procedure

1. Introduction
2. Pathway 1: Independent Sexual Misconduct Advisory
3. Pathway 2: Appropriate Measures
4. Pathway 3: Formal Complaint - Considerations
5. Investigation Process: Stage 1 Initial Assessment
6. Investigation Process: Stage 2 Formal Assessment
7. Investigation Process: Stage 3 Decision and Action
8. Aggravating Factors
9. Arrangements for initial and formal assessment meetings
10. Reviews
11. Timescales
12. Appendix 1: Flowchart
13. Appendix 2: Possible Sanctions

## 1 Introduction and Aims

1.1 Parliament believes that all people have the right to be treated with dignity and respect and not be the subject of sexual misconduct, harassment or discrimination of any kind. We expect all members of the Parliamentary Community (see Scope) to treat others accordingly, promote a culture that supports this and protect individuals from harm.

1.2 This Policy and Procedure, the Behaviour Code and the Bullying and Harassment Policy and Procedure provide a framework for us to create a respectful and courteous working environment and to respond to any allegations of unacceptable behaviour promptly, fairly and effectively. The aims of the Policy and Procedure are to:

- Ensure that all members of the Parliamentary Community are aware of their responsibilities in relation to sexual misconduct.
- Provide a fair, transparent and consistent approach for reporting, investigating and responding to allegations of sexual misconduct.
- Provide information about sources of support available to anyone who experiences sexual misconduct or who is accused of sexual misconduct.

## 2 Zero Tolerance Approach

2.1 This Policy and Procedure relates specifically to sexual misconduct. Sexual misconduct is unacceptable in all circumstances and may also constitute a criminal offence. This approach means that sexual misconduct will not be tolerated by the Parliamentary Community and an abuse of power can be an aggravating factor in such cases.

2.2 All reports of sexual misconduct will be taken seriously. Members of the Parliamentary Community found to be behaving in this way will be dealt with under the appropriate routes and sanctions will apply.

2.3 This Policy and Procedure sets out how Parliament defines sexual misconduct, what we expect of those in the Parliamentary Community, the support we will provide to all parties and the options and remedies available to them.

## 3 Definitions

3.1 The definitions below will be used for determining whether any behaviour reported under this Policy and Procedure constitutes sexual misconduct.

3.2 All behaviour that constitutes sexual misconduct is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute sexual misconduct. When alleged incidents of sexual misconduct are reported using this Policy and Procedure, any investigation will assess whether the incidents constitute sexual misconduct.

## Sexual Misconduct

3.3 Sexual misconduct incorporates a range of behaviours including sexual assault, sexual harassment, stalking, voyeurism and any other conduct of a sexual nature that is non-consensual or has the purpose or effect of threatening, intimidating, undermining, humiliating or coercing a person. Sexual misconduct is used to describe the range of behaviours that will be treated as a potential breach under this Policy and Procedure, encompassing behaviours that may or may not also be defined as sexual harassment or sexual offences in the context of civil or criminal courts. However, using the language of sexual misconduct makes it clear that the Policy and Procedure for Parliament is separate from and additional to any court processes.

3.4 For the purposes of this policy, although it may not be illegal to pay for sex, in line with best practice it is considered unprofessional, inappropriate and a breach of the Behaviour Code, if this occurs whilst individuals are acting in a parliamentary capacity or engaged in activity connected to their membership of the Parliamentary Community both in the UK and overseas.

## 4 Legislation

4.1 Harassment of a sexual nature is defined in the Equality Act 2010 section 26 (2) (3). A non-exhaustive summary that covers the majority of what is meant by the term is: unwanted behaviour that is sexual in nature or draws attention to sex in an unwanted way. The law around sexual harassment is grounded in a rights framework; sexual harassment offends the universal right to work in a dignified, safe environment and not be subject to discrimination.

4.2 Forms of sexual harassment and sexual misconduct may also constitute criminal offences under a range of legislation, including, but not limited to, the Sexual Offences Act 2003 and the Protection from Harassment Act 1997 and national legislation in Scotland and Northern Ireland. Potential criminal offences include sexual assault, sexual assault by penetration, rape, harassment, stalking or ‘revenge pornography’.

## 5 Behaviours

The following behaviours may constitute sexual misconduct if they occur inappropriately or without explicit full and freely given consent.

5.1 This non-exhaustive list provides examples of broadly escalating severity in the categories of verbal, non-verbal/environmental and physical sexual misconduct. However, impact and trauma will be felt differently by those experiencing sexual misconduct.

5.2 **Verbal**—sexual remarks including those about appearance or clothing, jokes, catcalls, questions about sexual life, raising sexual topics, verbal advances, etc.

- Asking personal questions about sexual or social life or offering unwanted personal information about own activities.
- Remarks that draw attention to someone's sex in an inappropriate or unwanted way.
- Enquiring about sexual history, fantasies or preferences.
- Making sexual comments about a person's clothing, anatomy, or appearance.
- Obscene phone calls of a sexual nature.
- Repeatedly propositioning someone.
- Subtle or overt pressure for sexual activity, including requests or demands for sexual favours and promises of reward in return.
- Threats of reprisals if requests for sexual activity are turned down.
- Treating someone less favourably because they have rejected or submitted to unwanted sexual conduct.

5.3 **Environmental/Non-Verbal**—displaying pornographic or sexually explicit material, sexist comments and pictures on social media, stalking, image-based sexual abuse such as up-skirting, revenge porn, deep fake porn, etc.

- Obscene texts, emails, notes or letters of a sexual nature.
- Inappropriate gifts of a sexual nature.
- Inappropriate advances or stalking via social media.
- The circulation or displaying of pornography.
- Sharing private sexual materials of another person without consent.
- Repeatedly propositioning someone in writing.
- Repeatedly following or tracing the movements of another person without good reason.

5.4 **Physical**—suggestive looks and gestures, staring, leering, threatening behaviour, brushing past someone, pinching, touching, groping, promises/threats related to career prospects in return for sexual favours, etc.

- Uncalled-for physical contact, deliberate brushing past.
- Unwelcome and inappropriate touching, hugging or kissing.
- Groping, grabbing, kissing or fondling without consent.
- Indecent exposure (masturbation, nudity) and acts of voyeurism or exhibitionism.

- Attempting to or engaging in sexual intercourse or a sexual act without consent.

## 6 Consent

6.1 The definition of consent provided by the Sexual Offences Act 2003 is agreeing to something by choice and having the freedom and capacity to make that choice. This Policy uses the same definition of consent in relation to sexual misconduct.

6.2 Capacity—A person’s capacity is dependent on whether they are physically and/or mentally able to make a choice and to understand the consequences of that choice. For example, a person does not have the capacity to give consent if:

- They are drunk or under the influence of drugs, for example they may still be physically able to have sex but they may not be able to consent.
- They are asleep or unconscious.
- They may not have capacity if they have a disability or impairment, including learning difficulty, physical disability or mental health condition.

6.3 Consent is ongoing and needs to be negotiated every time one engages in sexual activities. Individuals must stop if they are not absolutely sure that they have someone’s consent. Any prior sexual activity or relationship does not, in and of itself, constitute consent. Consent may be withdrawn at any time (including during a sexual act) and can never be implied, assumed or coerced.

## 7 Terms used in this Policy and Procedure

- Reporter: This is an individual who reports or makes a complaint of sexual misconduct.
- Responder: This is an individual who is accused of sexual misconduct by a member of the Parliamentary Community or a visitor to Parliament/a constituency office.
- Sexual misconduct: Any act that is covered by this Policy and Procedure, including sexual harassment and sexual violence.
- Independent Sexual Misconduct Advisory Service (ISMA Service): The ISMA Service is available for all and offers advice, support and signposting throughout the three Sexual Misconduct Pathways in the procedure.
- Independent Investigation Service: The service available if a reporter decides to make a complaint. It provides an independent and impartial investigation of any cases which enter the Complaint Pathway.
- Decision-making bodies: The organisations within the Parliamentary Community with responsibility for the reporter and responder



depending on their role/employment function. Decision-making bodies are responsible for deciding and implementing appropriate actions and/or sanctions following an independent assessment of a complaint.

## 8 Intersectionality and Impact

8.1 Sexual misconduct can happen to anyone and can be carried out by anyone, but the research is clear that it is disproportionately carried out by men against women. Sexual misconduct is both a cause and a consequence of inequality and power differences.

8.2 Research shows that the incidence and specific experience of sexual misconduct can be affected by a number of characteristics of those who are targeted, including the protected characteristics covered under the Equality Act 2010, such as: age, disability, gender reassignment, race, sex and sexual orientation. Characteristics such as race and sex and sexuality can intersect with each other in ways that create specific issues (for example a Black woman might be targeted with racialised sexual harassment). Additional factors which influence power dynamics include class and if a position of authority is held.

8.3 Research has documented the impact of sexual misconduct upon those who have experienced it. Impact cannot be predicted and varies with every individual. Emotional and physical impact can include anxiety and long-term depression, sleep disorders, lowered self-esteem and a range of physical impairments. From a workplace perspective, sexual misconduct can lead to a hostile and unpleasant working environment or the risk of loss of job or promotion opportunities, reduced productivity and increased staff turnover.

## 9 Scope

9.1 This Policy and Procedure applies to acts of sexual misconduct by and against any member of the Parliamentary Community, provided that it takes place in conjunction with their parliamentary role or function. It includes sexual misconduct by individuals (see 10.3), such as a visitor to the Parliamentary Estate.

9.2 For the purposes of this Policy and Procedure, the Parliamentary Community comprises all those working for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of parliamentary work.

9.3 This Policy and Procedure sets out the standards of behaviour expected of individuals to protect them from sexual misconduct. The list of individuals who can make a report or complaint through the Policy and Procedure includes:

- Members of Parliament (MP) or Peers;
- Employees of MPs or Peers or other people working for them, such as volunteers, people undertaking work experience or interns;

- Employees of the House of Commons and Parliamentary Digital Service, following a decision by the House of Commons Commission on 16 July 2018;<sup>19</sup>
- [Employees of the House of Lords;—subject to House of Lords Management and TUS consultation]<sup>20</sup>
- Employees of other Parliamentary organisations (for example, CPA UK, BGIPU, an All Party Parliamentary Group)
- Specialist Advisers and others supporting Parliamentary work, including people employed by political parties or collectively employed by MPs (e.g. PRU, PRS and Group staff);
- Members of the Press Gallery;
- Contractors, agency workers, inward secondees or interns to any of the relevant bodies above;
- Visitors at Westminster

9.4 The work of the Parliamentary Community is broad and can involve office work, public facing work, travel and social events related to parliamentary business, as well as non-standard working hours. As a result, this Policy and Procedure applies to behaviour by members of the Parliamentary Community:

- On the Parliamentary Estate.
- At constituency offices or other places of work.
- In the course of parliamentary duties and activities (including UK or overseas travel, all events related to parliamentary business, conferences, social events, gatherings and functions).

9.5 Members of the Parliamentary Community should expect the provisions of employment legislation, including the Employment Rights Act 1996 and the Equality Act 2010, to apply to employment related matters in all circumstances covered by 10.4.

## 10 Other Ways of Reporting Sexual Misconduct

10.1 This Policy and Procedure are not intended to discourage individuals from reporting incidents of sexual misconduct to the police, an employment tribunal, their employer, a political party or the relevant Commissioner for Standards. Making use of the specialist ISMA Service available, as set out in Pathway 1 of the procedure, may help individuals to come to a decision that they judge to be right for them.

19 This was updated on 16 July 2018 and that the text previously said “[House of Commons staff subject to a decision by the House of Commons Commission]”

20 This section of the policy will be updated in light of any decision by the House of Lords Management Board

10.2 Where a reporter chooses to use another policy route (such as a political party route) to make a complaint of sexual misconduct, the Investigation Service reserves the right not to investigate the same incident under this Policy and Procedure.

10.3 The nature and scope of the Policy and Procedure is fundamentally different from that of a criminal process. The Policy and Procedure is a disciplinary matter for the Parliamentary Community based upon an allegation that an individual has breached the Sexual Misconduct Policy and Procedure.

10.4 Where someone has reported an alleged criminal offence to the police and has made a complaint under this Policy and Procedure, the circumstances of the case will be considered, to determine whether it is appropriate to investigate the matter under this Procedure at the same time, or whether action under this Procedure should be paused until the criminal investigation is complete.

## **11 Victimisation**

11.1 Fear of victimisation is a major barrier that can prevent individuals from seeking support or resolution. Members of the Parliamentary Community are prohibited from engaging in any form of victimisation, revictimisation, or encouraging others to victimise someone who has made, or has supported someone else in making, a report/complaint or has cooperated in the investigation of a report/complaint.

11.2 If victimisation or retaliation are uncovered in the course of an investigation, they will be taken seriously as outlined in section 8 of the Procedure.

## **12 Malicious or Vexatious Complaints**

12.1 We require all individuals involved in a complaint made under this Policy and Procedure to provide accurate information made in good faith. False accusations of sexual misconduct, while rare, can have serious consequences.

12.2 Complaints will always be assumed to be made in good faith unless there is evidence to the contrary. The Independent Investigator will always examine the evidence from the case to determine whether a complaint is made in good faith.

## **13 Confidentiality**

13.1 Parliament recognises the importance of privacy and confidentiality in cases of sexual misconduct. For this reason, breach of confidentiality is an aggravating factor in any finding of sexual misconduct. Mechanisms will be put in place to protect confidentiality of all the parties involved throughout the three pathways of the procedure and all parties will need to respect confidentiality (see section 8 of the Procedure, aggravating factors).

13.2 Any sensitive information disclosed will be held subject to and in accordance with the provisions of the Data Protection Act 2018.

13.3 At all stages, those receiving disclosures and/or processing details of cases are required to keep the names and details confidential, to protect the rights of the parties involved.

13.4 However, there may be circumstances where certain information may need to be shared with other parties consistent with safety, a duty of care or because of Parliament's safeguarding responsibilities. In these cases, permission will be sought and, if not granted, the risk of potential harm will be weighed up.

## **14 Provision of Support**

14.1 The Independent Sexual Misconduct Advisory Service (ISMA Service) provides confidential, independent, specialist and trained support in relation to sexual misconduct.

14.2 The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisors (ISVAs) who provide specialist support, advice, advocacy and signposting in relation to instances of sexual misconduct which fall within the scope of this Policy and Procedure.

14.3 The primary aim of the ISMA Service is to provide advice, support and signposting so that individuals can make informed choices about the pathways they wish to pursue.

## **15 Time limits**

15.1 The sooner a complaint or report is made, the better the chance of thorough evidence gathering. Therefore, early reporting or making a complaint of sexual misconduct is encouraged. There may be times when a reporter does not want to or feel able to make a report soon after an alleged incident or incidents of sexual misconduct, the barriers to early reporting are understood and acknowledged and a delayed decision to make a report will be respected and not treated with suspicion.

15.2 All members of the Parliamentary Community as set out in section 9 (Scope) of the Sexual Misconduct Policy can access the ISMA Service for advice and support and signposting as outlined in Pathway 1. However, under Pathway 2 & 3, retrospective investigations using this Sexual Misconduct Policy and Procedure are limited to the start date of the 2017 Parliament. Previous acts of sexual misconduct prior to the start date of the 2017 Parliament can be included where such acts amount to a continuing act.

15.3 People who have concerns about behaviour prior to the start date of the 2017 Parliament may be able to raise a complaint under a different pre-existing policy or as a criminal case and can call the IMAS Service for advice about sources of support that they can access. A record will also be made by the IMAS Service.

15.4 If someone wishes to report a criminal or civil offence, different time limits may apply depending on the nature of the offence. Anyone considering this action should seek legal advice or discuss this with the ISMA Service in Pathway 1 of the Procedure.

## **16 Responsibilities of the Parliamentary Community**

16.1 All members of the Parliamentary Community should treat others respectfully and be aware of the types of behaviour that are unacceptable under this Policy.

16.2 The Behaviour Code encourages all members of the Parliamentary Community to speak up about unacceptable behaviour they experience or observe, including reporting concerns to their line managers as appropriate. Individuals are encouraged to seek advice from the specialist advisers provided by the ISMA Service in Pathway One of the Procedure.

16.3 Managers have a particular responsibility to develop and maintain a working environment in which people are treated with dignity and respect and intervene if they identify any sexual misconduct amongst their staff. Managers also have a responsibility for ensuring that any of their direct reports involved in a complaint of sexual misconduct (whether that be a reporter, responder or a witness) are signposted and encouraged to use the ISMA Service for advice and support.

16.4 Anyone who is involved in assisting with the Appropriate Measures Pathway or Formal Complaint Pathway, has a responsibility to provide accurate information and to maintain confidentiality throughout.

16.5 This Policy does not replace safeguarding obligations for all members of the Parliamentary Community. For example, if you are concerned about a vulnerable adult, you should report this to the Designated Safeguarding Lead as outlined in the Safeguarding policy.

## **1 Introduction: Sexual Misconduct Procedure – 3 Pathways**

1.1 The Sexual Misconduct Procedure identifies three distinct pathways (see flow chart in appendix 1);

- Pathway 1: Independent Sexual Misconduct Advisory Service (ISMA Service)
- Pathway 2: Appropriate Measures
- Pathway 3: Formal Complaint

1.2 These pathways can be accessed independently or in the following combinations;

- Pathway 1: Can be used by all for advice, support and signposting, regardless of whether Pathway 2 or 3 are used.
- Pathway 2: Is an optional pathway for reporters who wish to have a facilitated intervention with the responder.
- Pathway 3. At any point during this pathway the reporter will have the option to seek resolution through Pathway 2 Appropriate Measures and the matter need go no further.

## **2 Pathway 1: Independent Sexual Misconduct Advisory Service (ISMA Service)**

2.1 The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisers (ISVAs) who will provide specialist support, advice and advocacy in relation to sexual misconduct and act as Case Managers.

2.2 Those contacting the ISMA Service will be logged anonymously or with identifying details, depending on the wishes of the individual, and their information will be kept confidential and assigned to a Case Manager.

2.3 The Case Manager will provide ongoing support and advice and signpost individuals to additional support if required.

2.4 One of the aims of the ISMA Service is to enable the reporter to make informed choices about the pathways they wish to pursue by putting them at the centre of decision-making in relation to their case.

2.5 Where risks to the reporter or others are identified, the Case Manager will complete a risk assessment and a management plan.

2.6 If individuals are unsure that what they have experienced is sexual misconduct or think the behaviour might also be related to other factors, they can still follow this pathway which will give them access to specialist advice and support related to sexual misconduct that will help in deciding the best course of action.

### Pathway 1: Confidentiality

2.7 Confidentiality will be maintained in relation to contacts made via the ISMA Service, unless otherwise agreed. However, there may be circumstances where certain information may need to be shared with other parties' consistent with safety, a duty of care or with Parliament's safeguarding responsibilities.

2.8 In these circumstances, the Case Manager will seek the permission of the reporter and, if this is not granted, will need to weigh up the risk of potential further harm to them or others before sharing information, for example, in cases where someone is in immediate physical danger.

## 3 Pathway 2: Appropriate Measures

3.1 This pathway can be followed whether or not the reporter wishes to follow the formal complaint pathway.

3.2 At any time after contacting and receiving advice and support from the ISMA Service, the reporter may decide that they wish to take action to help remedy their situation through the Appropriate Measures Pathway. Any action taken via this route will be subject to an initial assessment to check that the Policy applies and a risk assessment will be carried out by the ISMA Service. This Pathway will not include an investigation. For this reason, although action may lead to resolution, this may be limited in scope.

3.3 Where necessary, the Case Manager in the ISMA Service will help broker and facilitate interventions.

3.4 Appropriate measure might include (non-exhaustive list):

- A facilitated telephone conversation between the reporter and the responder.
- Communication in writing from the reporter.
- A face to face meeting, facilitated by the Case Manager in the ISMA Service with the responder.
- Intervention by another appropriate individual, such as the manager of the responder.

Desired outcomes might include (non-exhaustive list):

- An apology from the responder.
- Acknowledgement of the behaviour by the responder.
- A behavioural agreement outlining what is considered appropriate/inappropriate behaviour moving forward.
- Training:

- for the responder to increase awareness of inappropriate/appropriate behaviours, their impact and expectations going forward.
- for an area/team to deal with an inappropriate culture or to train a particular team, which doesn't target a particular individual.
- for the reporter to help them cope and deal with any future inappropriate behaviours.

3.5 The reporter may decide at any time to end or halt the progress of this pathway.

3.6 If a resolution is agreed under this pathway, no finding of fault will be recorded in respect of the responder. Details of both parties will be kept confidential. Mechanisms will be put in place to protect confidentiality of all the parties involved throughout the three pathways of the procedure and all parties will need to respect confidentiality.

#### Pathway 2: Confidentiality

If the reporter requests Appropriate Measures it will be necessary to involve the responder and other members of the Parliamentary Community as necessary. These individuals will be contacted only with the permission of the reporter.

## 4 Pathway 3: Formal Complaint

### Considerations

4.1 The key principles of any investigation will be fairness, due process and proportionality:

- The reporter, responder and any witnesses will be treated fairly, with dignity and confidentiality.
- The responder will be provided with details of the allegations made against them and by whom and will be offered appropriate support.
- The standard of proof will be on the balance of probabilities.
- Efforts will be made to avoid any re-traumatisation of the reporter.

4.2 It is recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect the reporter from retaliation or victimisation, may inform the degree of disclosure to the responder of certain details of some reports, in tandem with the principles of natural justice. Factors to consider when making this decision will be:

- The immediate safety of the reporter, such as risk of violence or retaliation.
- The immediate safety of the responder.



- Whether there is a substantial risk that the responder would make efforts to interfere with or undermine an investigation.
- Whether a reasonable request has been received from the police or other authority with statutory or investigatory powers to require the information.

4.3 At each stage in the process evidence will be sought and be considered. Decisions for further evidence gathering will need to be carefully considered as the preference will be to interview the parties only once, to avoid the risk of potential re-traumatisation and prolonging the process.

4.4 Under Pathway 3, an investigator will also escalate a case if they believe the complaint of sexual misconduct might amount to a major criminal offence. In that case, the Scheme will share anonymised information with the police under a protocol that is designed to make sure that our internal investigation does not inadvertently prejudice a criminal investigation. The police will be responsible for deciding whether they need to investigate the matter further, and this may include asking for identifying information. Decision-makers may also have information sharing requirements under their own policies.

## Investigation process

### 5 Stage 1: Initial Assessment

5.1 The Investigator receives a written complaint from the reporter using the Sexual Misconduct Complaints Form.

5.2 The Investigator makes an initial assessment of the complaint to determine whether the Policy applies. To do this, they will check that the complaint meets the conditions for being reported under this Policy and Procedure (e.g. that the complaint is made by and against people who are covered by this Policy).

5.3 The outcome of the initial assessment could be as follows:

Case to answer	No case to answer	
The complaint can be made under this Policy and the incident(s) warrants further investigation (i.e. they may be sexual misconduct).	The complaint does not constitute sexual misconduct.	The complaint cannot be made using this Policy because it does not meet the relevant conditions.
The investigator will notify both parties and their respective decision-making bodies.  The ISMA Service remains available to offer ongoing support and advice.	The investigator will notify the reporter and the responder.  The ISMA Service remains available to offer ongoing support and advice.	The investigator will notify the reporter and the responder.  The ISMA Service remains available to offer ongoing support and advice.

## 6 Stage 2: Formal Assessment

6.1 Before starting a formal assessment, the specialist investigator will contact the appropriate decision-making body. These discussions might involve sharing:

- An assessment plan;
- The approach for evidence gathering (e.g. including the timetable, list of witnesses, any documentation to be requested)

6.2 A letter is sent to the relevant parties to start the evidence-gathering process.

6.3 In the case of complaints made against Members or Peers, where the initial assessment identifies that there is a case to answer, this will be passed to the relevant Commissioner for Standards for the responder. They will commission the same or another investigator from the Independent Investigation Service to undertake the full assessment and will have oversight of the investigation.

6.4 The Investigator interviews both parties and any witnesses to collect any evidence and understand the circumstances of the complaint, any actions already taken and whether there are any steps that could be taken to create a resolution. Witnesses will be given the opportunity to supply evidence.

6.5 The outcome of a formal assessment is a written report with details of the complaint and the evidence that has been gathered relating to the complaint, the outcome that the reporter wants to achieve and whether the information in the complaint is accurate.

6.6 The assessment will be sent to the relevant decision-making bodies, identifying recommendation of assessment, reasons for assessment and details of notifications.

6.7 The outcomes of the assessment may be:

- The complaint is upheld – there is sufficient evidence on the balance of probabilities to determine that sexual misconduct has occurred.
- The complaint is not upheld – the evidence suggests that sexual misconduct did not occur or the evidence is insufficient to determine whether sexual misconduct has occurred.

## 7 Stage 3: Decision and Action

7.1 Once the investigator has completed the formal assessment, the decision-making body for the responder will review the report. If there has been an assessment of sexual misconduct by the investigator, the decision-making body will use their own policies and procedures to deal with the matter including any additional investigations and imposing sanctions.

7.2 Potential sanctions are outlined in the table in Appendix 1 of this Procedure. Decisions about sanctions should take into account the following factors:

- The reporter's wishes (as documented in the Independent Investigation Service report).
- The decision-making body's legal and internal obligations.
- The severity of the sexual misconduct in question.
- Any precedents from comparable cases or previous complaints about the individual's behaviour.

## **8 Pathway 3: Confidentiality**

8.1 Complaints under the initial or formal assessment will be treated confidentially and will only be discussed with those who are legitimately involved i.e. the Investigation Service and the decision-making bodies. Those involved in the complaint as a reporter, a responder or a witness should treat the matter as strictly confidential.

8.2 Complaints to the Investigation Service cannot be raised anonymously (See section 4 the procedure on considerations).

8.3 During the course of initial or formal assessments, relevant extracts of statements or minutes from the meeting with the reporter, responder and witnesses may be made available to both the reporter and responder to ensure that all parties involved can understand and respond to relevant evidence provided by others. Copies of relevant documentation (e.g. email or other correspondence, social media posts) may also be provided. However, this will be in line with the consideration as outlined in section 4 of the procedure.

## **9 Aggravating factors**

9.1 If the following aggravating factors are uncovered in the course of any fact finding or investigation, they should be taken seriously and may impact on the sanctions even if the complaint is not upheld:

9.1.1 Breaches of the Behaviour Code.

9.1.2 Abuses of power/authority.

9.1.3 Retaliation or victimisation.

9.1.4 Breaches of agreed Appropriate Measures or sanctions.

9.1.5 Breaches of confidentiality, refusal to engage in the Procedure, or sharing the name of the reporter.

9.2 If during an investigation, the reporter or responder resigns or leaves, this will be recorded. However, the investigation will continue until it is concluded.

## 10 Arrangements for initial and formal assessment meetings

10.1 This section of the Procedure provides more detailed information about how initial and formal assessment meetings are conducted. It contains information for reporters, responders and witnesses.

### Notification of meetings

10.2 If you are a reporter, responder or a witness involved in an assessment, you may be invited to meeting(s) with the investigator. The investigator will always provide written notification of meetings, including the time, date and place of the meeting, the purpose of the meeting and any relevant information, including documentation and witness statements, if appropriate.

### The right to be accompanied

10.3 If you are a reporter or responder, you can be accompanied in any meetings under this Procedure by a colleague from the Parliamentary Community, the case manager from the ISMA Service, an interpreter or a trade union representative.

10.4 Prior to any meeting and with at least one day's notice, you should confirm to the Investigator who will be accompanying you to the meeting.

10.5 The following conditions apply to your choice of companion:

- Colleagues are not obliged to act as a companion and may decline a request if they wish.
- The Investigator will permit a companion who is not a colleague, such as the case manager from the ISMA Service or trade union representative where appropriate (e.g. to provide support for someone who may have difficulty understanding written or spoken English or who may have particular needs as a result of a disability).
- If your choice of companion is unavailable when the meeting is scheduled and will not be available for more than 5 working days, the Investigator may ask you to choose someone else.
- Companions can make representations, ask questions, and sum up your position, but are not allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

If you are interviewed as a witness, you would not usually be accompanied in the meeting. However, the Investigator will permit you to have a companion if appropriate to the circumstances (e.g. if you have difficulty understanding written or spoken English or have particular needs as a result of a disability).

## 11 Reviews

11.1 If an initial assessment finds no case to answer or a formal assessment at the investigation stage does not uphold a complaint of sexual misconduct the reporter

can ask the Independent Investigation Service to review the outcome. This review will be conducted by an investigator who has had no previous involvement in the case.

11.2 A review can only be requested on the following grounds:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

11.3 For complaints against a Member or a Peer, initial assessments will be reviewed by the relevant Commissioner for Standards. The reporter will be able to contribute to this review by putting forward any evidence that they feel may have affected the assessment finding in relation to:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

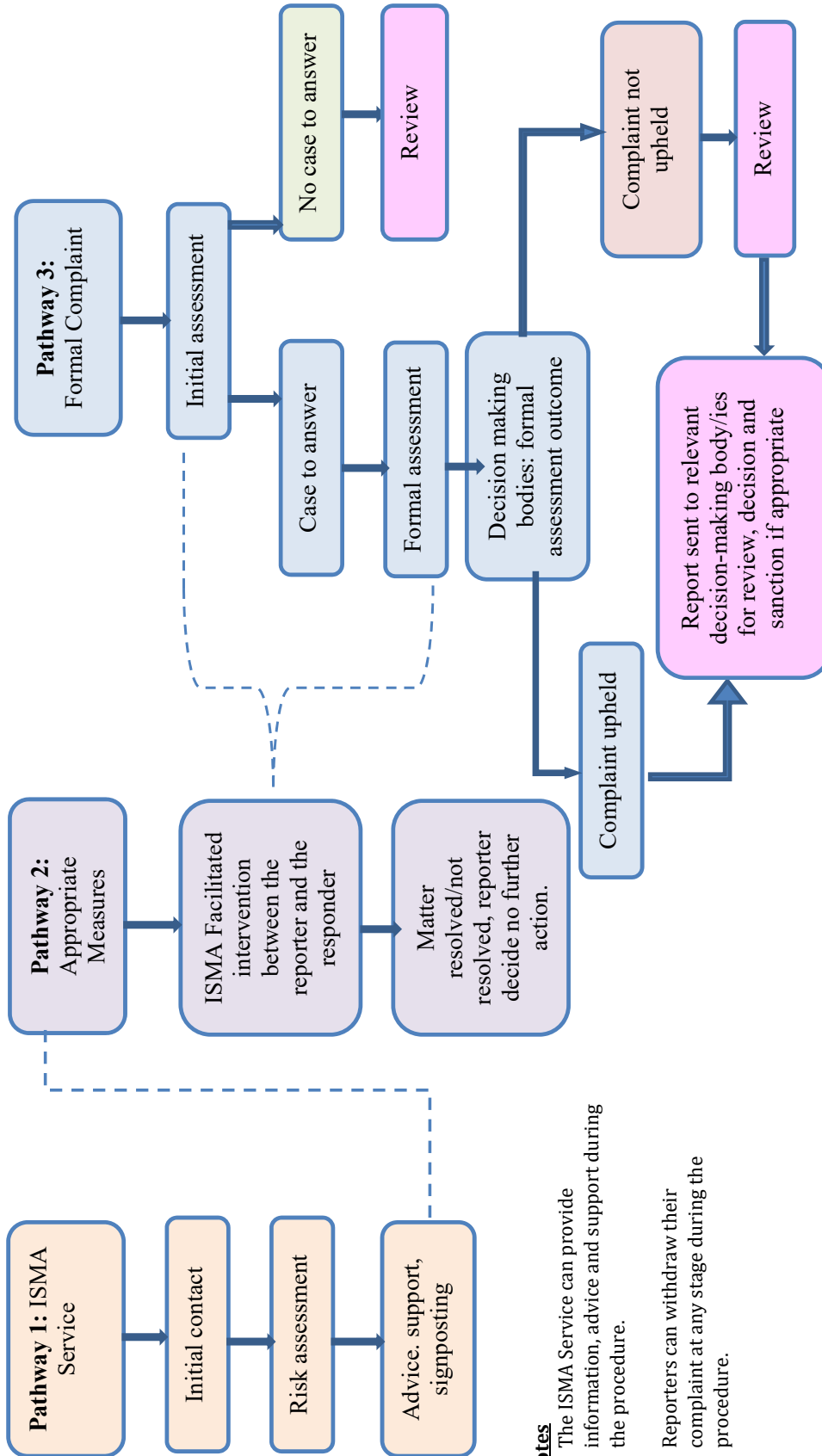
11.4 If a review finds that further evidence is admissible, the case will generally be re-assessed by the original investigator, taking into account the additional evidence. If the review finds that the correct procedure had not been followed or a different type of investigation is needed, the case may be re-assessed by a different investigator.

11.5 If a formal assessment upholds a complaint of sexual misconduct at the investigation stage, this will be reviewed by the decision-making body (e.g. via a hearing/interview under their own policies and procedures). The respondent will have an opportunity to represent any concerns they had about the investigation conducted by the Independent Investigation Service as part of this process.

## 12 Timescales

Stage of procedure	Responsibility	Timescales
Acknowledgement of written complaint and notification to responder	Investigator	Within 3 working days on the reporter's request
Notice of meeting with investigator	Investigator	A minimum of 3 working days of the meeting
Provision of draft minutes from meeting	Investigator	Within 3-5 working days of the meeting
Agreement of minutes of investigation or appeals meeting	Reporter, responder or witness	Within 10 working days of receiving the minutes
Application to appeal	Reporter, responder or witness	Within 10 working days of receipt of the initial or formal assessment
Acknowledgement of appeal	Investigator	Within 3 working days of receipt of the appeal application
Appeal review and decision	Reviewing investigator or PCS	Subject to variation, but usually within 10 working days of receipt of the appeal application

## Appendix 1: Flow Chart



**Notes**

1. The ISMA Service can provide information, advice and support during the procedure.
2. Reporters can withdraw their complaint at any stage during the procedure.

## Appendix 2: Table of possible sanctions

Responder	Decision making body	Sanction	How sanctions are imposed
MP/Peer	The Commissioner for Standards (Commons or Lords) in conjunction with the relevant committee of the Houses for the most serious cases or where alternative resolutions have failed	Rectification to restore and maintain working relationships, including, but not limited to, an apology, behaviour agreement and compulsory training	With agreement by all parties or imposed by the Commissioner for Standards  (Commons or Lords)
		Suspension/recall (in the House of Commons)  Suspension/expulsion (in the House of Lords)	The Commissioner for Standards (Commons or Lords), in conjunction with (Sub) Committees of the relevant House, a Resolution of the relevant House, and the provisions of the Recall of MPs Act 2015, and the  House of Lords (Expulsion and Suspension) Act 2015
An MP's or Peer's employee or someone employed by a political party to work on the Parliamentary Estate	MP, Peer or political party who employs them (or otherwise engages them—e.g. intern, volunteer, work experience agreement or contract for services)	Rectification to restore and maintain working relationships, including, but not limited to, an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer

Responder	Decision making body	Sanction	How sanctions are imposed
Employees of the House of Commons Administration, House of Lords Administration, Parliamentary Digital Service	House Authorities, through the appropriate management chains	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
Relevant passholders	Relevant officials and processes for suspending or revoking parliamentary— the passholder’s employer may also be notified, where relevant	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties
		Withdrawal of pass	Relevant officials and processes for revoking parliamentary passes - the passholder’s employer may also be notified, where relevant



## ANNEX D—Legal opinion on pre-Scheme cases from Tom Linden QC

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IN THE MATTER OF THE PROPOSED INDEPENDENT COMPLAINTS AND GRIEVANCE POLICY (“ICGP”)

AND IN THE MATTER OF COMPLAINTS BASED ON EVENTS OCCURRING BEFORE THE ICGP COMES INTO EFFECT AND THE RELEVANCE OF THE COMMON LAW PRESUMPTION AGAINST RETROSPECTIVE EFFECT

### OPINION

#### Introduction

1. I have been asked to give an opinion on the impact of the common law presumption against retrospective effect on the ability, under the proposed Independent Complaints and Grievance Policy (“ICGP”), to investigate complaints relating to events which occurred before that policy and the behavioural policies/codes which it will seek to uphold come into force. The question I have been asked to address is whether this presumption would, *of itself*, prevent such investigations and, for the reasons given below, I do not consider that it would.

#### The factual background

2. The factual background is set out in my Instructions and in the documents which accompany them, including the ‘Report of the Cross Party Working Group on an Independent Complaints and Grievance Policy’ dated 8 February 2018. It will also be familiar to those who read this Opinion and I therefore do not rehearse it here. Where relevant, I will deal with the facts below.

#### What is the presumption against retrospective effect?

3. The crucial starting point is to consider the nature and scope of the common law presumption against retrospective effect. Essentially, it is a principle of legal policy that changes in the law should not normally take effect retrospectively. The principle is based on fairness<sup>21</sup> and the rule of law:<sup>22</sup> the law should make clear to a person what he can and cannot lawfully do and what the consequences of given acts or omissions will be. He should not be put in a position whereby he conducts himself, or deals with his personal or business affairs, in a way which is lawful and/or will have known legal consequences, only for the law to change subsequently in such a way as to render his actions unlawful and/or subject to legal consequences which are different to those which he could have anticipated.

4. The primary context in which the presumption against retrospective effect is influential is in the interpretation of legislation. Parliament is presumed not to have intended that legislation will render past acts which were previously lawful,

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21 **L’Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd** [1994] 1 AC 486 at 525.

22 **R v Rimmington; R v Goldstein** [2006] AC 459 paras 32-37

unlawful, nor that legislation will penalise acts which were previously not subject to sanction, nor that it will subsequently provide for more severe sanctions than could have been anticipated at the time of the relevant events. Even then, clear words will displace the presumption. But the more adverse the retrospective effect, the clearer the language will need to be to demonstrate that his effect was intended by Parliament.<sup>23</sup>

5. The presumption is most powerful where the issue is the criminalisation of previously lawful acts or the increasing of sentences<sup>24</sup> and in such cases it is underpinned by Article 7 of the European Convention on Human Rights which provides that: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed”. The presumption is, however, also applicable in the civil context as one would expect given that it is a principle of fairness and the rule of law.<sup>25</sup>

6. Importantly, in the present context, the principle does not apply to procedural measures. On the contrary, where procedural changes in the decision making process occur through legislation, the presumption is that they are in the interests of justice in that they will improve the quality of decision making.<sup>26</sup> Retrospective effect is therefore regarded as desirable.

7. The distinction between procedural and substantive changes in the law is not always easy to draw. However, in ***Yew Bon Tew v Kenderaan Bas Mara***<sup>27</sup> Lord Brightman said the following in the context of an argument as to whether the provisions of the Public Authorities Protection (Amendment) Act 1974 which were in issue in that case were procedural or substantive in nature:

“the proper approach to the construction of the Act of 1974 is not to decide what label to apply to it, procedural or otherwise, but to see whether the statute, if applied retrospectively to a particular type of case, *would impair existing rights and obligations...*” (emphasis added).

8. Lord Brightman added that a provision has retrospective effect in the relevant sense:

‘if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past’

9. These passages are particularly helpful in the present context in that they show that the central question is whether a given measure which is introduced would impair existing rights and obligations if it were to have retrospective effect. If that is the case, in construing a statute at least, the court will consider whether

23 ***L’Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd*** [1994] 1 AC 486 at 525; ***Secretary of State for Social Security v Tunncliffe*** [1991] All ER 712 at 724.

24 ***R v Penrith Justices, ex p Hay*** (1979) 1 Cr App Rep (S) 265

25 See eg ***Gardner & Co Ltd v Cone*** [1928] Ch 955 at 966

26 ***Imperial Tobacco Ltd v A-G*** [1979] QB 555 at 581

27 [1983] 1 AC 553 at 558

the language of the provision in issue demonstrates that such an effect was intended by Parliament. They will also have this principle in mind in examining any decision where the issue is fairness. If, on the other hand, the measures in question seek to improve the decision making process, they will be presumed to be desirable and to have retrospective effect.

## **Applying these principles in the present case**

10. To my mind the following points are relevant. They overlap to some extent.

11. First, save to the extent that the presumption against retrospective effect reflects a basic principle of fairness, it seems to me to be debateable that it has any direct application in the present context. The presumption is primarily concerned with changes in the law and the preservation of legal rights, whereas the ICGP is essentially a proposed complaints procedure which is voluntary in the sense that no one is obliged to participate in it and that its outcomes are not binding per se. As I understand it, a responder to a complaint would be perfectly free to decline to participate, the proposed Investigator/Case Manager merely has a power to investigate and to make findings, and his or her conclusions do not bind anyone. Rather, they will be passed to the relevant decision making body, which will decide whether to act on the report of the Investigator/Case Manager and, if so, what action to take both in terms of procedure and outcome. The findings of the Investigator/Case Manager will have no legal consequences until such time as they are acted on by a decision making body. The investigation will also be confidential. The analogy between the ICGP and the application of the law by the courts is therefore not a close one.

12. Second, a key aspect of the ICGP appears to be to be to improve the quality of decision making in relation to complaints of misconduct including sexual harassment, harassment and bullying. These aspects of the proposal do not seem to me to be objectionable on the grounds that they are retrospective. They are simply the procedures whereby complaints will be investigated. It is clear that the process of investigating a complaint will be required to be conducted in accordance with the duty to act fairly, including to the responder, and the principles of natural justice. It therefore seems to me to hardly be a matter for complaint by the responder that such procedures did not previously exist. Even if the procedure for investigating complaints is retrospective, in the sense that when the acts which are investigated under the procedure were committed the responder could not be subject to such procedures, in my view the presumption against retrospective effect would not bite for the reasons discussed above.

13. Third, a key aspect of the ICGP is that it provides the machinery to investigate breaches of codes of conduct/behavioural policies which were not in existence at the time when the events which may be alleged in the so called historic cases took place. To this extent it might be said that there is an issue as to retrospective effect if those codes/policies are then enforced. However, even assuming that the presumption against retrospective effect is applicable by analogy there seem to me to be two answers to this point:

- a. First, as I understand it the codes/policies will in effect articulate standards or requirements which were already in existence at all material times. There may not have been written policies which prohibited, for example, bullying, harassment or sexual harassment but it is not the case that these forms of conduct were acceptable amongst the Parliamentary Community in the past and will now be rendered unacceptable by the new policies: they were always unacceptable. Moreover, in many cases the conduct in question (if it is found to have occurred) will have been unlawful for many years: amongst other things the policies prohibit discrimination and harassment in the context of employment which is contrary to the Equality Act 2010<sup>28</sup> and/or harassment which is contrary to the Protection from Harassment Act 1997, conduct which would amount to a sexual assault or other possible criminal offences or breach of the implied duty of mutual trust and confidence by employers, and so on. It therefore seems likely that in most cases where an complaint was upheld there would be some difficulty with an argument, if it were put forward by a responder, that he had a right to act as he did, that he had thought that the conduct prohibited by a given code or policy was permitted when he acted as he did, and that it is therefore unfair now to say that it was in breach of the standards expected of members of the Parliamentary Community. In marginal cases, where this type of argument was persuasive, it would no doubt be taken into account either as evidence that the conduct was indeed acceptable at the relevant time or as mitigation.
- b. Second, as noted above, the outcome of the procedure is merely that the findings are presented to the relevant decision making body which will then be obliged to act in accordance with the rights and obligations which form part of the particular relationship with the responder. This may mean that no action is taken or it may mean that action is taken which is in accordance with the legal rights of the responder. If the action taken is contrary to the responder's legal rights they will have whatever legal recourse would ordinarily be available against the decision making body in the relevant circumstances. It is not the case that the responder will be subjected to any sanction by the Investigator/Case Manager or, indeed, necessarily any adverse consequence. This tends to reinforce the point that there is no unfairness in the use of the ICGP to investigate and make findings in relation to past events.

## Practicalities

14. This seems to me to answer the question which I have been asked to consider, but it may be worth making the following practical points.

15. First, to my mind the key issue in relation to the so called historic cases is the fairness, in terms of the ability responder to respond effectively, of any investigation where the allegation relates to events which took place a long time ago. As is well known, complaints of discrimination or harassment which arise in

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28 (and was contrary to the anti discrimination legislation which existed before that)

the field of employment must be brought within 3 months of the act complained of or, where the act extends over a period, 3 months of the end of that period.<sup>29</sup> There is a discretion to extend time where it would be just and equitable to do so. The factors which will be taken into account when considering an application for an extension will include the reasons for the delay and the prejudice to the respondent, in terms of its ability to defend the claim, which has been caused by the delay.<sup>30</sup> For discrimination claims in the county court the primary limitation period is 6 months, albeit with the same scope for an extension as applies to employment cases.<sup>31</sup> The limitations periods for other civil claims in the courts are, however, longer. Careful thought therefore needs to be given to how this type of issue will be approached if historic cases are to be investigated.

16. Second, in the light of the concerns which have been expressed about the presumption against retrospective effect, if the decision is that historic cases will be investigated where they are not too old to be capable of a fair determination, this should be made clear in the ICGP. This will, at least, close down arguments that the ICGP should be interpreted as applying only to events which occur after it comes into force. I see that a statement along these lines is likely to be included.

17. Third, it is important to note that the analysis above is premised on the conduct in question being unacceptable at the time when it took place. As I have pointed out, in theory there may be marginal cases where a responder can genuinely say that his conduct was acceptable at the relevant time, in which case I would expect this to be made clear in the findings of the Investigator/Case Manager so that it can be taken into account by the decision making body.

18. Fourth, careful thought will need to be given to getting 'buy in' from the decision making bodies. Obviously, if they do not take action in the light of the findings, the ICGP process will be of less value. As the decision making bodies will potentially impose important sanctions, they are liable to have greater concerns about the fairness of any retrospective effect. There may be questions as to whether it would be consistent with the existing legal rights and obligations of the responder for a given course of action to be taken.

19. I have not been provided with the details of the rights and obligations which exist within the different types of relationship that there are within the Parliamentary Community, and which may be affected by a decision under the ICGP. Nor have I been asked to comment. However, it seems unlikely that a responder will be able to argue convincingly that, in the context of an employment relationship, he had a right e.g. to sexually harass the complainant, that he believed that he was entitled to do so and that therefore it is unfair now to punish such behaviour. I would expect the answer to be as above: that such conduct has never been acceptable in the context of the particular employment relationship, that on the contrary it has been unlawful for a number of years, and that the potential disciplinary consequences were obvious or ought to have been obvious at all material times.

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29 Section 123 Equality Act 2010. Note that there are numerous cases on what constitutes 'conduct extending over a period', with **Hendricks v Metropolitan Police Commissioner** [2003] ICR 530 CA being the one most often cited.

30 Again, there are numerous cases on the right approach to determining whether there should be an extension but see eg **British Coal Corporation v Keeble** [1997] IRLR 336.

31 Section 118 Equality Act 2010

20. In the case of the relationship between MPs and the Parliamentary Commissioner for Standards the position may be less clear cut, but I see that the House of Commons Code of Conduct provides for example that ‘Members have a duty to uphold the law, including the general law against discrimination’ and that ‘Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House as a whole or its members generally’. Although the thrust of the Code is directed at financial misconduct, assuming that they formed part of the Code at the time of the relevant events, these provisions seem likely to provide a basis for saying that even if, as a matter of common sense, it was obvious that the conduct in question was unacceptable, the Code sets a clear enough standard. Certainly, I would be surprised if an MP thought it advisable to argue that no action could be taken in relation to proven acts of sexual misconduct because they predated the introduction of the ICGP and the presumption against retrospective effect therefore prevented this.

## Conclusion

21. I hope that this Opinion has been helpful. Please do not hesitate to contact me if I can be of further assistance.

THOMAS LINDEN QC

Matrix Chambers

Gray’s Inn

27 June 2018

# ANNEX E—Legal opinion on criminal cases from David Perry QC and Katherine Hardcastle

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In the matter of the Independent Complaints and Grievance Policy

## Advice

### Introduction

1. In November 2017, following certain reports in the national media, a cross-party bicameral working group was established to consider the issues of bullying and sexual harassment within the United Kingdom Parliament and the Parliamentary Community (“the Working Group”). The Working Group reported in February 2018 (“the report”) and recommended, among other matters, the development of an independent Scheme for managing complaints and grievances, including a new policy for the management of complaints of sexual misconduct (“the policy”).
2. The policy is now in draft form, and will be finalised subject to the comments of various interested parties. It is expected that the policy may be amended (perhaps significantly) during this process of consultation, though this is a matter which falls outside the scope of this Advice.
3. The issue which presently arises for consideration is the functioning of the policy in circumstances where the subject of a complaint made under the policy may also be capable of constituting the subject of a criminal investigation and, potentially, a prosecution.

### Executive Summary

4. For reasons discussed further below, our views may be summarised as follows:
  - i. The processes of disciplinary proceedings and criminal proceedings are separate and their purposes and procedures are wholly distinct.
  - ii. There is no legal bar to an internal investigation being conducted prior to any criminal investigation. Civil and criminal proceedings may be conducted in respect of the same facts (subject to a limited exception, discussed further below) and it is commonplace for disciplinary proceedings to be concluded in advance of criminal proceedings.
  - iii. A disciplinary investigation should not be inhibited in considering matters which may form the subject of a criminal investigation. The risks arising from a properly conducted internal investigation are likely to be within tolerable limits and can be mitigated by certain steps being taken by those conducting an internal investigation.

- iv. However, in some exceptional circumstances there may be practical reasons why it is preferable to adjourn disciplinary proceedings which are likely to become the subject of a later criminal investigation.
- v. Otherwise, there is no particular significance of a decision by a complainant to report a matter to the police which is, or may be, the subject of disciplinary proceedings.
- vi. From the point of view of a criminal investigation or prosecution, there is no particular legal risk which arises because an internal investigation has not been conducted.
- vii. Consistent with the recommendations of the report and the terms of the policy, we would emphasise the importance of conducting internal investigations in a manner which is fair to all parties and in which all aspects are meticulously documented.

## Relevant Background

5. Before turning to the substance of this Advice, it is relevant to note several features of the policy and the report which preceded it.

### The report

6. Reflecting the result of the Working Group, the report is wide in its scope, extending to some 15,000 people within the Parliamentary Community, including Members of Parliament, Peers and staff in the Palace of Westminster and in constituency offices.

7. Whilst aiming to be inclusive and to foster a culture in which misconduct is readily reported and sanctioned, the report acknowledges that, owing to the nature of their positions, there is a particular risk of malicious and vexatious claims being made against Members of Parliament, Peers and staff and, accordingly, that there is a need to design a procedure that is fair to all parties.

8. Among the report's key findings is the point that sexual misconduct is qualitatively different in a number of ways from other forms of misconduct and requires separate definitions and procedures. Accordingly, the report recommends the development of a specific policy for the management of complaints of sexual misconduct.

9. The report does not envisage that the new arrangements should discourage any individual from reporting misconduct to the police or any other relevant body (an employment tribunal or political party, for example). It further states (at §27):

*“Complainants will be encouraged to report any criminal allegations to the police, and supported whether or not they chose to do so; the new scheme will provide support and advice to the complainant, whether or not they chose to raise [a] criminal complaint.”*



10. While the Scheme will be complainant led, it is noted that the Scheme will reserve the right not to investigate incidents that have already been investigated under another process.

11. In respect of confidentiality, the report states (at §32) that:

*“Confidentiality will apply at all stages of the process. Significant detail of allegations (and any counter allegations) will be provided to enable the alleged perpetrator(s) to understand and respond to the issues raised. The alleged perpetrator will be able to provide evidence in their own defence.”*

12. So far as sanctions are concerned, it is noted in the report that these will differ according to the role of the perpetrator in the Parliamentary Community as it will be the role of the new procedures to be adopted to make findings of fact (for example, whether there has been any act of sexual misconduct) and to refer that matter to the body responsible for the discipline of the perpetrator. For example, in the case of a Member of Parliament or a Peer, the relevant decision maker would be the Parliamentary Commissioner for Standards, whereas for a member of a Peer’s staff, the decision maker would be the person who employs them.

13. In relation to the development of a policy on sexual misconduct, the report notes that criminal proceedings and internal disciplinary proceedings are distinct—though the outcome of criminal proceedings may inform subsequent disciplinary proceedings. It is noted that if there is a parallel criminal investigation in any matter, a formal disciplinary process may be paused, depending on the circumstances.

14. The report envisages that an independent specialist will take up a key role in relation to the management of the procedure for complaints of sexual misconduct. It states (at §54):

*“All reports and complaints will be handled by a specialist, trained Independent Sexual Violence Adviser (ISVA) who will aim to be a single point of ongoing contact and advocacy for complainants and alleged perpetrators ... Mechanisms will be put in place to protect confidentiality of all those involved in the process throughout. If there is to be any disciplinary process, the right of alleged perpetrators to have complete disclosure of the allegations made is a key principle. It is nonetheless recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect complainants from retaliation or further victimization, may inform the degree of disclosure to an alleged perpetrator of certain details of some reports, in tandem with the principle of natural justice for all parties. The ISVA role includes management of an ongoing risk assessment process, and the keeping of confidential records of all allegations made against individuals (including allegations made anonymously or by third parties), in accordance with data protection laws. Where risks to the complainant or others are identified, it is the ISVA’s responsibility to ensure appropriate*

*referrals are made to manage the risk. Where the level of risk requires it, this may include referral to other agencies, including the police, taking into account the complainant's needs and wishes."*

15. The report envisages that the policy to be developed may provide for 'cluster' reporting (where a pattern of misconduct is identified through multiple reports), and appropriate information security measures.

16. Two broad channels are identified by way of potential procedures for resolving complaints:

- i. The informal resolution of allegations – in which no formal findings are made though resolution measures may be adopted by agreement between the parties (for example, the alleged perpetrator provides a written apology or enters into a future behaviour agreement).
- ii. Formal investigations—amounting to workplace disciplinary proceedings. The key principles of this procedure are said to be fairness and proportionality and alleged perpetrators are to be provided with all details of the allegations against them and invited to present their own evidence as well as to test the evidence against them. The standard of proof for such proceedings is the balance of probabilities. The investigation result in a written report which may be shared with the relevant decision-making body and, in the event of a finding of fault, would be shared with that decision maker in order to determine the appropriate sanction. It is noted in the report that in relation to the conduct of a Member of Parliament, the processes of the Parliamentary Commissioner for Standards may need to change such that there is no blanket obligation to publish details of investigations. It is envisaged in the report in relation to formal proceedings that complainants will have a right to anonymity (which they may chose to waive). The range of envisaged sanctions encompasses the informal resolution mechanisms (mentioned above), through to recall of a Member of Parliament or the suspension of a Peer. An employee may face dismissal. The appropriateness of sanctions is expected to take into account the wishes of the complainant, the role of the perpetrator, the severity of the conduct and any precedents set in comparable cases.

17. The report envisages that detailed procedures should include appeal mechanisms.

### The policy

18. The draft sexual misconduct policy and procedure is to be considered against the background of the report. Among the notable features of the policy are the following matters.

19. The policy is intended to deal with 'sexual misconduct', which term incorporates a range of behaviours in breach of the policy. Whilst the policy acknowledges that

sexual misconduct may include conduct which also amounts to the commission of an offence, the use of the term ‘sexual misconduct’ makes clear that the policy is separate from any consideration of the criminal law or criminal process. The policy does, however, adopt the same definition of consent as is used in the Sexual Offences Act 2003; that is to say, that consent is agreeing to something by choice and having the freedom and capacity to make that choice.

20. The report makes clear that its purpose and procedures are distinct from any criminal process and it includes a provision which reserves the right to pause any investigation in the event of a parallel criminal investigation (at §13.3 to 13.5):

*“The nature and scope of the policy and procedure is fundamentally different from that of a criminal process. The policy and procedure is a disciplinary matter for the Parliamentary Community based upon an allegation than an individual has breached the sexual misconduct policy and procedure. The allegation has to be proved on the balance of probabilities. The most serious sanction that can be applied is dismissal.*

*In contrast, the criminal process deals with allegations related to a criminal act, that must be proven beyond reasonable doubt.*

*Where someone has reported an alleged criminal offence to the police and has made a complaint under this policy and procedure, the circumstances of the case will be considered to determine whether it is appropriate to investigate the matter under this procedure at the same time, or whether action under this procedure should be paused until the criminal investigation is completed.”*

21. In cases where a number of individuals make allegations against one individual; or one individual makes allegations against a number of individuals (‘cluster’ cases), the policy provides that those complaints may be managed as a single joint investigation or as multiple investigations, depending on the circumstances, although the case against any alleged perpetrator will be considered on an individual basis.

22. The policy states that it is not intended to discourage individuals from other routes of reporting sexual misconduct, including reporting to the police.

23. In relation to confidentiality, the policy states that mechanisms will be put in place to protect the confidentiality of all of the parties involved in any procedure under the policy. It further requires that at all stages, those receiving disclosures and/or processing details of any case are required to keep the names and details of that case confidential.

24. The policy identifies three ‘pathways’ in relation to dealing with any particular allegation:

- i. Pathway 1: use of an Independent Sexual Misconduct Advisory Service. This pathway provides specialist support, advice and advocacy services and is aimed to assist a complainant in deciding which (if any) further pathways he or she wishes to pursue.
- ii. Pathway 2: the 'Appropriate Measures' pathway. This pathway does not include any investigation of the allegation and will make no findings. Instead it provides for a facilitated intervention with the alleged perpetrator (if desirable), and the adoption of informal measures such as a written apology, acknowledgment of the behaviour, and/or a future behaviour agreement or an agreement to undertake relevant training.
- iii. Pathway 3: a Formal Complaint. This involves a three stage process of: (a) an initial complaint and a determination of whether there is a prima facie case within the scope of the policy; (b) a formal assessment, in which a specialist investigator will gather evidence, the alleged perpetrator will be provided with details; and (c) a written report will be prepared to be sent to the relevant decision making body for the individual concerned and any sanction determined. The policy provides that a written report may conclude, in any case, that there is no case to answer (on the basis that the evidence suggests there was no sexual misconduct); that there is insufficient evidence (on the basis that it is not possible to determine whether the alleged misconduct occurred or not); or that the case is upheld on the basis that, applying the test of the balance of probabilities, sexual misconduct has occurred. The decision making body for the relevant individual will consider the written report and assess its findings (including taking further evidence if necessary). It is then for the relevant decision-making body to form its own conclusions on the allegation and to apply its own policies and procedures to deal with the matter, including the imposition of any sanction. Under the policy, decisions about sanctions will take into account the severity of the conduct in issue; the wishes of the complainant; and any precedents in comparable cases. The policy states that key principles of the Formal Complaint pathway are to be fairness, due process and proportionality. Parties are to be treated fairly, with dignity and confidentially. The alleged perpetrator will be provided with details of the allegation made against him or her. The standard of proof will be the balance of probabilities. The investigation may involve gathering further evidence in any case, if needed.

25. Pathway 1 can be used in conjunction with Pathways 2 and 3. At any time a person using Pathway 3 may chose to seek resolution through Pathway 2 and conclude the matter.

26. In relation to a Formal Complaint, it is envisaged that a complainant or alleged perpetrator may appeal against a determination at the stage of consideration of the initial complaint or the formal assessment stage.

## Application of Relevant Principles

27. There is no principle of criminal law that the subject of civil, or disciplinary or employment, proceedings cannot also form the subject of a criminal investigation or, if the applicable threshold is met, a prosecution. Criminal and civil proceedings (including disciplinary proceedings) frequently run in parallel. It is also often the case that disciplinary proceedings in an employment context are conducted and concluded prior to any criminal investigation.

28. The circumstances in which civil proceedings may be stayed pending the outcome of criminal proceedings are strictly limited; namely, that there must be a real risk of serious prejudice which may lead to injustice and that sufficient safeguards are not available to protect against the risk of injustice arising.<sup>32</sup> This is a high bar and is not met, for example, by the fact that a defendant, by serving a defence in civil proceedings, would be giving advance notice of a defence which he or she might wish to rely on in criminal proceedings.<sup>33</sup>

29. In the present case, and as the policy itself recognises, the purpose of criminal proceedings and disciplinary proceedings are distinct and their procedures are different. The procedures envisaged by the policy are intended only to cater for circumstances whether there has been sexual misconduct, as that term is defined within the policy. The policy is not concerned with any matter other than to establish whether ‘sexual misconduct’ has occurred, unlike the application of the criminal law or proceedings, the purpose of which is to determine whether an offence has been committed, contrary to the law of any part of the United Kingdom.

30. The standard of proof to be applied in civil proceedings generally and under the policy is the balance of probabilities, as opposed to a standard of beyond reasonable doubt in criminal proceedings. In criminal proceedings there is a law of evidence which is intricate and governs whether material is admissible before the tribunal of fact (in England and Wales: magistrates or a jury). By contrast, the policy imposes no restriction on what evidence an investigator may consider in undertaking an investigation under the Formal Complaint pathway. Further, while under the policy the greatest available sanction to any decision making body is dismissal or recall (depending on the role of the alleged perpetrator), a conviction for an offence in the criminal courts may lead to imprisonment.

31. As a matter of general principle, the findings of another tribunal in civil proceedings are not admissible evidence in criminal proceedings.<sup>34</sup> That is to say: the conclusion and findings of an internal investigation under the policy that sexual misconduct had occurred would not be admissible as evidence in a criminal trial. In this sense, internal disciplinary matters may be considered to have limited relevance to any subsequent criminal investigation or prosecution.

This is so regardless of the nature of the conduct (and potential offence) under consideration.

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32 **R v Panel on Takeover and Mergers, ex parte Fayed** [1992] BCC 524 and **Bankas Snoras v Antonov** [2013] EWCA 131.

33 Civil proceedings will only be stayed in exceptional circumstances.

34 **Hollington v Hewthorn** [1943] KB 587.

32. A related point is that the fact that an internal investigation has not been conducted is not a matter which, of itself, would be of any particular significance in relation to a criminal investigation or criminal proceedings – though the reasons why no investigation was conducted may be a subject on which witnesses are questioned at trial, depending on the facts of any particular case.

33. In very limited circumstances it may be argued that the fact of prior civil proceedings in relation to a particular set of facts gives rise to the principle of double jeopardy (the principle that a person cannot be tried twice in relation to the same conduct) and that a prosecution in relation to facts which have formed the basis of civil proceedings is barred. However, such an argument could only plausibly arise in relation to prior civil proceedings which shared the essential characteristics of a criminal process and, importantly, carried sanctions such as monetary fines, that were commensurate with a criminal process. On the basis of the policy described above, the principle of double jeopardy appears to be of no application in the present case. The procedure proposed by the policy and the available sanctions are far removed from criminal proceedings and no such argument could be made.

34. It follows that any risks associated with parallel criminal and disciplinary proceedings might be characterised as indirect and relate chiefly to the following topics:

- i. Publicity.
- ii. Confidentiality.
- iii. Evidence.

35. In relation to publicity, as a matter of principle, there is a possible risk that if it became publicly known that there had been a finding against, for example, a Member of Parliament, that he or she had misconducted him or herself under the policy, that fact and its reporting in the media may unfairly influence a jury in a subsequent criminal trial. It is to be noted however, that the threshold for finding that pre-trial publicity makes conducting a fair trial impossible is set very high. The Court of Appeal explained the principle in *R v Abu Hamza* in the following terms (at §93):<sup>35</sup>

*“Prejudicial publicity renders more difficult the task of the court, that is of the judge and jury together, in trying the case fairly. Our laws of contempt of court are designed to prevent the media from interfering with the due process of justice by making it more difficult to conduct a fair trial. The fact, however, that adverse publicity may have risked prejudicing a fair trial is no reason for not proceeding with the trial if the judge concludes that, with his assistance, it will be possible to have a fair trial. In considering this question it is right for the judge to have regard to his own experience and that of his fellow judges as to the manner in which juries normally perform their duties.”*

36. It follows that criminal trials proceed on the basis that jurors will act in accordance with their oaths and faithfully try the case on the evidence heard in court, not what has been reported in the media. In this respect, the risk that adverse publicity surrounding any prior internal investigation may cause any prejudice to a subsequent criminal trial is extremely remote.

37. We further note that the policy and the report place some emphasis on confidentiality. Accordingly, the usual position should be that it is unlikely that the details of any internal investigation would become publicly known. Such an approach is consistent with the position under the Sexual Offences (Amendment) Act 1992, victims in cases of rape and certain other specified offences are entitled to anonymity in reporting of the case. Once an allegation of one of the specified offences has been made, nothing can be published which is likely to lead members of the public to identify the victim. The rationale underlying this legislative provision is that potential complainants should not be deterred from reporting that they have been the victim of a sex crime. This serves to highlight the importance of preserving confidentiality for complainants under the policy.

38. As for the bearing which an internal investigation may have on the potential evidence available for a criminal trial and the likelihood of a prosecution, it is necessary by way of background to say something about the approach adopted by prosecuting agencies following a criminal investigation. The position is governed in England and Wales by the Code for Crown Prosecutors (“the Code”). The Code is applied by prosecutors when a criminal investigation has been completed in order to determine whether a prosecution should be brought (there being no law of automatic prosecution in this jurisdiction). The relevant test to be applied under the Code is known as the Full Code Test. The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Under the evidential stage of the Full Code Test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. The finding that there is a realistic prospect of conviction is based on the prosecutor’s objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty. If the evidential stage is met, a prosecutor must then go on to consider whether a prosecution is in the public interest having regard to all the circumstances, including the seriousness of the offence, its consequences, the status of the victim, the status of the perpetrator, the perpetrator’s role in the conduct, and any other relevant factors.

39. In relation to the question of whether an internal investigation may affect the likelihood of a later prosecution, the following points arise:

- i. As noted above, the law of evidence in criminal proceedings is extensive, whereas the policy does not envisage any restriction on the type of evidence which an investigator may take into consideration in any internal investigation arising from a Formal Complaint. It follows that certain types of evidence available to an investigator under the policy may not be admissible in any subsequent criminal proceedings.
- ii. However, there is no reason in principle why, for example, a witness statement taken in the course of an internal investigation could not form the basis of what a witness has said for the purposes of a subsequent criminal investigation and, potentially, a prosecution. Equally, there is no reason why other sources of evidence gathered by an investigator (for example CCTV footage) could not be used both in an internal investigation and criminal proceedings, and this would ordinarily be the case.
- iii. The availability and quality of available material is a matter which is considered by a prosecutor at the evidential stage of the Full Code test. In circumstances where criminal proceedings were to follow an internal investigation a prosecutor would be in a position to place the material potentially available to the prosecution in the context of the preceding internal investigation – and, if necessary, obtain evidence to address any difficulty arising from that prior investigation. A prosecutor would not be placed at any particular disadvantage (in making a decision of whether to prosecute under the Full Code test) where an internal investigation had been conducted and it is relevant to note that it is commonplace for employment proceedings to have been concluded before criminal proceedings commence.
- iv. It is noted that concerns have been raised in other contexts<sup>36</sup> that an internal investigation into sexual misconduct may pose a substantial risk to later criminal proceedings in that it may involve an element of “rehearsal” of evidence, with the potential for memories to be tainted or, in some cases, may lead to accounts being altered following certain matters coming to light in the course of an investigation. This risk is not to be overestimated, and should not inhibit an investigator under the policy. It is also to be considered that the risks may be mitigated by the introduction of certain safeguards, for example, video or tape-recording interviews with key witnesses (including an alleged perpetrator), such that the recordings are available to any subsequent investigation and, in general, ensuring that detailed notes are taken throughout the process and that the evidence given at any hearing is properly recorded (by tape recording, for example).

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36 See for example the Guidance for higher education institutions: how to handle alleged student misconduct, 21 October 2016 <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/guidance-for-higher-education-institutions.aspx>



40. It follows from the above that the risk that an internal investigation under the policy may prejudice the evidence available to a criminal investigation and possibly a prosecution may be adequately managed and should not be overstated.

41. Notwithstanding the discussion above, it may be that in certain exceptional circumstances practical considerations mean that it is preferable to postpone disciplinary proceedings behind a criminal investigation, in particular in the most serious cases. For instance:

- i. An alleged perpetrator may not wish to cooperate with any internal investigation on grounds that it may generate inculpatory material in respect of his or her case, or may require him to disclose at an early stage details of his or her defence to an allegation.
- ii. A potential complainant may fear that any prior internal investigation poses an unacceptable risk of tainting the available evidence and jeopardising any future criminal proceedings.
- iii. Either party may consider that there is an unacceptable risk of the confidentiality of the process being breached and attracting the attention of the media.
- iv. It may be considered that, in any event, disciplinary proceedings should take into account the outcome of a criminal investigation and/or a prosecution: for example, there may be certain advantages to commencing disciplinary proceedings following the conviction of a person for a sexual offence (for example, avoiding the need to conduct any internal investigation and risk re-traumatising a victim).

## Summary of Conclusions

42. It follows from the above that our conclusions may be summarised as follows:

- i. Disciplinary proceedings and criminal proceedings are wholly distinct in their purposes and procedures.
- ii. There is no reason in principle why an internal investigation cannot be carried out prior to any criminal investigation or prosecution.
- iii. There is no particular procedural (or other) significance to a decision by a complainant to report a matter to the police, so far as parallel disciplinary proceedings may be concerned.
- iv. Equally, there is no significance per se, in respect of criminal proceedings, to a decision not to commence an internal investigation.
- v. There are minimal risks in an internal investigation preceding a criminal investigation, provided sensible steps are taken to ensure that the investigation is properly documented and the evidence of witnesses is recorded and retained.

- vi. In some exceptional circumstances there may be practical reasons why it is preferable to adjourn disciplinary proceedings which are likely to become the subject of a criminal investigation.
- vii. As the policy rightly envisages, detailed and reliable records of the proceedings should be taken and preserved.

43. We hope that what we have written above is helpful but we would, of course, be happy to address any questions arising in conference.

**6KBW College Hill  
EC4R 2RP**

**David Perry QC  
Katherine Hardcastle 29 June  
2018**

## Annex F—Announcement and Terms of Reference of the Inquiry into the Bullying and Harassment of House of Commons Staff led by Dame Laura Cox QC

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Dame Laura Cox QC Appointed to Conduct Independent Inquiry into the Bullying and Harassment of House of Commons Staff

Dame Laura Cox DBE QC has today been appointed to conduct the independent Inquiry into the Bullying and Harassment of House of Commons Staff.

Her appointment follows a decision by the House of Commons Commission on 19th March to task its two non-executive and non-Parliamentarian members, Jane McCall and Dame Janet Gaymer, with identifying an independent expert to look at the issue and agree suitable terms of reference for the Inquiry.

The findings of Dame Laura's inquiry will be laid before the House of Commons. It is hoped that preliminary findings will be available before the summer recess with a final report produced in the Autumn.

The Inquiry will consider issues impacting directly on House of Commons staff (those employed directly by the House of Commons rather than by Members of Parliament). It is an inquiry, not an investigation. Dame Laura will not be investigating any individual complaints or reopening past cases. The Inquiry will, however, consider what options are available for resolving current or historical allegations and the support available to those affected. No Parliamentarians will be involved in the conducting of the Inquiry.

Dame Laura has today written to all current employees of the House of Commons asking them to come forward with any information as to perceived bullying or harassment. Those House staff, both present and past, who have experienced it, or have information about it, will be able to submit written information to Dame Laura directly, by email or post, and to speak to her in private and confidential meetings to be arranged.

No contributor to the Inquiry will be identified and all submissions will be treated in complete confidence.

Announcing the appointment, Dame Janet Gaymer said:

“In appointing someone of the calibre and expertise of Dame Laura Cox, we are demonstrating our intention that those working for the House of Commons can be confident that the appropriate processes are in place to ensure that they are treated appropriately and fairly at all times.

“It is vitally important that this Inquiry is wholly independent of any political or parliamentary influence so that everyone can be assured that it is conducted fairly and with the sole purpose of protecting those employed by the House”.

**ENDS**

## Notes to Editors:

1. **Dame Laura Cox DBE** served as a Justice of the High Court from 2002 until her retirement in November 2016. She was previously the Head of Barristers' Chambers at Cloisters in the Temple, London, where she specialised for many years in equality law and employment law. She was appointed as Queen's Counsel in 1994 and appeared in many of the leading cases in her specialist areas in both domestic and European courts. Serving on the Bar Council, she was instrumental in ensuring the effective implementation of the first Equality Code for the Bar.
2. In addition to advising and representing both employees and employers in numerous court cases involving harassment at work, and subsequently hearing appeals in such cases as a judge, she has carried out a number of investigations in cases involving such allegations. In December 2002, Dame Laura received a "lifetime achievement" award from the organisations 'Liberty' and 'Justice' for her commitment to equality and human rights over 25 years at the Bar. She is a Bencher of the Inner Temple and an Honorary Fellow of Queen Mary, University of London.
3. In 2017 she accepted an invitation from the Fawcett Society to chair a panel of equality experts, reviewing the scope and effectiveness of our current gender equality laws. The report, addressing a broad range of issues and making many recommendations for change, was published earlier this year to considerable acclaim.
4. Since her retirement from the Bench, she has re-joined Cloisters as an Associate Tenant and will run the independent Inquiry from her office there.
5. Current and past employees of the House of Commons who wish to raise matters of relevance to the Inquiry are being invited to submit written information and, if so wished, to seek a meeting with Dame Laura via her office at Cloisters by 8th June 2018.

**The Inquiry's Terms of Reference** are as follows:

### Objectives

The objectives of the inquiry are—

- to establish the nature and extent of bullying and harassment (including sexual harassment and any systemic behaviours) of past and present House of Commons staff;
- to identify any themes and patterns regarding how previous complaints about such behaviour were handled or how complainants were treated, or, if no formal or informal complaint was made, the reasons for this;
- to assess previous, existing and any proposed policies and procedures relating to bullying or harassment and to complaints about such behaviour, comparing them to current best practice, with a view to making any

recommendations for improvement in the way in which such complaints are handled or will be handled in the future, including the availability of appropriate internal or external support; and

- to consider and comment upon the House of Commons as a place of work with regard to ensuring the treatment of staff with dignity and respect and maintaining an open and supportive culture.

### Scope and Methodology

- The Inquiry will invite past and present House of Commons staff and others with relevant perspectives (including staff representatives) to offer in person or in writing their experiences of perceived bullying and harassment, including sexual harassment.
- All contributions will be treated in strict confidence and will not be published or liable to release. Any references to such information in any Report arising from the Inquiry will be anonymised. No individual will be identified or identifiable.
- It is not the purpose of the Inquiry to reopen past complaints of bullying or harassment or to investigate new ones against particular individuals. It is hoped that the opportunity offered to House of Commons staff to reflect on the House of Commons as a place of work and to present their experiences to an independent third party in confidence may help them to achieve closure, where appropriate.
- No existing route of complaint open to staff will be affected by the Inquiry, and those submitting experiences will be given details of any existing routes which may be pursued, and of available support or counselling services or other pathways for the resolution of such complaints.
- The Inquiry will be provided with all necessary resources under the auspices of the two non-executive members of the House of Commons Commission, who will provide any necessary guidance and support as requested by the Inquiry in order to help it achieve its objectives.
- The Inquiry will aim to present preliminary findings to the House of Commons before the summer recess, depending on the numbers of people who come forward, and a Final Report as soon as reasonably practicable thereafter.